EMPLOYMENT TRIBUNALS

Claimant: Miss U Sharma

Respondent: HSBC Bank PLC

PRELIMINARY HEARING

Heard at: Birmingham (in public) **On:** 1 March 2019

Before: Employment Judge Camp (sitting alone)

Appearances
For the claimant: no appearance
For the respondent: Miss R Thomas, counsel

REASONS

1. This is the written version of the reasons given orally at the hearing on 1 March 2019 for the decision in the respondent's favour. Written reasons are being provided at the EAT's direction.

2. The claimant was employed by the respondent until 9 April 2014 and, as I understand it, was dismissed for reasons of capability. It appears that she originally presented this claim on 4 June 2014.

3. There is some relevant history to the employment relationship, and to what could be called the employment tribunal relationship. On 3 April 2013, the claimant presented a claim of discrimination and, possibly, public interest disclosure detriment as well. That claim was ultimately dismissed in two phases. First, a substantial part of it was withdrawn at a preliminary hearing before Employment Judge Woffenden on 23 September 2013: claims of discrimination on the grounds of sex and age. The claimant also confirmed at that hearing that she had no claim for public interest disclosure detriment. At a further preliminary hearing, on 29 October 2013, Employment Judge Woffenden struck out the whole of the rest of her claim on the grounds that it had no reasonable prospects of success. As far

as everyone is aware, those decisions were not appealed and there was no successful application for reconsideration of them.

4. This case comes before the tribunal today because, the following year: the claimant started a new claim, the "2014 claim" as I shall refer to it; it was dismissed for non-payment of tribunal fees; and it was subsequently reinstated following the fees regime being found to be unlawful.

5. A key difficulty for me is not having any of the original case papers other than some administrative papers connected with the fees regime relating to the 2014 claim; in particular, no claim form. This means things are not remotely as clear as one would like them to be. That lack of clarity overshadows these proceedings and this hearing.

6. The claimant was written to, in December 2017, with what is now the standard letter to people whose cases were struck out pursuant to the fees regime, stating that their claim can be reinstated and encouraging them to ask for its reinstatement. The claimant asked for her claim to be reinstated. The mechanism for doing this – the usual mechanism for claimants in her position – was to present a new claim form.

7. The new claim form was presented on 20 February 2018. In relation to the claim, the claimant relied on an early conciliation certificate with a date "A" of 13 June 2014 and a date "B" of 18 June 2014.

8. The contents of the new claim form are quite difficult to understand and the claimant has had a number of goes at providing further information. I shall return to this later.

9. The case came before Employment Judge Rose QC on 7 September 2018 for a case management preliminary hearing. Judge Rose QC made an order that there should be a preliminary hearing in public to deal with preliminary issues. It was originally listed to take place on 1 February 2019 and was to be to determine the following:

    9.1 what was the scope of the original claim presented to the employment tribunal in 2014 but subsequently rejected because of non-payment of a fee in June/July 2014?

    9.2 does the employment tribunal have jurisdiction to hear the claims identified in the original claim form, having regard to the appropriate time limits applicable to those claims? As a subsidiary issue in the event that the claimant's [2018] ET1 raises claims separate to those in the original [2014] claim form and that the claimant wishes to proceed with those claims, does the employment tribunal have jurisdiction to hear those claims having regard to the relevant time limits?

    My understanding of that issue is that it was effectively two issues. The first of these was: were the claims in the original – 2014 – claim form presented in time? The second was: should the claimant be given permission to amend to add claims to those that were made in 2014 (to the extent she wanted to do so) and to consider time limits as part of that;

9.3 is it possible to have a fair trial of the claim set out in the original claim form, having regard to the provisions of rule 37(1)(e) of the Rules of Procedure and if not, should the claim be struck out?

10. Those were all the issues I was supposed to be dealing with today. However, the claimant wrote to the tribunal in January 2019 withdrawing her claim.

11. To put that withdrawal into context, Employment Judge Rose QC had made various case management orders relating to this hearing, which, as I have said, was originally going to be on 1 February 2019.

12. On 24 December 2018 (which was, I think, a little late, but nothing turns on that) the claimant submitted what purported to be a witness statement that was submitted to comply with an order that Judge Rose QC had made. It is not a witness statement in a conventional form. It is more like a written submission than a statement. As with much of the claimant's correspondence, I am afraid it is quite difficult to follow the points that she was making.

13. On 14 January 2019, the claimant wrote to the respondent's solicitor, copying in the tribunal. The claimant frequently copies the tribunal into correspondence between herself and the respondent's solicitors unnecessarily, so nothing should be read into the fact that she copied the tribunal into this correspondence. It was not something that, on the face of it, the tribunal was expected to respond to; it was an email about what should go into the preliminary hearing bundle.

14. On 13 January 2019, the claimant had sent some documents into the tribunal. I am not entirely sure what those documents were, but Acting Regional Employment Judge Findlay had the tribunal administration write to the claimant on 15 January 2019 stating, "*If you wish a Judge to look at the documents sent on 13 January, they will have to be copied to the respondent. You are directed to confirm whether you agree to this by 22 January 2019*".

15. The claimant sent an email to the tribunal later on 15 January 2019. It's not clear whether the claimant had read and digested Employment Judge Findlay's letter by then. It was, though, emailed to her and her email is timed as having been sent after it was emailed to her. The claimant's email was about various things, including witness statements, and some of the points the claimant makes are not very clear. Its final paragraph is, "*In preparing for the 1st February hearing, I have not understood what a swap of witness statements was for which is to swap values from procedural communications to dispose of the complaint for procedural communications. I am satisfied at this stage that I don't have to require or evidence that there was criminal activity at Birmingham employment tribunal in September to satisfy a criminal complaint. I am not Birmingham employment tribunal for the formal hearing and I think that might affect your performance not mine.*" I should say that in some of her correspondence, the claimant appears to be suggesting that the Birmingham employment tribunal is involved in a criminal conspiracy with the respondent, or, possibly, that the tribunal and the respondent are both involved in separate criminal conspiracies.

16. On 16 January 2019, the claimant emailed the tribunal (without copying her email to the respondent in accordance with rule 92) to state: "*With regards to the above*

case, I am displacing my communication on this matter to the British police for their advice, I would like have this case moved to the Criminal Court in London but I don't make decisions, they do. I will come back with more information as I get it."

17. Then, on 17 January 2019, in an email timed at 14:58 hrs, the claimant wrote as follows (again not copying in the respondent): "*Dear Birmingham Employment Tribunal, I am withdrawing because I will not have a fair hearing. I won't be at the hearing in February. Yours sincerely, Miss Uma Sharma.*"

18. That email was processed by the administration the following day. It appears that the administration, on its own initiative, sent out a standard withdrawal letter under rule 51 – a letter numbered 6.6 – and it says: "*Thank you for informing the tribunal that you have withdrawn your claim. The file will be retained until January 2020 and then destroyed. The hearing listed on 1 February 2019 will not now take place.*" That letter was emailed to the claimant at 11.03 am on 18 January 2019 and was copied to the respondent.

19. At 5.30 pm on 18 January 2019, the claimant wrote:

> *Dear Birmingham Employment Tribunal,*
>
> *I wondered if my complaint can be reinstated because I didn't consult anyone, I was concerned about matters that occurred that have passed from timing in communication,*
>
> *I mentioned things that had happened five years and I getting some assistance with advice at this time where I think I have made a hasty decision.*
>
> *I am going to get feedback which resurfaced from of this complaint from communication but I do to attend Birmingham Employment to reinstate my employment values from employment communication to return to work.*
>
> *I was planning to attend and I want to have this procedural communication and decision and those other matters I raised with the Employment Tribunal have gone of to the appropriate authority.*

20. At Employment Judge Woffenden's instigation, the respondent was asked for its comments and in particular for comments on whether a judgment dismissing the claim should be issued under rule 52. The respondent's solicitors replied on 25 January 2019 stating that they believed: "*the legal position to be that the tribunal has to issue a judgment dismissing the claim on notification of withdrawal by the claimant, unless it considers it would not be in the interests of justice to issue such a judgment. The respondent believes the strict legal position to be that the tribunal does not have discretion to overturn this decision. However, the respondent observes that given - 1. the claimant is a litigant in person; 2. had not had the benefit of legal advice before withdrawing her claim; and 3. in withdrawing her complaint and subsequently changing her mind within a short timescale, she did not materially alter the position of the parties and neither party had been prejudiced significantly by her decision to change her mind - were the Preliminary Hearing listed for the 1 February 2019 to remain in the tribunal's list, or to be reinstated to the list, then the respondent would not object to it and would actually be supportive of the claimant's request for the claim to be reinstated.*"

21. That was a rather puzzling position for the respondent to take, not least because, through respondent's counsel today, it has been pointed out, correctly, that the tribunal has no power to reinstate a claim that has been withdrawn. For that reason, Employment Judge Woffenden directed the tribunal administration to write stating that the preliminary hearing, originally listed on 1 February 2019, would be relisted and that the first issue to be decided would be whether a judgment should be issued dismissing the claim under rule 52.

22. That is where, procedurally, I was at the start of this hearing.

23. Logically, the first issue to deal with is whether the claim should be dismissed. I have to consider whether the claim has indeed been withdrawn, because if it has, it is not before the tribunal and I shouldn't really be doing anything else with it.

24. Rules 51 and 52 are as follows:

WITHDRAWAL

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.

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.

25. I don't think I can improve on the statement of the law set out in respondent's counsel's Skeleton Argument, at paragraph 8. I quote: "*Pursuant to rule 51, if a claimant writes to the tribunal withdrawing her claim, then that claim comes to an end. The tribunal has no power to revive or reinstate a withdrawn claim*". Counsel then refers, rightly, to Khan v Heywood & Middleton Primary Care Trust [2006] EWCA Civ 1087, which is a case under the old Rules, but there seems to be a consensus that it is still good authority for this general proposition: once withdrawn, a claim cannot be reinstated.

26. Counsel also refers to the more recent case, one under the 2013 Rules, of Campbell v OCS Group UK Ltd & Anor [2017] ICR D19. It was cited in support of a proposition of law and that is how I consider it, but the facts of Campbell are noteworthy. The claimant emailed late in the evening before what was to have been day 2 of a five-day final hearing, stating, "*I am writing with regret that I am withdrawing my case … due to ill health and under medical advice*". That email was sent on 14 December 2015. The claimant didn't attend the following day, and,

on the day after that, the claim was dismissed pursuant to rule 52. The judgment dismissing the claim in its entirety was dated 16 December and was sent to the parties on the 17th. By a letter dated 17 December 2015, the claimant applied for reconsideration of the judgment and requested that her withdrawal be rescinded.

In the EAT, the President, as she then was, decided that the effect of rule 51 was that withdrawal brings the proceedings to an end, and that there is no jurisdiction for a notice of withdrawal to be rescinded or revoked, and no scope at all under the Rules for the claimant to revive those claims.

27. In the present case, the question therefore is: did the claimant withdraw her claim? I think she did.

    27.1 There is, it seems to me, nothing ambiguous in her words, "*I am withdrawing*" in the context. Realistically, she can only have meant withdrawing her claim.

    27.2 Immediately or shortly before she wrote to the tribunal on 17 January 2019, neither the tribunal nor the respondent wrote anything to the claimant that, objectively judged, pushed her towards withdrawing the claim. She seems to have decided to withdraw it spontaneously, for her own reasons.

    27.3 The claimant evidently meant to withdraw her claim and was clearly aware of what the effect of a withdrawal is. She had previously withdrawn claims in the 2013 proceedings. She asked to have her claim "*reinstated*", presumably realising that if it wasn't, that would mean the end of it. She sought to revoke her notice of withdrawal very shortly after giving it and, when doing so, did not express any surprise at the tribunal treating her email as a notice of withdrawal, nor did she suggest that she had not intended to withdraw her claim, merely that, essentially, she had thought better of doing so.

28. In those circumstances, I think counsel is right that I have no option other than to consider this claim withdrawn and that is the end of these proceedings, in accordance with rule 51.

29. The next question is: should I exercise my discretion under rule 52 to issue a judgment dismissing the claim? Rule 52 provides that the tribunal shall issue a dismissal judgment unless one of two things, (a) or (b), applies. (The claimant has never, to my knowledge, suggested that either applies). (a) doesn't apply because the claimant did not express at the time of withdrawal a wish to reserve the right to bring a further claim. The only one that potentially applies is (b), which applies if I believe that to issue such a judgment would not be in the interests of justice.

30. What I am now going to move on to is two things. First, I am going to consider what the position might be if I were wrong about the effect of withdrawal in these particular circumstances. Secondly, I am going to consider, in the same breath (as it were) because it is a considerably overlapping issue, whether there is anything that means issuing a judgment would not be in the interests of justice.

31. That brings me to the preliminary issues that this hearing was supposed to be dealing with, the first of those issues being: what did the 2014 claim consist of?

32. Before tackling that issue, I need to think about what the effect of the reinstatement of the claimant's 2014 claim is. The process that has been put in place is slightly curious. It is purely administrative; there is no judicial input into it. I don't believe it has been considered in any of the appellate Courts. I shall attempt to look at it logically.

33. The dismissal of the claim for non-payment of fees was an administrative act. We have some fees paperwork and what that shows me, using my knowledge of how fees were administered, is that this case never emerged from the fees processing office in Leicester. In other words, it never came before an actual employment tribunal (the claim and fees processing office in Leicester, which at the time processed all claims, was and is completely separate, both physically and administratively, from the Leicester employment tribunals).

34. The claim was formally rejected or dismissed by a letter dated 1 September 2014 for non-payment of an issue fee. That was, as I have said, a purely administrative act. Reinstatement of the claim in 2018 was, similarly, a purely administrative act.

35. It seems to me that the situation must be as if the 2014 claim had never been dismissed, as it was dismissed pursuant to a fees regime that was found to be unlawful. It follows that what is before the tribunal now is no more and no less than the claim that was presented in 2014.

36. It is right that the claimant has put in a fresh claim form, but she has done that because that is what people in her position have been encouraged to do, in circumstances where their original claim form is not available, as there would otherwise be no claim form. It is not, though, a new claim. I appreciate that this case is proceeding under a new[1], 2018, claim number, but it is not a 2018 case: it's the 2014 case which happens to have been given, for administrative reasons, a 2018 case number.

37. I note that if the claimant had issued brand new proceedings covering the same ground as her 2014 claim in circumstances where the 2014 claim had been reinstated, the new proceedings would be an abuse of process.

38. Although I can look at her 2018 claim form to get some information about what the claimant wants to claim, her claim is not what is set out in it. Her claim that is before the tribunal is whatever was before the tribunal in 2014. And there are considerable difficulties with that because nobody has the 2014 claim form. I am fairly sure that the practice of the Leicester processing office was to dispose of claim forms some months after they were rejected. The claimant has informed the tribunal that she didn't keep a copy of her 2014 claim. I think she is saying it was submitted electronically, and that would make sense. Neither the respondent nor any employment tribunal has ever had a copy of it.
Unfortunately, the claimant has not attended this hearing either.

39. Trying to work out what the claimant is claiming and whether what she wants to claim now – i.e. what is in her 2018 claim form – is what she was claiming in 2014 or is something different, is, in circumstances where she is not here to answer

[1] It may well never have been given a number in 2014.

questions and has not provided information on the point in any coherent way in writing, frankly impossible.

40. The best that can be done is to look at the paperwork from 2014 that survives, which is very limited. One thing it does tell us is that the claimant was claiming unfair dismissal. We know the claimant was claiming unfair dismissal because

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there is a piece of paper headed "*Exempt for respondent*" giving, as the exemption reason, "*I've been unfairly dismissed and I'm claiming interim relief*". I think that is a piece of paper reflecting the fact that she had ticked the box on the claim form suggesting that she was exempt from going through early conciliation because she was claiming interim relief.

41. Although there is an early conciliation certificate, date "A" on that certificate is, as I've already said, 13 June 2014. I can see, from various other documents to do with fees, that the claim was issued on 4 June 2014. A claim issued after 5 April 2014 without an early conciliation certificate would not have got through the system at all without the claimant ticking a box on the claim form indicating that

one of the exemptions from early conciliation applied, because of rule 10(1)(c) of the Rules of Procedure and section 18A of the Employment Tribunals Act 1996.

42. What would have happened had she paid the fee (or had her application for remission been allowed) is that the claim would have been sent from the Leicester processing office to the Birmingham employment tribunals. An Employment Judge at the Birmingham tribunals would then have looked at the claim form and would have decided whether or not the case was actually exempt from early conciliation. It is very common, and has been common since early conciliation came in, for claimants who are unwilling to go through early conciliation simply to tick one of the boxes stating that an exemption applies when in fact it doesn't. Rule 12(1)(d) [of the Rules of Procedure] exists so that claims can be rejected on this basis.

43. What I don't know is whether what the claimant did in her claim form in 2014 was simply tick the box to say that her claim was exempt from early conciliation because she was making an application for interim relief, or whether she did in fact make an application for interim relief.

44. Any application for interim relief would, of course, have been very significantly out of time because the claimant was dismissed in April 2014 and her claim was submitted in June. Even if she made an application, it would therefore never have gone to an interim relief hearing. However, the fact that an application for interim relief was made too late would not by itself have prevented the claimant from getting around the requirement to go through early conciliation. This is because the relevant exemption is set out in regulation 3(1)(d) of the Employment Tribunals (Early Conciliation: Exemptions and Rules of Procedure) Regulations 2014, the relevant part of which states: "*A person ("A") may institute relevant proceedings without complying with the requirement for early conciliation where the proceedings are proceedings under Part X of the Employment Rights Act 1996 and the application to institute those proceedings is accompanied by an application under section 128 of that Act*".

45. What this means is that a claimant does not have to go through early conciliation before bringing a claim if the claim is an unfair dismissal claim and if the claim form is accompanied by an application for interim relief, made on the basis of an allegation that the reason for dismissal was one of the reasons specified in section 128 of the Employment Rights Act 1996 ("ERA"), for example that the claimant made a protected disclosure.

46. Simply ticking the early conciliation exemption box on the claim form obviously does not mean that it is "*accompanied by an application*" for interim relief.

47. It is for the claimant, who is seeking to make use of an exemption to the requirement to go through early conciliation, to satisfy me that her 2014 claim form did satisfy the requirements of regulation 3(1)(d) [of the Employment Tribunals (Early Conciliation: Exemptions and Rules of Procedure) Regulations 2014]. It is for the claimant to do this now just as it would have been for her to satisfy the tribunal in 2014 that, had she paid the issue fee and had her claim form passed from the Leicester processing centre to the employment tribunals in Birmingham, her claim should be accepted and not rejected notwithstanding her failure to go through early conciliation. She has singularly failed to do so.

48. The claimant has not suggested in any of the correspondence I have seen that in 2014 she made an application for interim relief, nor that she was making one of the types of claim to which ERA section 128 applies. In her 2018 claim form, which should (although it may well not do so) reflect the claimant's recollection of her 2014 claim form, there are crosses in the boxes for unfair dismissal, age discrimination, race discrimination, religion or belief discrimination and sex discrimination. She has not put a cross in the box for "*I am making another type of claim which the Employment Tribunal can deal with*" and below it written, for example, "I am also making a whistleblowing claim".

49. Even if I am wrong about her 2018 claim form not containing a claim to which ERA section 128 could apply, the claimant certainly hasn't told this tribunal that in 2014 she was making [e.g.] a whistleblowing claim and made an application for interim relief which accompanied her claim form. Only if she were alleging that, and were able to make out that allegation, would she satisfy me that she was exempt from the early conciliation regime.

50. Before I go any further, I need to mention something. Yesterday [28 February 2019] afternoon, the claimant emailed the tribunal. The email is timed at 16:37 hrs. In fact, it was sent to the respondent's solicitors and copied to the tribunal, but it begins, *"Dear Birmingham Employment Tribunal*". From its content, it appears more to be addressed to the respondent's solicitors than to the tribunal. It ends with the following:

> *I have been instructed by West Midlands that the matter is a civil and criminal matter that should be addressed by the Tribunal themselves and I should contact which has been done. At this time I have not been contacted by Birmingham Employment Tribunal on this matter I won't be at this time preparing to travel for tomorrows under duress. As the respondent if you want to turn up Birmingham Employment Tribunal tomorrow and represent you statement by all means Caroline* [the name of the individual with conduct of the

> case at the respondent's solicitors] *but mine is withdrawn. I have notified the Birmingham Employment Tribunal and it cannot be used.*

51. What "*statement*" she is referring to that "*is withdrawn*" and "*cannot be used*" is unclear. There are possibly half a dozen documents she could mean. I simply don't know whether she wants all of them disregarded, or some of them, or just one, or which one (or ones).

52. With that in mind, I come to a letter from the claimant that has been drawn to my attention. It is undated and it is one of the many attempts she has made to set out her case. In it she refers to ACAS early conciliation. The relevant paragraph of the letter is headed "*ACAS Conciliation Number*". It reads as follows:

> *The certification is produced later than the date and evidences that the conciliation number was attained on or prior to the 4th June 2014. The number is required on the form and the certificate is sent when it comes through the system and for that reason both dates are recorded. There are emails I have on record for this.*

53. If the claimant is seeking to suggest that the dates on the early conciliation certificate are wrong, she would need to produce some strong evidence to persuade me of this. She wrote to say she has "*emails … on record*", but she hasn't produced them, either to the tribunal or to the respondent.

54. It may simply be that the claimant misremembers the dates when she went through early conciliation. The only relevant early conciliation certificate I have seen, which is the certificate the number of which the claimant set out in her 2018 claim form, shows that the claimant started early conciliation on 13 June 2014. As I have already mentioned, it is clear from a number of documents that the claimant sought to issue her claim on 4 June 2014.

55. The reason I am going through all of this is because if the claimant's claim had not been dismissed for non-payment of fees, it would have to have been dismissed pursuant to section 18A of the Employment Tribunals Act 1996 for failure to go through the early conciliation process, in circumstances where none of the exemptions applied. That is one of a number of reasons why would very much be in the interests of justice for this claim, which has been withdrawn, to be dismissed pursuant to rule 52.

56. The early conciliation issue also illustrates the problems there are in trying to litigate in 2019 a claim that was disposed of in 2014. It is not, of course, the claimant's fault that the fees regime was there in 2014 and that she was a victim of it, but I have to look at fairness to the respondent as well as fairness to the claimant. We do not have the 2014 claim form and nothing can be done about that. The respondent would potentially be deprived of defences it might otherwise have if I were just to assume things in the claimant's favour, for example assuming that there was an application for interim relief.

57. Returning to the first preliminary issue: what was this [2014] claim about? I will assume that it was an unfair dismissal claim, but that is as far as I am prepared to go. The claimant's 'statements' are unclear and she has withdrawn at least one of

them. Her 2018 claim form is difficult to understand. Nowhere does she say, "This is what my claim in 2014 consisted of". Instead she is, essentially, saying, "This is the claim I want to make now". In the circumstances, I am not satisfied that there was any claim validly before the tribunal in 2014 other than a claim for so-called 'ordinary' unfair dismissal.

58. There is also a concern, one fuelled not only by the contents of the claim form and the further information about her claim the claimant provided but also by what is in various of her potentially withdrawn 'statements', that if in 2014 she was pursuing complaints in addition to ordinary unfair dismissal, what she was doing was trying to resurrect the 2013 claim, or parts of it. It would, of course, be an abuse of process for her to do that.

59. My answer to the first issue is, then, that the only claim which is before the tribunal is the unfair dismissal claim. I would add that that claim would necessarily have been rejected for failure to go through early conciliation.

60. The second issue is a time limits issue, but also an amendment issue. The time limits issue doesn't 'bite' on the unfair dismissal claim. I have already explained that, on my analysis of the situation, what has happened is that it is as if the 2014 claim had never been dismissed for non-payment of fees. This means that when thinking about time limits, I have to consider them in relation to a claim presented on 4 June 2014. Putting non-compliance with early conciliation requirements to one side, there is no time limits problem in relation to unfair dismissal because the claimant presented her claim within three months of the effective date of termination of her employment.

61. If the claimant is wanting to pursue claims other than for ordinary unfair dismissal, which she seems to be, I note that she has not made an amendment application, or, at least, not a coherent one. I also note it is not clear what additional claims she wants to bring – I am not in a position to grant permission to amend to pursue any particular complaint. I note, too, that she is not here to explain herself: to explain her claim; to explain why she is seeking to bring claims now that she didn't bring in 2014; to explain herself in terms of time limits by producing evidence in support of extending time on a "*just and equitable*" or "*not reasonably practicable*" basis.

62. Whether to allow an amendment is a matter of discretion, to be exercised in accordance with the overriding objective in rule 2. All the circumstances must be taken into account, including, in particular, the type of amendment sought, when the amendment application is made, and time limits. No one factor is necessarily determinative in and of itself.

63. In relation to time limits, what is uppermost in my mind is that, in relation to complaints that appear on the face of them to be out of time, it is for the claimant to satisfy the tribunal that there was, for example [see section 123 of the Equality Act 2010], "*conduct extending over a period*" and/or that it would be "*just and equitable*" to extend time.

64. Taking everything into account, I decline to allow the claimant to amend her claim – or, rather, I would decline to do so were I not dismissing the claim anyway. The

most important factors to me are time limits and not being able to understand what particular complaints the claimant wants to add.

65. All of this is also relevant to whether or not it would be in the interests of justice to issue a judgment pursuant to rule 52 and supports issuing such a judgment.

66. Part of the time limits issue that Employment Judge Rose QC envisaged would be dealt with at this hearing was time limits in relation to the original [2014] claim. The original claim, as I have said, was submitted on 4 June 2014. This means that any complaint about something that happened before 5 March 2014[2] would, *prima facie*, be out of time. It would therefore be for the claimant at this hearing (as Employment Judge Rose QC envisaged it) to satisfy the tribunal that any complaint about something that happened before 5 March 2014 should be allowed to proceed in accordance with the applicable time limits provisions, for example, in relation to any discrimination complaint, sections 123(1)(a) and (b) of the Equality Act 2010 ("EQA").

67. The claimant has not produced any evidence at all, and has not even put forward any arguments, in support of any submission that complaints about things that happened before 5 March 2014 should be allowed to proceed. In relation to this, I note that when asking the tribunal to extend time on a "*just and equitable*" basis under EQA section 123(1)(b), it is not enough for the claimant simply to come along to the tribunal and say that the respondent would not be prejudiced (and she hasn't even done that) and anyway, given the lapse of time, I think there would be very considerable prejudice to the respondent were I to extend time.

68. It follows that if the claimant's [2014] claim contained complaints other than a complaint of 'ordinary' unfair dismissal that dated from prior to 5 March 2014, those complaints were out of time. This is yet another factor making it in the interests of justice to dismiss the claim following its withdrawal.

69. That takes us to the third issue, which is whether a fair trial is possible in accordance with rule 37(1)(e). On this, suffice it to say, that I have considered the written evidence that has been submitted on the respondent's behalf, evidence confirmed on affirmation from Ms Sundeep Thakkar of the respondent. I agree with her that a fair trial is probably not going to be practicable.

70. Even if I were wrong about everything else, I would, then, still be dismissing this claim pursuant to rule 37(1)(e). It is no longer possible to have a fair hearing of the claim. The claimant has put forward no material to suggest otherwise – nothing to counter the respondent's points. Amongst other reasons why I'm concerned that it's not possible to have a fair hearing is that it is, as of now, impossible to say precisely what the claimant is alleging, let alone what she was alleging in 2014. Despite the claimant providing further information about her claim numerous times, it remains extremely confused and confusing. I think a trial would be something of a farce at this stage and, certainly, would not be fair to the respondent.

[2] To my knowledge, it has never been suggested that the claimant has ever wanted to pursue a complaint with a six-month limitation period.

71. Finally, the claimant has failed to attend today, without adequate explanation. Her non-attendance has made it very difficult indeed to deal with the preliminary issues in accordance with the overriding objective, albeit it's fair to say it is largely her case that has suffered as a result. If her claim had overcome the other hurdles in its way, I would probably have dismissed it because of her nonattendance, pursuant to rule 47.

72. In conclusion: the claim has been withdrawn in accordance with rule 51; I am dismissing it pursuant to rule 52 because, in all the circumstances and for all the reasons I have given, I do not believe that to issue a dismissal judgment would not be in the interests of justice – in fact, I believe the opposite.

EMPLOYMENT JUDGE CAMP
2nd October 2019

Sent to the parties on:
08.10.2019 For the Tribunal