



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs Helen Lesley Pudney

**Respondent:** Titchmarsh Marina (Walton-On-The Naze) Ltd

## JUDGMENT FOLLOWING RECONSIDERATION

The claimant's application for reconsideration of the dismissal judgment sent to the parties on 20 May 2021 is refused.

## REASONS

1 This claim has a procedural history which led to a preliminary hearing being listed, by a notice of hearing sent on 15 January 2021, to consider whether the claims should be dismissed for having been presented outside of the prescribed time limits, and if it was not dismissed for the tribunal to consider whether a deposit order should be made because of those time limits. The preliminary hearing was listed to be held on 7 June 2021. The claimant was represented by solicitors, Pactum Law, who had presented her claim on her behalf.

2 On 16 May 2021 the claimant wrote to the tribunal, in person, withdrawing this claim by an email sent to the tribunal; that email read:

'I am withdrawing on the advice received from two of my counsel [stating their names] due to the ACAS number not being attached to the original submission. I understand this [is] a mandatory requirement, with no discretion permitted and therefore do not wish to further waste the Tribunal's time.'

3 Pursuant to rule 52, Employment Tribunals Rules of Procedure 2013, the Tribunal promulgated a dismissal judgment on 20 May 2021.

4 Mr Javed, solicitor, wrote to the tribunal on 27 May 2021 and 2 June 2021 informing the tribunal that the claimant wishes to continue with her claim, stating that the claimant sent the notice of withdrawal 'in error', asking the tribunal to note that the email came from the claimant, not from her solicitors firm, and applying for reconsideration of the dismissal judgment, suggesting that a preliminary hearing should be listed to consider and determine the application.

5 Further correspondence was received from both the claimant and the respondent commenting and making various submissions on the claimant's withdrawal of this claim, the application to revoke the dismissal judgment and the surrounding circumstances. In short, the respondent submitted that the claimant wrote to the tribunal on her own account making clear reference to having sought advice independent of her representative, withdrawing her

claim. This was a clear and unequivocal step, albeit unusual, given her solicitors prior involvement. The circumstances raised a question (unaddressed by Mr Javed) of whether there might be professional conflict between the claimant and her solicitor. Having regard to the applicable law and the overriding objective, Mr Javed's purported explanation of the withdrawal having been made 'in error' was insufficient grounds on which to support the application for reconsideration or to support the application to hold a preliminary hearing.

**The applicable law, deliberations and conclusions**

6 Simply stated, where a claimant informs the employment tribunal that a claim is withdrawn, the claim is discontinued and thereby comes to an end. (This is subject to any application that the respondent may make for a costs or a wasted costs order.)

7 Under rule 52, Employment Tribunals Rules of Procedure 2013, the tribunal will automatically issue a judgment dismissing the claim that has been withdrawn, unless at the time of withdrawal the claimant expresses the withdrawal of the claim in equivocal terms or where the withdrawal is apparently ill-considered or irrational.

8 In her email of 16 May 2021, the claimant informed the employment tribunal that she had obtained independent legal advice on her decision 'from two of my [named] Counsels'. The tribunal considered that the withdrawal was written in clear and unequivocal terms and given that the claimant had obtained professional advice was satisfied that her decision did not appear ill-considered. Even had the claimant retained solicitors at that time of her email she had the right to withdraw her claim on her own volition.

9 A tribunal does not have general power to permit a claimant to revive a withdrawn claim because they have subsequently changed their mind or regretted their decision. (Khan v Heywood and Middleton Primary Care Trust 2007 ICR 24, CA.)

10 Rule 70 provides for reconsideration where it is necessary in the interests of justice. The discretion must be exercised judicially, in the interests of doing substantive justice to both parties.

11 The Tribunal considers that there is no reasonable prospect of the original decision being varied or revoked, because the claimant wrote to the employment tribunal on the 16 May 2021 withdrawing her claim in clear, cogent and unequivocal terms and after taking legal advice from counsel. The Tribunal is satisfied that the decision to dismiss the claim was not wrongly made and that it is not necessary in the interests of justice to reconsider it.

12 Having considered all of the circumstances the application for a hearing to consider this application is refused and, pursuant to Rule 70, the application for reconsideration of the dismissal judgment is refused.

**Regional Employment Judge Taylor**  
**Date: 18 June 2021**