



EMPLOYMENT TRIBUNALS

Claimant: Mr D McIntosh

Respondent: Nuclear Decommissioning Authority

JUDGMENT

Having considered afresh under regulation 10A of the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013 the Judgment of Legal Officer Lamazares sent to the parties on 15 June 2022, I decline to dismiss the proceedings. The judgment of Legal Officer Lamazares is superseded by this judgment.

REASONS

1. In this claim the claimant complains of age discrimination in relation to certain provisions of the Civil Service Compensation Scheme. It is one of a number of such cases which were the subject of a Presidential Case Management Order on 30 March 2020.
2. The main substantive issue between the parties is whether the less favourable treatment because of age can be justified as a proportionate means of achieving a legitimate aim.
3. That issue was tried in a number of sample cases by a Tribunal chaired by Employment Judge Doyle in late 2021. By a Reserved Judgment with Reasons sent to the parties on 18 January 2022, that Tribunal decided that the justification defence succeeded.
4. Subsequently the Tribunal wrote to the claimants indicating that it was minded to strike out their claims if not withdrawn.
5. On 8 June 2022 the claimant's representatives wrote to the Tribunal withdrawing the claim. It was subsequently dismissed by Legal Officer Lamazares, exercising her delegated powers under regulation 10B(3)(h) of the 2013 Regulations.
6. However, the claimant and his representatives have now become aware that a different group of claimants in this litigation, represented by Slater and Gordon, have applied for there to be a further preliminary hearing to deal with the question of justification afresh on the basis that they intend to rely on evidence beyond that presented to the Tribunal chaired by Employment Judge Doyle. The claimant has therefore sought to have the dismissal of his claim revoked.

7. There is no need for claimant to rely on the reconsideration procedure under rule 70, as under regulation 10A a party has an absolute right to have a decision taken by a Legal Officer considered afresh by a Judge.

8. I have therefore looked at the matter afresh on the basis of the withdrawal but taking account of subsequent correspondence from both parties.

9. I am satisfied that it is not in the interests of justice for this claim to be dismissed. The claimant would not have withdrawn his claim had he or his representatives been aware of the application which is being pursued by those claimants represented by Slater and Gordon. In those circumstances dismissing the claim would not be fair or just as it would prevent any attempt to pursue the issue any further, for example by presenting a fresh claim and seeking an extension of time. Whether such a course of action would be fruitful is not within the scope of this Judgment.

Regional Employment Judge Franey

18 July 2022

JUDGMENT AND REASONS SENT TO THE PARTIES ON
20 July 2022

FOR THE TRIBUNAL OFFICE

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