



EMPLOYMENT TRIBUNALS

Claimant: Alastair Patterson

Respondent: Secretary of State for Work and Pensions

Heard at: East London Hearing Centre (by Cloud Video Platform)

On: 9 November 2020

Before: Employment Judge Gardiner

Representation

Claimant: In person

Respondent: Ms M Tutin, counsel

JUDGMENT

The judgment of the Tribunal is that:-

1. The claim is dismissed upon the Claimant's withdrawal, in accordance with Rule 52 of the Employment Tribunal Rules 2013.
2. The Claimant's application for a preparation time order under Rule 76 of the Employment Tribunal Rules 2013 is dismissed.

REASONS

1. In its Response to the Claimant's claim, the Respondent applied for the entire claim to be struck out or subject to a deposit order. The basis of the application was set out in paragraphs 39 and 40 of the Response. This was because, in the Respondent's view, the claims had no reasonable prospects of success. By email sent to the Tribunal last Friday, the Claimant wrote as follows:

“I concede the striking out because even after disclosure I will not be able to demonstrate causal disadvantage.”

2. Before the Tribunal at this morning’s Preliminary Hearing, the Claimant agreed that in so writing to the Tribunal, he was intending to withdraw his claim. This remained his position even after I told him that the strike out application was not being considered during this Preliminary Hearing, and that such applications did not normally involve weighing the evidence in advance of a Full Hearing. Rather they tended to turn on whether, as a matter of law, the claims being brought were claims that could succeed before an Employment tribunal, given the Claimant’s case.

3. In addition, in the same email, the Claimant wrote as follows:

“Instead I am asking for a preparation costs order for my time spent from August 2010, when the 'but for event' of costs occurred. The event was *British values* character discrimination of *Hostile Environments*; by an employment officer (Job Coach) in the Ipswich Job Centre. I would like a Vento award of £45,000 for my injured feelings.”

4. The basis of the Claimant’s application for a preparation time order was discussed at this morning’s hearing. The Claimant clarified that his application was being made under Rule 76 of the Employment Tribunal Rules. In particular, he was arguing that the Respondent had acted unreasonably in the way that the proceedings had been conducted. The unreasonable feature was this – the Respondent had applied to strike out the claim before disclosure had taken place. As a result, the Claimant argued, he had no evidence disclosed to him to enable him to resist the strike out application. He also clarified that his preparation time application was independent of his decision to withdraw his claim.

5. The Respondent’s position was that the Tribunal had no jurisdiction to consider an application by a Claimant for a preparation time order, in circumstances where a claim is withdrawn. In any event, there was no basis for finding that the Respondent had acted unreasonably here.

6. Rule 51 is titled “End of claim” and is worded 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”.

7. Rule 52 is titled “Dismissal following withdrawal” and is worded 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 a legitimate reason for doing so; or
 - (b) The tribunal believes that to issue such a judgment would not be in the interests of justice.”
8. The effect of withdrawing a claim under Rule 51 is to bring the claim to an end, subject to one exception. That is where there is an application by the Respondent for a costs, preparation time or wasted costs order. If the claim is withdrawn under Rule 51, there is no scope for an application from a Claimant for a preparation time order.
 9. The effect of Rule 52 is that where the claim has been withdrawn under Rule 51, the Tribunal is required to issue a judgment dismissing the claim, subject to two exceptions. The first does not apply in the present case. The second states that “the Tribunal believes that to issue such a judgment would not be in the interests of justice”.
 10. My decision is that the Claimant’s application for a preparation time order must be refused. There are two reasons for my decision. The first is that the Tribunal has no power to consider an application by a Claimant for a preparation time order, following withdrawal, given the wording of Rule 51. The effect of withdrawal is that proceedings are at an end.
 11. The second reason is that I do not find that the Respondent’s conduct in defending the proceedings has been unreasonable in the respect alleged. The Respondent was entitled to apply for a strike out order or a deposit order, and was entitled to do so in the Response. It was not required to wait until after disclosure before making such an application. In appropriate cases, the Tribunal should strike out cases that have no reasonable prospect of success, and can do so even before disclosure has taken place. Therefore the Respondent was entitled to argue that this was such a case, and to make an application for such an order. The Tribunal reaches no concluded view as to whether such an application would have succeeded or failed, had it been considered and decided on its merits. However, even if the application would have failed, the Claimant’s application for such an order was not an unreasonable step in the defence of the claim.
 12. In circumstances where the Claimant’s preparation time application has failed, and there is no other reason advanced to depart from the general rule, it would be in the interests of justice to issue a judgment dismissing the claim.

13. Therefore, the outcome of this Preliminary Hearing is that there will be a judgment dismissing the claim upon the Claimant's withdrawal. The Claimant's application for a preparation time order will be dismissed.

**Employment Judge Gardiner
Date: 9 November 2020**