



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr Stephen Green

**Respondents:** (1) The Governing Body of Newbridge Primary School  
(2) Bath & North East Somerset Council

**Heard at:** Bristol (hybrid hearing)                      **On:** 14 February 2022

**Before:** Employment Judge Christensen

## **Representation**

Claimant: did not appear

Respondent: Ms Winstone of Counsel

# JUDGMENT

**The claims pursued by the claimant are dismissed upon withdrawal under Rule 52 of the Rules of Procedure**

# REASONS

## **Background**

The claimant was not present at the hearing. At its conclusion I issued my judgment as set out above. At that time I did not give reasons. I confirmed to the respondent that I would do so in writing to ensure that the claimant understood the reasons for my judgment given his non-attendance at this hearing.

The claimant pursues claims under the Equality Act for disability discrimination. The disabilities relied upon by the claimant are (i) functional neurological disorder and bilateral knee inflamed arthritis, (ii) dyslexia with associated memory problems and scotopic sensitivity (iii) chronic clinical depression and general anxiety disorder and (iv) attention deficit and hyperactivity disorder.

There is one earlier Judgment issued by me dated 21 September 2021 addressing estoppel points. There are a number of earlier Case Management Orders issued by me, by EJ Midgely and by REJ Pirani which assist in understanding how matters have progressed to date. I do not recite the content of those various orders but I have taken them all into consideration.

Today's hearing had been listed as a 2 day Preliminary Hearing to determine the issue of the claimant's status – namely was he an employee of the respondent within the

meaning of S83 Equality Act. He was engaged by the respondent between 2013 and 2024 as a music teacher.

This same issue (together with other preliminary issues) had been before me at an earlier Preliminary Hearing listed on 20 & 21 September 2021. On that occasion I was not able to determine the status issue because of problems with the bundle as set out in my Case Management Order. Matters were relisted to 13 & 14 January 2021. On 20 December 2021, REJ Pirani, had a further Case Management Hearing with the parties and vacated the hearing date in January and relisted the status point to a hearing listed over 2 days on 14 & 15 February.

### **Reasonable adjustments**

EJ Midgely directed on 22 May 2021 that a number of reasonable adjustments would be made to accommodate the claimant's request for such adjustments. These adjustments were reviewed and accommodated at the hearing I conducted on 20 & 21 September 2021.

Those adjustments are confirmed in the CMO issued by REJ Pirani on 20 December 2021 and are supplemented (paragraph 13) by two further adjustments agreed for today's hearing.

### **Events prior to today's hearing and application to withdraw**

The claimant made an application in writing in advance of today's hearing to withdraw his claim under Rule 52. He accompanied the application with a request to the tribunal to exercise its discretion not to dismiss the claim upon withdrawal.

The claimant's application is in a letter of 7 January 2022 and then repeated in further letters of 5 February 2022 and 11 February 2022. These refer (1) *"I am formally writing to you to request a withdrawal of all my claims, but not to have them dismissed. I wish to reserve the right to bring all of my claims back to the Tribunal at a later date"* (2) *"I can confirm I would my claims [sic] to be withdrawn but not dismissed"* and (3) *"...you are asking me.....to give reasons as to why I wish to withdraw my claims and be given permission to reintroduce my claims at a later date"*

On 14 January 2022 and following receipt of the letter of 7 January, EJ Midgely directed the claimant to clarify whether he was seeking a stay of proceedings or whether he was withdrawing his claim. The claimant responded on 15 January 2022 and the respondent commented on 18 January 2022. Following receipt of those further representations EJ Midgely directed on 4 February 2022, that an application for stay was refused and gave reasons for his refusal. He further directed that the claimant confirm by 7 February whether he wished to withdraw his claim or attend the preliminary hearing listed on 14/15 February 2022 to determine the status issue. The claimant responded on 5 February and confirmed that he wished his claim to be withdrawn but not dismissed.

The parties were written to by the tribunal on 10 February under direction of EJ Midgely and REJ Pirani to confirm (a) that the claimant may make his application *"addressing why it is not in the interests of justice to dismiss his claims, if they are withdrawn, at the outset of the hearing"* and (b) that the REJ was considering converting to a video hearing because of a number of recent positive cases of Covid with the Bristol Civil Justice Centre. It was explained to the claimant in that letter that the judge will be able to discuss reasonable adjustments with the claimant.

The respondent agreed to the switch to a video hearing, however the claimant's response was less clear regarding whether he agreed to a video hearing. The parties were written to on 11 February to confirm that the hearing would proceed as a hybrid hearing; that the claimant may appear in person and that the respondent's representative and witnesses were permitted to attend remotely.

**Today's hearing**

The claimant did not appear at the hearing today.

The claimant emailed the tribunal on Sunday 13 February to indicate that he objected to having a hearing. He sets out reasons for this. He also referred to having mostly lost his voice, having a high temperature, that he doesn't think it is covid but more likely a chest infection.

The claimant emailed the tribunal at 10.00am on 14 February and said this

I'm very sorry to say that I'm unable to attend today, as our computers are still down and our internet is intermittent. I'm still not feeling well (temperatures, no voice and chest infection).

I do apologise for my absence.

At my request my clerk telephoned the claimant a little after 10.00am and before I started the hearing to confirm whether he was planning to attend the hearing in person or by video. There was no response on the telephone number provided by the claimant on his ET1, despite two attempts to call that number.

On the basis of the information available to me at the outset of the hearing I consider it proper to proceed to determine the claimant's application to withdraw his claim under Rule 52. The claimant has been told that he may appear in person but has not done so. The claimant has given no indication of a wish to join the hearing by video and did not respond to the enquiry made of him from the tribunal when they called him at the outset of the hearing. The claimant has told the tribunal that he is feeling unwell but has made no application for a postponement of today's hearing on that basis and has provided no medical evidence of illness. He has instead offered his apologies for absence. The basis for his application for withdrawal but without a dismissal is set out in writing.

I have also considered the reasons put forward by the claimant in his email of 13 February as the basis for his objection to the hearing proceeding today. I respond to them as follows.

- I have considered the contents of all the emails sent by the claimant to the tribunal and referred to in his letter of 13 February. None of these appear to provide a proper reason not to proceed to consider his application to withdraw today.
- Reasonable adjustments have been discussed, agreed and provided to the claimant.
- I cannot discern any basis to conclude that proceeding today is contradictory to any earlier correspondence. Earlier correspondence from the tribunal on 4 and 11 February 2022 sets out clearly that the preliminary hearing will take place.
- The claimant was reassured by letter of 11 February that he may attend the hearing in person. Guidance was sent to explain hybrid hearings.
- There is no application for a postponement of today's hearing.

**Application to withdraw but not dismiss (Rule 51/52)**

I have been aided by the skeleton argument provided by the respondent for today's hearing, a copy of which was sent to the claimant on 13 February. That sets out a chronology of events and submissions. I have carefully reviewed those submissions with Ms Winstone, in light of there being no attendance by the claimant, and am satisfied that it is proper to rely upon them. I have also carefully considered the letters from the claimant in which he sets out his various reasons to request that there is no dismissal on withdrawal.

Rule 52 sets out: *Where a claim, or part of it, has been withdrawn under Rule 51, the*

*Tribunal shall issue a judgment dismissing it....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.*

This is not a situation in which a claimant is asking to withdraw a claim on the basis of no dismissal because the claimant wishes to litigate in another forum. The claimant in this case is asking for a withdrawal with no dismissal so that he may bring this claim back to the same tribunal at a later date and for the following reasons.

**COVID 19.** The claimant advances an argument that rising covid levels means that his claim should be suspended and on that basis there should be no dismissal. I see no proper basis to reach that conclusion.

**Unreasonable conduct of the respondent.** The claimant refers to the failure by the respondent to have settled with him and that their spending on legal fees to defend themselves as excessive and a waste of public money. None of that creates a situation in which I am satisfied that there is a proper basis not to dismiss on withdrawal.

**Disability & adjustments.** I am satisfied that the tribunal has taken proper steps to identify and provide the reasonable adjustments requested by the claimant to accommodate the disabilities that he relies upon in his claim. His argument appears to be that he is now seeking a withdrawal of his claim but no dismissal so that he may reintroduce his claims at a later date once he has undertaken an autism assessment for which to date he has no appointment or referral. In support of this he has provided a letter dated 4 January 2022 to the Avon & Wiltshire Mental Health Specialized ADHD Services. In that letter he sets out that he was diagnosed by that service in 2019 with ADHD and that he is now concerned that he may have a combined diagnosis of ADHD and ASD. He asks the specialized ADHD service whether he could now be assessed for ASD and whether there is some specific medication for ASD. He has a response to that letter of the same date in which the ADHD Clinic confirm that he will need a referral from his GP.

The claimant stated in his letter to the tribunal of 7 January "*I therefore believe it is in the interests of justice that I suspend legal action and seek further professional assessments for communication/memory problems as well as Autism. I believe with the help of medical professionals I would need to spend time to formalize specific 'reasonable adjustments' associated with all of my disabilities. After this has been done I would like to reintroduce my claims*"

The respondent resists these arguments in robust terms in their written submissions and I agree with the approach argued for by the respondent in paragraphs 10-13. There is no legitimate reason for me not to dismiss this claim upon withdrawal and neither do I believe that a dismissal judgment would not be in the interests of justice.

In considering the overriding objective to deal with cases justly, I am instead satisfied that it would be disproportionate to fail to dismiss on withdrawal in a case in which it is clear that the claimant has already been accommodated with reasonable adjustments. What he is now seeking is an unknown period of delay to enable him to seek a diagnosis that may or may not be confirmed and even if confirmed may add nothing more to the current understanding of what adjustments the claimant needs for the hearing. The overriding objective sets out that delay should be avoided so far as that is compatible with proper consideration of the issues. I cannot identify any cogent reason which would militate in favour of the considerable delay that would necessarily be created by not now dismissing this claim on withdrawal. It is relevant that the evidence required to determine status will require a recollection of events from witnesses going back many years and that further delay in determining this point may create prejudice to the respondent.

Another factor is expense. This is the second Preliminary Hearing listed to determine the status point. If I agreed to withdrawal but no dismissal there would of necessity need to be a further hearing to determine that issue with attendant costs. I cannot identify a legitimate reason to do so and am not satisfied that it is in the interests of justice to do so.

**Criminal Investigations.** The claimant sets out in his letter of 7 January that he has reported matters to Avon & Somerset Police as a disability hate crime. On that basis he wishes to withdraw his claim but not have it dismissed so that he may reinstate it at a later date once the police have concluded their investigations. I was told by the respondent in oral submissions that the police have indicated that they wish to await the outcome of the hearing in the Employment Tribunal before deciding how they should proceed. From all of that I can discern no proper basis to be satisfied that creates a legitimate reason for me not to dismiss this claim upon withdrawal.

**Seeking legal advice.** I have also considered what the claimant has stated in his letter of 15 January 2022 regarding the time taken to get advice from the musician's union. The claimant has been in a position to instruct the musician's union to advise him on the conduct of his claim or represent him since he started this claim but has not done so. Accordingly I do not regard that as providing any proper basis to conclude that there is a legitimate reason to not dismiss this claim upon withdrawal by the claimant.

**Summary**

I am satisfied that the claimant has indicated in clear terms that he wishes to withdraw his claim. The possibility that he may instead be applying for stay has been considered and rejected by EJ Midgley. The issue before me today is therefore whether there is a legitimate reason for not dismissing his claim on withdrawal, as he requests, and I have not been satisfied that any such reason exists. Further I do not believe that to issue such a judgment would not be in the interests of justice.

Employment Judge Christensen  
Date: 14 February 2022

Judgment & reasons sent to parties: 17 February 2022

FOR THE TRIBUNAL OFFICE