EMPLOYMENT TRIBUNALS

Claimant: Mr N Cole

Respondent: Dunelm (Soft Furnishings) Ltd

Before: Regional Employment Judge Swann

On: 8 February 2018

Representation
Claimant: No attendance by consent – written representations
Respondent: No attendance by consent – written representations

JUDGMENT OF THE EMPLOYMENT TRIBUNAL IN ACCORDANCE WITH RULE 72 OF THE EMPLOYMENT TRIBUNALS RULES OF PROCEDURE 2013 WITHOUT A HEARING

JUDGMENT

The judgment of the tribunal is that the original judgment dismissing the claim of the Claimant is hereby confirmed.

REASONS

Background and issues

1. This is an application made by the Claimant for the reconsideration of a judgment signed by me in accordance with Rule 52 of the Employment Tribunals Rules of Procedure 2013 dismissing the proceedings on 27 April 2016 following correspondence received from the Claimant indicating his wish to withdraw the claim and to have the same cancelled.

2. Correspondence thereafter submitted to the Employment tribunal in August 2016 and subsequently in November 2017 from the Claimant set out his wish for his case to be "reopened" to enable him to continue with his claim against the Respondent. That correspondence has been treated as an application for the reconsideration of the aforementioned judgment to determine whether or not it was in the interests of justice for the said dismissal judgment to be revoked as requested by the Claimant.

3. As the original judgment was issued without a hearing, the parties have in accordance with Rule 72 of the Employment Tribunals Rules of Procedure 2013 consented for this matter to be dealt with by me without the need for an attended hearing.

4. Therefore, the issues to be determined are firstly whether or not the Claimant has brought his application for reconsideration within the time limits provided for within the Employment Tribunals Rule of Procedure and if not whether time should be extended. Secondly, whether it is in the interests of justice, having taken account of the submissions made by both the Claimant and Respondent, for the said dismissal judgment to be revoked or varied.

5. In that regard, I have taken into account the reconstructed Employment tribunal file (the original file having been destroyed in accordance with usual procedure following the dismissal of the Claimant's claim) and the subsequent correspondence and attachments submitted, together with legal arguments and submissions, on behalf of both the Claimant and the Respondent in reaching my judgment on this application.

The law

6. The relevant law in regard to an application for reconsideration of a judgment issued by the Employment tribunal is set out within the Employment Tribunals Rules of Procedure 2013. By Rule 70:

> **"*Principles***
>
> ***70.*** *A Tribunal may, either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) or on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration, the decision ("the original decision") may be confirmed, varied or revoked. If it is revoked it may be taken again*:

7. By Rule 71:

> **"*Application***
>
> ***71.*** *Except where it is made in the course of a hearing, an application for reconsideration shall be presented in writing (and copied to all the other parties) within 14 days of the date on which the written record, or other written communication, of the original decision was sent to the parties or within 14 days of the date that the written reasons were sent (if later) and shall set out why reconsideration of the original decision is necessary*."

8. Rule 72:

> **"*Process***
>
> ***72.—****(1) An Employment Judge shall consider any application made under rule 71. If the Judge considers that there is no reasonable prospect of the original decision being varied or revoked (including, unless there are special reasons, where substantially the same application has already been made and refused), the application shall be refused and the Tribunal shall inform the parties of the refusal. Otherwise the Tribunal shall send a notice to the parties setting a time limit for any response to the application by the other parties and seeking the views of the parties on whether the application can be determined without a hearing. The notice may set out the Judge's provisional views on the application.*
>
> *(2) If the application has not been refused under paragraph (1), the original*

decision shall be reconsidered at a hearing unless the Employment Judge considers, having regard to any response to the notice provided under paragraph (1), that a hearing is not necessary in the interests of justice. If the reconsideration proceeds without a hearing the parties shall be given a reasonable opportunity to make further written representations.

(3) Where practicable, the consideration under paragraph (1) shall be by the Employment Judge who made the original decision or, as the case may be, chaired the full tribunal which made it; and any reconsideration under paragraph (2) shall be made by the Judge or, as the case may be, the full tribunal which made the original decision. Where that is not practicable, the President, Vice President or a Regional Employment Judge shall appoint another Employment Judge to deal with the application or, in the case of a decision of a full tribunal, shall either direct that the reconsideration be by such members of the original Tribunal as remain available or reconstitute the Tribunal in whole or in part."

The relevant law on withdrawal of a claim

9. Rule 51:

"*End of claim*

51. *Where a claimant informs the Tribunal, either in writing or in the course of a hearing, that a claim, or part of it, is withdrawn, the claim, or part, comes to an end, subject to any application that the respondent may make for a costs, preparation time or wasted costs order*."

10. Rule 52:

"*Dismissal following withdrawal*

52. *Where a claim, or part of it, has been withdrawn under rule 51, the Tribunal shall issue a judgment dismissing it (which means that the claimant may not commence a further claim against the respondent raising the same, or substantially the same, complaint) unless—*

(a) the claimant has expressed at the time of withdrawal a wish to reserve the right to bring such a further claim and the Tribunal is satisfied that there would be legitimate reason for doing so; or

(b) the Tribunal believes that to issue such a judgment would not be in the interests of justice."

Time limits

11. Rule 5:

"*Extending or shortening time*

5. *The Tribunal may, on its own initiative or on the application of a party, extend or shorten any time limit specified in these Rules or in any decision, whether or not (in the case of an extension) it has expired*."

12. In addition to the above statutory legislation in regards to the application for reconsideration, I have also taken into account the findings and guidance emerging

from the case of ***Khan v Haywood and Middleton Primary Care Trust [2006] EWCA Civ 1087*** from the Court of Appeal and the case law cited in the submissions documents presented to the tribunal, both by the Claimant's legal consultant and the Respondent's solicitors in this matter.

The relevant facts arising from the papers

13. Given that both parties consented to this application being determined by me in their absence and in reliance upon the papers before me in accordance with Rule 72 above of the Employment Tribunals Rules of Procedure, there has been no live evidence before me to consider and I have therefore found the following relevant material facts from the papers on the tribunal reconstructed file, the correspondence and submissions subsequently presented to the Employment tribunal by the parties and copies of the various documents that the Claimant submitted to the tribunal in order to assist with the reconstruction of the said file, for which I am grateful. Although both parties have made reference to detail concerning the complaints raised by the Claimant, I have limited my findings of fact to those matters which I consider relevant to the question of whether or not the dismissal judgment should be varied or revoked.

14. By an Originating Claim received at the tribunal on 17 March 2016, the Claimant brought allegations that he had been unfairly dismissed from his employment as a sales assistant working for the Respondent business and although in box 8.1 he had not specifically indicated any further types of claims he was pursuing, from the narrative set out in boxes 8.2 and 9.2 of the ET1 Claim Form, it is clear that he also pursues a claim that he was subjected to bullying and, more particularly, sexual harassment contrary to the Equality Act 2010 by and through the actions of his employee colleagues and his manager working at the business at the time.

15. In accordance with the usual tribunal procedure, the claim (having been accepted and vetted) was served upon the Respondent on 7 April 2016. Given that the case appeared to be one containing allegations of less favourable/unfavourable treatment by way of discrimination and in accordance with an open track pilot procedure that was then in force in the Midlands (East) Region, the case was given a provisional final hearing date of 3 days for 17 – 19 October 2016 inclusive. As well as the standard notice submitting the claim to the Respondent advising the Respondent of the need to file a Response thereto, a notice of a Preliminary hearing by telephone in order to discuss case management of the claim was also submitted to the parties on the same date. Within both of the above documents, standard orders and directions were submitted to the parties in order to prepare the case for final hearing.

16. According to the copy of the ET1 form (which the Employment tribunal has now been able to obtain following the earlier destruction of its file after the case had been dismissed), the Claimant had been employed by the Respondent from 27 July 2015 until 14 January 2016 when he was dismissed for misconduct. He had recorded the details of the ACAS early conciliation certificate number that he had obtained having raised matters with ACAS to enable his claim to proceed against the Respondent.

17. The aforesaid claim having been served upon the Respondent on 7 April 2016, a subsequent email was then submitted by the Claimant to the Employment tribunal (although not apparently copied to the Respondent) dated 14 April 2016 addressed to: "*Whom it may concern*" recording as follows:

"…

I'm writing into to see if i can (Cancel) the hearing as I live in South Wales Pontypridd I do not know where Nottingham is,

As this is putting me under a lot of stress and making myself unwell, and cannot afford the case as I Niki Cole is a job seeker and the company will not respond to me for any compensation.

If possible can I Cancel this case altogether.

Kind regards
Niki Cole
Who lives in South Wales"

18. By a second email of 15 April 2016, the Claimant wrote again quoting the case reference number addressing the same to "the Judge":

"…

*I am writing in to W**ithdrawing/Cancelling** my application for the Employment Tribunal.*

Reasons are:

*1) **As I am a jobseeker, I cannot afford the court fees***

2) Dunelms are stressing me out and making me ill and stressed

*3) **I live in South Wales not in Nottingham***

*4) Everything stated on the application forms are 2000% **truthful** as I contacted the police in the end because of the*

Team leader sexually harassment me and bullying

*Store manager taken myself into cleaning cupboard Which he **admit** to but Denies any allegations.*

*Team **leader threaten to stab me in the eye with a fork** in front of customer.*

*and also they have messed my salary up and **fraud my signature**.*

Dunelms had Miss-gross Conduct me from the company as I called them a bunch of Dicks

Kind regards
Niki Cole
From South Wales"

19. These applications were copied to the Respondent, again in accordance with the Tribunals Rules of Procedure and on 19 April 2016, a request was received from the Respondent asking for an update on confirmation of the withdrawal of the claim and the subsequent issue of a dismissal judgment.

20. On 3 May, a follow up email was received from the Respondent, again requesting formal confirmation of the withdrawal and dismissal of the claim to be "*signed off and sent out to us*". The reason behind this enquiry was because the deadline for the ET3 Response was Thursday 5 May 2016 and the Respondent was not proposing to submit a Response in light of the earlier information provided to it.

21. In the meantime, the file had been brought before me as part of the interlocutory work carried out that day and having considered the documentation, I issued a dismissal judgment in accordance with Rule 52 of the Employment Tribunals Rules of Procedure, which was dated 27 April 2016 and sent to the parties on 4 May 2016.

22. Subsequent to that, the Employment tribunal correspondence file was destroyed following the closing of the case. As part of the reconstruction of the file, however, it appears that the Claimant then wrote by email to the Employment tribunal on 31 August 2016 addressed again: "*To the attention of the judge*" and citing the relevant case reference number. The letter records as follows:

> "…
>
> *Hello I Niki am writing to you asking for your help as I would like to Re-Open my case please.*
>
> *the reason why I had to decline it was because my Grandmother whos 81 had a stroke in front of me from losing her second son and husband.*
> *Let alone trying to challenge Dunelms by myself.*
>
> *I was under a lot of stress with Dunelms and I did not have any support to help me with my case at the time and also Dunelms was stressing me out who made me ill.*
>
> *I am back on track in life and I have found an employment solicitor who can help me with this matter.*
>
> *…*"

23. The email then goes on to record a summary of the reasons as put by the Claimant why he brought the case before the tribunal and concludes with the following comment:

> "…
>
> *Please can you re-open my case so I can have the chance to stand in-front of you with the right support, with all the evidence I have got and also with the sick notes and police who got involved.*
>
> ***Please Please** can you **RE-Open** my case please*
>
> *Can my case please be in Cardiff courts*
>
> *….*"

24. There is no evidence from the reconstructed file that that application, which was submitted a considerable period of time after the aforesaid dismissal judgment was despatched to the parties (and was therefore outside the relevant time limit for

an application for re-consideration in accordance with rule 71 of the Rules of Procedure) was ever presented to a Judge for consideration.

25. However, following that email, nothing further was received from the Claimant until he wrote again by email on 22 November 2017, some 13 months later, to the Midlands (East) Region with a copy to the office of the President of Employment Tribunals.

26. Within that email, the Claimant gives details of the ACAS notification reference and records:

> "…
>
> ***Hello I Niki Cole who is writing to you asking if you please Re-open my case for the employment tribunal for the reasons that led me to you***
>
> ***….***"

27. He then sets out a further summary of the allegations raised by him as part of the Employment tribunal claim and concludes by recording:

> …"
>
> ***Please can you re-consider re-opening my case please.***
>
> ***claiming unfair dismissal***
>
> ***I had to with Draw for the reasons of the claim because I could not find anyone to help represent me and also i live in Cardiff South Wales.***
>
> ***I come to you asking you to reconsider and hopefully allow me to re-open my case as im still unemployed and now im being effected for future employment because of Dunelms****.*
>
> …"

This was signed by the Claimant.

28. On 24 November 2017, the President of the Employment tribunals (Judge Doyle) responded to the Claimant's letter, advising that he had no power to reopen the case or intervene in the proceedings and that the appropriate course of action was for the Claimant to apply to the Employment tribunal office handling the case to request a Judge to reconsider the matter. From the evidence before him, he concluded that the Midlands (East) Region had originally dealt with the Claimant's claim and confirmed that his letter aforesaid of 24 November 2017 to the Claimant (with attachments) would be copied to me as Regional Employment Judge for Midlands (East).

29. On 12 December 2017, through my Personal Secretary, I wrote to the Claimant confirming that in accordance with the tribunal's usual procedure, the original file would have been destroyed following the withdrawal and dismissal of the Claimant's claim, setting out details of the documents that we had been able to obtain to commence the reconstruction of the file and further confirming we were waiting for copies of any judgments that may have been issued by the tribunal from the Bury St Edmonds judgment database. I asked the Claimant if he could provide any further documentation that might assist the tribunal in its deliberations.

30. On 15 December 2017, the Claimant responded confirming his wish to reopen his case, as he records because:

> "…
>
> ***I am looking to Re-open my case for the unfair dismissal because dunelms is ruining my reputation also ruining my chance to gain future employment let alone i have been bullied out of the business of the reasons which are in past communications with me to the employment tribunal***."

31. On 20 December 2017, through my Personal Secretary, I wrote to the Claimant (again as with the other correspondence copied to the Respondent) confirming that we had obtained a copy of the original dismissal judgment under Rule 52 of the Employment Tribunals Rule of Procedure. That the correspondence and applications that had been received so far by the Claimant would be treated as an application for the reconsideration of the aforesaid judgment and indicating that before any decision could be made in regards to the application itself, the Respondent would be invited to provide comments thereto.

32. Subsequently, with the assistance of the Claimant, the Employment tribunal obtained a copy of the original ACAS certificate correctly recording Dunelms as a prospective Respondent.

33. On 21 December 2017, the Claimant wrote again to the tribunal confirming that all of his documentation was with a firm of solicitors but that they were not assisting him in agreeing to forward their file of papers on to the tribunal. He also telephoned the tribunal and spoke to my Personal Secretary confirming that he wanted the hearing of his case to be transferred to Cardiff because the Claimant lives there. He raised issues about the firm of solicitors that he had previously instructed to assist him with his claim.

34. On 2 January 2018, I caused a letter to be written to the Claimant confirming that the tribunal understood from his correspondence that it would be extremely difficult for the Claimant to attend any "in person" hearing and that the question of the reconsideration of the judgment needed to be resolved before any potential transfer of the Claimant's claim could take place.

35. On 4 January 2018, the Claimant wrote to the tribunal by email recording that his personal health records were held by his former solicitors from when, as he records, he agreed to the release of part of his records to his former solicitors concerning issues about his working time at Dunelms. He maintains that the said solicitors had obtained more detail from his records than he had instructed them to do.

36. On 10 January 2018, the tribunal received a letter from Messrs Cummings, (Employment solicitors now instructed on behalf of the Respondent) setting out in some detail their objections on behalf of the Respondent, to the application for the reconsideration of the dismissal judgment that had been made by the Claimant and the reasons thereto.

37. Further email correspondence then followed from the Claimant reiterating his wish to have the case reopened and again recorded some brief detail of the treatment that he maintains he was subjected to by his former employee colleagues at the Respondent that led to his decision to pursue his original claim.

38. On 15 January 2018, I caused a letter to be written to the parties in connection with the aforesaid reconsideration application. Given that the Claimant had already made clear that he did not wish to attend a live hearing in Nottingham Justice Centre and that the original dismissal judgment was issued without a hearing, I set out my proposal that the reconsideration application should be dealt with on paper in accordance with Rule 72(1)(2) of the Employment Tribunals Rules of Procedure without the need for the parties to attend. The letter also provided the parties with the opportunity to make any representations in regard to this proposed course of action and any other submissions they would wish to have considered before I determined the matter.

39. On 17 January 2018, the tribunal received an email setting out submissions on behalf of the Claimant written by Mr Runako Mowatt, Legal Consultant with Cardiff Legal, both responding to the earlier submissions made by Messrs Cummings Solicitors for the Respondent and setting out arguments as to why the dismissal judgment should be revoked and thereby opening the way for the Claimant to pursue proceedings against the Respondent.

40. On 18 January 2018, the Claimant submitted copies of consent form authorities that he had signed for the release of his medical records to his former solicitors and also recorded that he believed his signature on the release forms had been forged to enable his full medical records to be despatched.

41. On 22 January 2018, a further email was received from the Respondent's solicitors (Messrs Cummings) confirming the Respondent had no objection to the reconsideration application being dealt with on paper rather than at a hearing. They asked that their earlier submissions of 10 January be taken into account and outlined some detail as to the difficulty the Respondent would now have in defending the case if it was to be reopened subsequently given that a number of their key witnesses were no longer working for the Company and presenting legal argument as to why the dismissal judgment should not be revoked or varied.

42. In response to this and by a number of subsequent emails of 23, 24 and 25 January 2018, the Claimant presented comments to the Respondent's submissions about the absence of their witnesses, further detailing elements of the claim that he sought to pursue and providing a copy of what appears to have been the papers from the disciplinary and appeal procedure undertaken at the time of his dismissal.

43. By subsequent emails of 29 January and 1 February 2018, the Claimant then submitted further copies of the consent and authority forms completed for the release of the medical records to his former solicitors and a copy of a letter from what appears to be his GP practice dated 31 January 2018 signed by Dr A Young confirming that the Claimant was certified unfit for work from 1 December 2015 to 12 December 2015 for work related stress. This was acknowledged and also copied to the Respondent's solicitors.

44. This concluded the relevant correspondence received from the parties.

The submissions

45. Aside from the correspondence received from the Claimant in person with a number of attachments referred to above setting out some detail as to his wish to reopen his case, the tribunal also received some specific submissions as recorded above from the Respondent's solicitors and also on behalf of the Claimant.

46. The submissions from the Respondent are firstly set out in the email letter of 10 January 2018 in which the Respondent's solicitors record a history of the events to date; submitting that the application for reconsideration had not been brought within the relevant 14 day time frame required under Rule 71 of the Employment Tribunals Rule of Procedure, either in respect of the aforesaid email of 31 August 2016 or, more particularly, the more recent correspondence of 22 November 2017. They submit that in both cases, there had been a considerable delay on the part of the Claimant in pursuing such an application and arguing therefore that such time having lapsed, the application should accordingly be dismissed and that there was no just ground for extending time for the application to be considered.

47. The submissions of 10 January go on to record that in accordance with Rule 51 of the Rules of Procedure and the fact that a dismissal judgment had now been issued, the claim had come to an end, arguing that in accordance with Rule 52 of the said Rules, the Claimant was prevented from starting any further claim against the Respondent raising either the same, or substantially the same, complaint noting that there was no evidence that the Claimant had at the time of withdrawing the claim expressed any wish to bring a further claim or that a dismissal judgment should not have been issued.

48. The Respondent goes on to argue in line with the decided case of ***Khan v Haywood Middleton Primary Care Trust*** (referred to above), that the Claimant's claim could simply not be reactivated; that he was estopped from bringing a new claim as the claim had been formally dismissed and that he should not be allowed to circumvent these procedures in a matter validly dismissed approximately 2 years previous.

49. The Respondent's solicitors argue that the Respondent was entitled to the finality of proceedings.

50. The submissions go on to make reference to the affordability or otherwise of tribunal fees and notes that the Claimant had been entitled to apply for remission from fees and that he was now seeking legal advice in any event.

51. Finally, the submissions argue that given the time lapse that had now taken place since the Claimant's dismissal in January 2016, that to reinstate a claim at this time would be contrary to the overriding objective and that in conclusion, there was no basis for the original decision to be varied or revoked.

52. Cardiff Legal on behalf of the Claimant (again as recorded above) by letter of 17 January 2018 set out submissions and legal arguments to be taken into account. In particular, they respond to some of the points raised by the Respondent in its aforesaid submissions letter. They submit that in addition to the matters the Claimant had already outlined, the tribunal should take into account the fact that the Claimant alleges that he had suffered discrimination on the grounds of sexuality or sexual orientation and that this underpinned his claim for "automatic unfair dismissal" (the Claimant not having had sufficient continuous employment service with which to bring a standalone claim of unfair dismissal). They submit that the Claimant withdrew from the process due to a stress related illness following a sudden family bereavement and diagnosed subsequent clinical depression. That as he withdrew before the hearing took place, no final decision had ever been made on the basis of the full facts of the case.

53. They go on to submit that there was no rule which prevented the tribunal from reconsidering a submission, citing Rule 73 of the aforesaid Rules and recording that although the circumstances and timescales involved were somewhat

unusual, there were existing precedents for accepting a resubmission. The letter then goes on to cite case law in support of the same.

54. The submissions conclude that the Claimant believes that the tribunal has absolute discretion to decide whether or not his case could be heard. That he was able to provide significant evidence of his physical and mental wellbeing at the time which had a serious bearing on his decision to withdraw and that at least in part, this was due to the misconduct of the Respondent which amounted to "a frustration of his case".

55. The submissions conclude by recording the Claimant had sufficiently recovered to put forth his case and that he remained deeply affected by the events in question.

56. In response thereto, the tribunal received the aforesaid letter of 22 January 2018 from the Respondent's solicitors (Messrs Cummings) confirming their agreement to the reconsideration application being dealt with on paper; reiterating the submissions made in their earlier letter of 10 January and, as recorded above, in the fact finding section of this judgment, confirming that a number of their key witnesses and those accused of having discriminated against the Claimant had now left the Respondent business.

57. The Respondent submits further arguments as to the finality of the case and, whilst acknowledging the tribunal's discretion to reconsider the judgment, that decided case law cited therein emphasised the need for finality to be upheld.

58. The submissions conclude by reiterating the length of time that had passed since the case had been dismissed and the dismissal of the Claimant from the employment of the Respondent and that the prejudice if this case was to be reopened at a future date against the Respondent would be significant.

59. This concluded the specific submissions made on behalf of the parties.

The conclusions

60. In reaching my decision on this matter, I have taken into account the documentation now contained in the reconstructed Employment tribunal file, the correspondence received from the parties and the submissions contained therein, the relevant facts that have emerged from the said correspondence and the relevant law and case law that I have cited above.

61. Whilst the tribunal has received, in particular from the Claimant, a significant amount of detail and attachments relating to the liability issues in this case in regards to the evidence that he intends to rely on, it is not my role to determine whether or not liability has been made out. In regards to this application, I have to determine whether the application has been brought in time and if not should time be extended and whether or not the interests of justice would be served by varying or revoking the original dismissal judgment, thus opening the potential for the Claimant to continue to pursue these matters against the Respondent.

62. In respect of the time issues, Rule 71 aforesaid of the Rules of Procedure clearly record that any application for reconsideration of a judgment should be presented in writing and copied to the other party within 14 days of the date on which the written record of the decision or judgment has been sent to the parties. In the alternative, 14 days from the date written reasons were sent, if those were despatched later.

63. The dismissal judgment, as recorded above, was submitted to the parties on 4 May 2016, the judgment having been signed by me on 27 April 2016. That judgment was issued on the basis of the two previous emails received from the Claimant respectively dated 14 April and 15 April 2016. The first email of 14 April makes reference to the Claimant living in South Wales; that he was under stress at the time and that he could not afford to pursue the case as he was a jobseeker and requesting that the case be cancelled altogether.

64. The subsequent email confirms his wish to withdraw and cancel his application to the Employment tribunal, this time making reference to being a jobseeker that he could not afford the court fees, reiterating that he was ill and stressed; that he lived in South Wales and not Nottingham and setting out a brief summary of the reasons why he brought the claim in the first instance. There was no argument submitted by the Claimant as to why a rule 52 dismissal judgment should not then be issued.

65. No further correspondence was received from the Claimant in regards to the claim until, as recorded above, an email was submitted on 31 August 2016 addressed to Midlands (East) Employment tribunal. Within that document (which has since been recovered by the tribunal), the Claimant emphasises his wish to reopen the case and records then that the reason why he had to "*decline it*" was because his grandmother had had a stroke in front of him after losing her second son and husband, plus the additional difficulties that he had in trying to challenge the Respondent by himself and the stress that he was then under.

66. That application makes no reference to any issue concerning the question of Court fees. Whilst it is regrettable that this document does not appear from the evidence before me to have ever been referred to a Judge for consideration, nevertheless there was no subsequent follow up, either by the Claimant or by somebody on his behalf until he wrote again to the Employment tribunal and copied the same to the President of Employment Tribunals on 22 November 2017, some 13 months later. He again reiterated his wish to reopen his case, in particular because the dismissal from Dunelms was still affecting him for future employment; that he had found someone to help him; that he had had to withdraw because he could not find anyone to represent him and that his grandmother had suffered a stroke from the loss of her second son, who sadly (as recorded by the Claimant) had passed away in front of her.

67. In neither of these documents, nor indeed in any subsequent documentation or submissions presented on behalf of or by the Claimant, is any further reference made to any question of the Employment tribunal fees having been a barrier to the Claimant being able to pursue his claim before the tribunal, more particularly, given the judgment handed down by the Supreme Court in the case of **R on the application of UNISON the Lord Chancellor [2017] UKSC 51** on 26 July 2017. The Claimant in principal sets out the reason for his withdrawal of the claim as being his personal health at the time following the witnessing of his grandmother's stroke and the fact that he had at that time no solicitor to support him and that he lived in Cardiff, whereas his claim had been issued and was being processed within the Midlands (East) region at Nottingham.

68. As submitted by the Respondent's solicitors, the Claimant was able to issue the claim and as an unemployed person without income he would have been entitled to remission. However, there is no evidence to suggest that this was the fundamental reason as to why he withdrew his claim at that time nor in his subsequent applications or correspondence requesting the case be reinstated.

69. Whilst the Claimant in his correspondence has made reference to issues that he had with his previous firm of solicitors that he instructed in or about the end of 2017 and the medical records that were submitted to them by his general practice surgery and the question of whether they had been fraudulently obtained by his previous firm of solicitors, there is no cogent current medical evidence before me that could establish any medical reason as to why it took such a considerable period of time, firstly until August 2016 and, more importantly following that, until November 2017 for the Claimant to pursue his application for reconsideration.

70. In light of the strict 14 day time limit that is required within which to bring an application for reconsideration, my first conclusion is that this application has been lodged out of time and there appears to be no just or equitable reason as to why, despite the seriousness of the allegations being made by the Claimant, to allow such an application to proceed by extending time.

71. Nevertheless and in the alternative, even if time were to be extended, I am not satisfied on the basis of the evidence before me and the submissions made that there is any just reason as to why the dismissal judgment should now be either varied or, more importantly, revoked as sought by the Claimant.

72. Taking into account the interests of justice in respect of both the Claimant and the Respondent in this matter, it was the Claimant's decision for the reasons that he set out in April 2016, to withdraw his claim and no argument was submitted at that time that a dismissal judgment should not be issued. The Claimant was originally dismissed from his employment in January 2016. The reason why the Employment Tribunal's Rules of Procedure (in particular Rules 51 and 52) are so drafted is to ensure that there is finality to a process when a claimant has withdrawn his or her claim following the decided case of ***Khan v Haywood***. The issuing of a Rule 52 dismissal judgment brings that finality to the proceedings and estops a claimant from pursuing such a claim or a claim like it whilst the judgment is in place.

73. A considerable period of time has elapsed since the events took place that the Claimant outlines in his ET1 application. I have considered the arguments presented by the Respondent as to the now lack of availability of their key witnesses in this matter, in particular those specific witnesses whom the Claimant alleges were responsible for the treatment that he received.

74. I am satisfied that with the time that has lapsed so far, that it would be extremely difficult for the Respondent to now defend this case, which of course it is entitled to do. The prejudice against the Respondent if this case were to be re-opened outweighs the prejudice against the Claimant if it were not in my view. Whilst therefore I have sympathy for the Claimant, I do not consider that it is appropriate that the original dismissal judgment should be varied or revoked, firstly because there is no reason to extend time based on what has been submitted to the tribunal for such an application to be determined. Secondly, based on the evidence before me and the submissions made, it would not be in the interests of justice for this case to potentially be re-opened against the Respondent. As I record above, the Respondent in accordance with Rules 51 and 52 of the Rules of Procedure is entitled to finality in these proceedings after the Claimant decided, to withdraw his claim in April 2016. The original dismissal judgment is therefore confirmed.

Regional Employment Judge Swann

Date: 16/02/2018
JUDGMENT SENT TO THE PARTIES ON

27/02/18

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FOR THE TRIBUNAL OFFICE