



EMPLOYMENT TRIBUNALS

Claimant: Mr M G Mawby

Respondent: Charnwood Borough Council

Heard at: Nottingham **On:** Monday 21 October 2019

Before: Employment Judge Blackwell (sitting alone)

Representatives

Claimant: In Person

Respondent: Mr Bownes, Solicitor

JUDGMENT

The decision of the Employment Judge is that:-

1. Pursuant to rules 51 and 52 of the first schedule of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 the Claimant's claim of unfair dismissal is dismissed on withdrawal by the Claimant.

REASONS

Chronology

1. Mr Mawby by a claim form received by the Employment Tribunal on 12 July 2019 brought a single claim of constructive unfair dismissal.

2. On 24 July Mr Mawby e-mailed the Tribunal in the following terms:

"I lodged an Employment Tribunal claim on-line on 12 July 2019.

I write to notify you that I wish to withdraw my claim from the Tribunal."

3. On 25 July the Tribunal wrote to Mr Mawby in the following terms:

"The Claimant has withdrawn the claim. The hearing listed on 12 November 2019 has been postponed. A judgment will be sent to the parties once it has been processed."

4. On 28 July Mr Mawby wrote a further e-mail to the Tribunal as follows:

"Please note that my offer to withdraw is conditional upon the Respondent

agreeing to waive any claim for costs in this matter.”

5. None of these three e-mails were copied to the Respondent.
6. On 14 August the Tribunal on the direction of Employment Judge Ahmed wrote to the Respondents in the following terms:

“With regard to the enclosed e-mail from the Claimant dated 28 July 2019, Employment Judge Ahmed wants to know if you intend to make any application for costs.”

7. On 16 August the Solicitors acting for the Respondents filed a response and grounds of resistance.

8. Later on the same day Mr Bownes of those solicitors wrote to the Tribunal by e-mail quite reasonably complaining of the failure on the part of the Tribunal in copying correspondence to their clients. He went on:

“As a matter of the application of the Tribunal Rules of Procedure, it is the Respondent’s position that under Rule 51 the claim comes to an end once the Claimant has signified withdrawal of the claim. If as appears here, the Claimant seeks to add conditions to that withdrawal after having notified such intention to the Tribunal then that is irrelevant, the claim has already come to an end.”

9. There was further correspondence between the parties and the Tribunal which led to a Preliminary Hearing case management discussion held on 21 October at which Mr Mawby represented himself and Mr Bownes represented the Respondents.

The Relevant Law

10. Rule 51 of the Employment Tribunal (Rules of Procedure) Regulations 2013 is as follows:

“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.”

11. Rule 52 of the Employment Tribunal (Rules of Procedure) Regulations 2013 is as follows:

“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.”

Conclusions

12. Mr Mawby made plain during the case management discussion that throughout he was acting upon the advice of solicitors appointed by his trade union Unison. To that end he wrote the withdrawal e-mail of 24 July and then on receipt of further advice he wrote the second e-mail of 28 July.

13. Mr Mawby was understandably somewhat confused as to the legal position. I read to him rules 51 and 52 and he was aware that the Respondent's solicitors were of the view that it was incumbent upon the Tribunal to issue a judgment pursuant to Rule 52. Mr Mawby did not object to that being done.

14. Accordingly in my view on the facts of this case the Tribunal is required to issue a judgment pursuant to Rule 52 and that is now done.

Employment Judge Blackwell

Date: 25th October 2019

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE