EMPLOYMENT TRIBUNALS

Claimant: **Mr D Redmond**

Respondent: **Selfridges Retail Limited (named as Selfridges and Co)**

JUDGMENT

1. The claimant's email of 7 March 2022 for the reinstatement of the claim is treated as an application under regulation 10A(2) of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 ("regulation 10A(2)") for decisions of Legal Officer Metcalf resulting in the dismissal of the claim to be considered afresh.

2. Considering the matter afresh, I [the Employment Judge] uphold the decisions that: the claimant's email of 17 March 2022 is a withdrawal of the claim under rule 51; the claim should be dismissed under rule 52.

3. The claim therefore remains dismissed, pursuant to the Judgment sent to the parties on 4 March 2022; alternatively, if and to the extent this is what regulation 10A(2) requires, I dismiss it myself by this Judgment.

REASONS

4. On 29 December 2021, the claimant presented a claim to the Midlands (West) employment tribunals. It was listed for a routine case management preliminary hearing on 21 July 2022. The respondent presented its response, within the applicable time limit, on 31 January 2022. They made an application to strike out within the response. In light of that, Employment Judge Faulkner directed that the case management preliminary hearing be converted to a preliminary hearing in public to consider striking out or making a deposit order. The Tribunal's letter confirming this was emailed to the parties on 17 February 2022 at 15:01 hrs.

5. At 16:56 hrs on 17 February 2022, the claimant emailed the Tribunal (not copying-in the respondent; none of his emails were copied to the respondent by him, although all or most of them were forwarded by the Tribunal) stating, "*I now wish to drop the case as of the 17/02/22 at 17.00pm*". The Tribunal file, including that email in particular, was then

referred to Legal Officer Metcalf. He looked at that email and evidently made two decisions. First, he decided that the email constituted a withdrawal of the claim in accordance with rule 51 of the Rules of Procedure. Secondly, he decided rule 52 applied, and that a Judgment dismissing the claim should be issued in accordance with that rule. His Judgment dismissing the claim, dated 22 February 2022, was sent to the parties on 4 March 2022 and emailed again to the claimant on 7 March 2022 at 11:41 hrs. It contained information about the claimant's right to have the decision considered afresh under regulation 10A(2).

6. On 7 March 2022 at 17:18 hrs, the claimant emailed the Tribunal stating, "*Please reinstate my court case of the 07/03/2022 as I would like to pursue the matter to achieve* [that] *which I believe* [I'm] *entitled to by law*". Apparently due to administrative oversight, it was not until 11 May 2022 that the Tribunal wrote to the claimant, at Legal Officer Metcalf's direction, asking him, "*Given* [his] *correspondence dated 17/02/2022*" to provide his reasons in support of the application to reinstate the claim.

7. On 12 May 2022, the claimant emailed the Tribunal stating, "*Just to confirm the main reasons why I would like to have the case reinstated are as follows*[:] *I would like to take Selfridges and Co under the Disability Discrimination Act 1995 also for wrongful dismissal and breach of contract loss of earnings etc and I wasn't sure the case was likely to be heard or not*".

8. On 18 May 2022, after receiving the claimant's correspondence from the Tribunal, the respondent's solicitors emailed the Tribunal and the claimant asking for the claim not to be reinstated. I note the contents of that email. The Tribunal file was then referred to me [Employment Judge Camp] on 20 May 2022.

9. Although the claimant has not labelled it in this way, I think in fairness to him I should treat his email of 7 March 2022 as an application under regulation 10A(2). On my analysis of the rules, the only way to challenge a Legal Officer's decision short of an appeal is by making an application under regulation 10A(2).

10. If the dismissal judgment had been issued by an Employment Judge, then the claimant would necessarily be making a reconsideration application under rule 70. My understanding of legal officers' powers is that reconsideration does not apply to their decisions. I say this because rule 72(1) states that, "An Employment Judge shall consider any application made under rule 71" and rule 72(3) assumes that the original decision being challenged by the reconsideration application was made either by an Employment Judge or by a full tribunal chaired by an Employment Judge.

11. In addition, there is (subject to the time limit) an absolute right to have a decision considered afresh under rule 10A(2), whereas a decision will only be reconsidered where an Employment Judge thinks that doing so is necessary in the interests of justice.

12. The next thing for me to decide is what test I should apply when dealing with an application under regulation 10A(2). The wording of the regulation is "*considered afresh by an Employment Judge*". What I take from this is that I should make whatever decisions the Legal Officer made that are being challenged from scratch, as if I had been standing in the Legal Officer's shoes when he made the decision. In other words, I don't have to

decide whether I think the Legal Officer Metcalf was right or wrong; I can effectively ignore what he decided.

13. 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.

14. Pursuant to rule 51, if a claimant writes to the tribunal withdrawing his claim, the claim comes to an end. The tribunal has no power to revive or reinstate a withdrawn claim. See Khan v Heywood & Middleton Primary Care Trust [2006] EWCA Civ 1087. That was a case under the old Tribunal rules, but it remains good authority for this general proposition: once withdrawn, a claim cannot be reinstated.

15. I also note, in support of a similar proposition, Campbell v OCS Group UK Ltd & Anor [2017] ICR D19, which was decided under the 2013 Rules. In that case, 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.

16. The first issue is: should the claimant's email of 17 February 2022 be taken as a withdrawal of the claim under rule 51? I think it should. There is no ambiguity in the email. I cannot see any reasonable way of interpreting it other than as the claimant saying that he wishes to withdraw the claim. Claimants not have to use the word "withdraw" for that to be what they mean.

17. The second thing I have to decide is whether, in light of that withdrawal, it would be appropriate for the claim to be dismissed under rule 52. I have no hesitation in deciding that it would be. Rule 52(a) does not apply. And in accordance with rule 51 and the Khan and Campbell cases mentioned above, the claim came to an end when the claimant withdrew it and not dismissing it would be pointless and would not help the claimant at all, because there is no power to reinstate it.

18. For those reasons, I endorse the Judgment of Legal Officer Metcalf dismissing the claim. It is not entirely clear to me whether rule 10A(2) requires me to issue a Judgment myself dismissing the claim again. If and to the extent it does, that is what I am doing.

Employment Judge Camp
23 May 2022