

EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: S/4107600/2017

5

Employment Judge: Ian McPherson

Held in Glasgow on 25 May 2018 (Preliminary Hearing)

10

Mr Conor Morgan

Claimant
Not Present and
Not Represented-

15

Written Representations, per
Thomas Smith, his
representative

20

Sense Scotland

Respondents
Represented by:-
Ms Eleanor Mannion-
Solicitor

25

30

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Employment Tribunal is that:

35

- (1) The case having called for Preliminary Hearing on timebar, and the claimant not being in attendance or represented, but having submitted a withdrawal of his claim, by e-mail from his representative, the Hearing proceeded in the absence of the claimant, the Tribunal taking into account, in terms of Rule 47 of the Employment Tribunal Rules of Procedure 2013, available information from the claimant's representative, Thomas Smith, being his e-mails to the Tribunal of 24

40

and 25 May 2018, and oral submissions from the solicitor appearing for the respondents.

5 (2) In terms of Rule 51 of the Employment Tribunal Rules of Procedure 2013, the Tribunal noted the claimant's withdrawal of his claim, bringing his claim to an end, and while his representative's e-mail of 25 May 2018 at 09:32 am sought to resist a dismissal Judgment being granted to the respondents, the Tribunal grants the respondents' application, made orally at this Hearing by their solicitor, in terms of Rule 52, dismissing the claim, which means that the claimant may not commence a further claim against the respondents raising the same, or substantially the same, complaints of wrongful dismissal and breach of contract arising out of the termination of his employment as a support assistant on 24 August 2017.

io 15 (3) Further, the solicitor for the respondents having intimated orally at this Hearing that the respondents do not intend to seek an award of expenses against the claimant, and / or his representative, in respect of the late withdrawal of the claim, or otherwise in respect of unreasonable conduct in the bringing and / or conducting of the claim before the Tribunal, the Tribunal makes no Order as regards Costs, 20 nothing that the respondents do not seek to rely on the reservation of Costs submission made at paragraph 28 of their ET3 response submitted on 5 February 2018.

REASONS

25 Introduction

1 This case called before the Tribunal on the morning of Friday, 25 May 2018, at 10.00am, for a 34 day (3 hour) Preliminary Hearing on time-bar, on the respondents' application, as per Notice Hearing issued to both parties' representatives by the Tribunal on 5 April 2018.

2 On 16 May 2018, the claimant's representative, Mr Thomas Smith, who had
lodged the ET1 claim form, on behalf of the claimant, sought a
postponement of this Preliminary Hearing, on the grounds that the
respondents had arranged a stage 4 grievance hearing for Monday, 28 May
5 2018.

3 On 23 May 2018, having considered objections intimated by the
respondents' solicitor, on 22 May 2018, Employment Judge Claire McManus
refused the postponement, and ordered that this Preliminary Hearing
proceed as listed.

10 4 By e-mail sent at 16:31 on 24 May 2018, Mr Smith stated that:

*"The applicant wishes to withdraw from the complete claim and
therefore there will be no need to be in attendance tomorrow."*

Hearing before this Tribunal

5 When the case called before this Tribunal, the claimant was not in
15 attendance, nor represented, but there was on the casefile the email
exchange between the Tribunal, Mr Smith, and the respondents' solicitor,
Ms Mannion, on 23, 24 and 25 May 2018.

6 In particular, in reply to an e-mail sent by the Tribunal, on my instructions, at
09:15 am this morning, enquiring about the claimant's position, by e-mail
20 reply sent at 09:32, and copied to Ms Mannion for the respondents, Mr
Smith had stated as follows :-

*/ wish to confirm that the applicant will not be appearing at the
hearing set for today.*

25 *We note the comments in respect of Rule 52 and will resist this
on the basis that this matter has caused the applicant ill health
and that the withdrawal at this late stage was due to anxiety and
ill health that the applicant felt that his health was more*

important than appearing today as this would have caused him further stress.

5 *The withdrawal of this application was based on the fact that a culmination of the past 9 months has had a detrimental effect on the applicant's health and wellbeing.*

10 *I would ask that the tribunal considers that the applicant is an 18 year old man who has cited that his mental health was being compromised by this process and after due consideration he felt it best to abandon this case albeit last minute but his health was the priority.*

7 The Tribunal noted that the claimant's representative's reply did not seek a
15 postponement of the Preliminary Hearing, on account of the claimant's asserted
unfitness, on medical grounds, to attend the Tribunal. It explained a background to the withdrawal of the claim.

8 It was also of note that the postponement application refused the previous
day by Judge McManus had been made on grounds of ongoing grievance
20 procedures, and not on account of the claimant's health and well being such as to make him unfit to participate at the listed Hearing, and give evidence on the preliminary issue of timebar.

9 When the Hearing started, just after 10.00am, Ms Mannion, solicitor with MacRoberts LLP, Glasgow, appeared for the respondents.

10 Arising from a discussion between the Employment Judge, and her on
25 behalf of the respondents, the Tribunal noted the claimant's withdrawal of his claim, under Rule 51, thus bringing it to an end, and having considered Mr Smith's e-mail, and Ms Mannion's oral submissions, I there and then orally granted the respondents' application, in terms of Rule 52, for a Dismissal Judgment.

11 While Mr Smith's e-mail stated that he "resisted" such a Judgment, I was satisfied that there was no good cause not to grant dismissal, taking into account the precise terms of Rule 52, as follows:-

Dismissal following withdrawal

5

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 —

10

(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

15

(b) the Tribunal believes that to issue such a judgment would not be in the interests of justice.

12 Thereafter, enquiring of the respondents' solicitor about the respondents' statement, in their ET3 response, that they reserved the right to seek an award of expenses against the claimant, Ms Mannion indicated that her instructions were that the respondents would not be making such an application. In those circumstances, I stated that I would make no further Order, and this Hearing concluded at 10.10am, when I proceeded forthwith to draft this Judgment and Reasons for issue to both parties.

20

25

Employment Judge: I McPherson
Date of Judgment: 25 May 2018
Entered in register: 30 May 2018
and copied to parties

30

35