



EMPLOYMENT TRIBUNALS

Claimant: Mrs D Knight

Respondent: The International Church, Mansfield (In Liquidation)

Heard at: Nottingham **On:** Wednesday 30 October 2019

Before: Employment Judge Hutchinson (sitting alone)

Representatives

Claimant: Mr D Dring (Father)

Respondent: Mr J Heard of Counsel

JUDGMENT

The judgment of the Employment Judge is that: -

The claim is withdrawn but not dismissed

REASONS

Background

1. The Claimant presented her claim to the Tribunal on 3 October 2018. She said that she had been employed by the Respondents as a Housekeeper between 7 July 1990 and 30 November 2017. She said that she worked 37 hours per week and was earning £220.00 per month and her claim was for non-payment of wages.
2. The particulars of the claim were brief simply saying that she had originally been receiving £130.00 per month and that this had risen to £220.00 per month and that this was less than the minimum wage.
3. She explained that although the church was in liquidation it had sizeable assets.
4. The claim was accepted and the matter listed for a hearing on 8 February 2019. The proceedings were served on the Respondent.
5. At that time the Claimant was not legally represented.

6. The Respondents filed their response to the claim on 18 December 2018. They requested that the claim be dismissed without a hearing because, they said, the claim had been brought out of time.

7. My colleague Employment Judge Britton reviewed the file and converted the hearing on 8 February to a three-hour attended Preliminary Hearing to determine the out of time question only.

8. On 4 February 2019 my colleague Employment Judge Camp reviewed the file and ordered that the hearing on 8 February 2019 should be postponed and relisted for a one-day hearing and made various orders including the provision of a schedule of loss and written statements.

9. The matter was then listed for a hearing on 17 June 2019. On 28 March 2019 the Claimant had instructed a solicitor as evidenced by a letter from her solicitors Bryan Armstrong.

10. On 29 March 2019 the Respondents asked that the matter should be set down for a Preliminary Hearing to consider whether the Claimant's claims should be struck out because she had not complied with the orders of Employment Judge Camp.

11. Subsequently, on 24 May 2019 the Claimant's solicitors Bryan and Armstrong wrote to the Tribunal to inform us that she wished to withdraw her claim against the Respondent but did not want the claim to be dismissed. They said that the Claimant had a legitimate reason for withdrawing this claim because of the following: -

- The Claimant was and has been a litigant in person throughout the proceedings
- The Claimant's claim form claims arrears of pay. That the Respondents had interpreted this as incorporating a claim for unlawful deduction of wages and/or breach of contract
- The time limit for bringing such claims before an Employment Tribunal is three months
- The Employment Tribunal's jurisdiction in respect of compensation for breach of contract is limited to £25,000
- There are risks to the Claimant's case in respect of the time limit which could lead to the dismissal of her claim

12. They said that it was the Claimant's intention to issue proceedings in the County Court where the limitation period is six years and the jurisdiction is not limited. That her claim if successful would be for well over £25,000.

13. They submitted that the withdrawal would not be an abuse of process.

14. They also said that it would not be in the interests of justice to issue a judgment formally dismissing the claim because: -

- The reasons stated above about withdrawing the claim
- The case has substantial merit

- The Respondents assertions in their response denying she was an employee or worker were without merit as she was employed under a contract of employment dating back to 1 January 2000
- Any work carried out in relation to the Employment Tribunal case would not be wasted.
- The Employment Tribunal has made no findings, rulings or judgment on the facts of the case
- The Claimant's rights to have a fair hearing could be lost unless the case is heard by the civil courts
- The Claimant was not abandoning her claim or making any concession that her claim would fail
- The Claimant was intending to issue proceedings for technical and procedural reasons and should not be stopped from doing so.
- Duality and multiplicity of proceedings should be avoided
- It would be in accordance with the overriding objective to allow the Claimant to withdraw her claim without a dismissal judgment

15. The Respondents responded to that application on 4 June 2019. They referred me to Rule 52 of the Employment Tribunals Rules of Procedure 2013 and said: -

15.1 The Claimant had had ample opportunity to seek advice prior to submitting the claim, to consider any time limits and/or compensatory caps that would apply to such a claim. That she had made an informed decision to proceed with the claim and it would therefore not be in the interests of justice to allow the Claimant to pursue the same claim in the civil courts.

15.2 They went on to set out the background to the claim and how they had applied for the claims to be struck out because the claims had not been presented in time. They also pointed out: -

- That any award of compensation for breach of contract in the Tribunal is subject to a limit of £25,000
- That the Tribunal had already listed a Preliminary Hearing to discuss the time issue but this was postponed due to the Tribunal administration not sending the case management orders to the parties
- The Claimant had not then complied with case management orders and they had applied to strike the claim out because of that non-compliance
- They say that presenting the claim as fresh proceedings would be an abuse of process as the Tribunal had jurisdiction to decide the Claimant's claim.
- They say that the claim was withdrawn at a late stage and that she had not engaged in these proceedings and decided to withdraw her claim within 14 working days of the Tribunal hearing
- They assert that the fact that the Claimant was a litigant in person prior to 28 March 2019 does not mean that she did not have access to legal advice
- They say that the decision not to dismiss would only prejudice the Respondent and this would not be in line with the overriding objective

The Hearing Today

16. I heard representations from Mr Heard for the Respondents who went through with me the grounds set out in the Respondent's letter and urged me to dismiss the claim. I also heard from Mr Dring who is the father of the Claimant. He is not a lawyer and was a member of the church which he says employed his daughter. He could not afford to instruct solicitors to represent him at the hearing.

The Law

17. It was agreed that the relevant rules are set out in Rule 52 of the Employment Tribunal Rules of Procedure 2013. That provides: -

“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 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.”

Submissions

18. I acknowledged Mr Heard's points. He disputes that there is any legitimate reason for not dismissing the claim and that no claim has subsequently been made to the County Court.

19. He makes the point that the Claimant did not engage in these proceedings and questioned her intention to pursue the claim.

20. He placed reliance on the letter of 4 June 2019 and I said to him that I had considered this in reaching my conclusions.

21. He said that because of the conduct of the Claimant it would not be in the interests of justice to allow the claim to proceed in another court.

22. Mr Dring told me that it was their contention that Mrs Knight had been working without a proper wage for the Respondents for 28 years. That he has not been able to obtain advice before he issued the claim with his daughter and they acknowledge now that that claim would have considerable difficulties in the Tribunal because of the jurisdiction, namely that the claim had been presented out of time.

Conclusions

23. I am satisfied in this case that the Claimant expressed at the time of withdrawal that she wished to reserve the right to bring a further claim and I am satisfied that there would be a legitimate reason for doing so.

24. In particular: -

24.1 The Claimant at the time that she issued the claim and until shortly before she withdrew the claim was a litigant in person.

24.2 The normal time limit for bringing a claim before the Employment Tribunal is 3 months and the claim for wages/breach of contract has been issued well out of time and the Claimant would have to show that it was not reasonably practicable to present the claim in time and that she had presented the claim within such further time as was reasonable for the Tribunal to be satisfied it had jurisdiction to hear the claim.

24.3 This presented a serious risk that the Claimant's claim would not be heard because the Tribunal would not have jurisdiction to hear the claim.

24.4 I am satisfied that the Claimant should be allowed to present her claim to the County Court if she wishes to do so without hindrance. She has six years to present a claim for breach of contract in the County Court and their jurisdiction is not limited in the same way as ours is. The Claimant should not be deprived of a remedy on technicalities and it would not be an abuse of process to allow her to withdraw the claim without dismissing it particularly when there has been no evidence called or any findings of fact made.

24.5 In any event I am also satisfied that it would be in the interests of justice not to formally dismiss the claim. Whilst of course not dismissing the claim causes some prejudice to the Respondents in that they can still be subject to a claim, there is a much greater prejudice to the Claimant who would not be able to proceed with a claim in the County Court.

24.6 I am satisfied that the Claimant at no stage has abandoned her claim and indeed Mr Dring has made it clear that she does not wish to do so.

24.7. In these circumstances I am satisfied that there was a legitimate reason for withdrawing the claim and it is in the interests of justice to not issue a dismissal judgment in this case.

Employment Judge Hutchinson

Date 14 November 2019

JUDGMENT SENT TO THE PARTIES ON

FOR THE TRIBUNAL OFFICE