EMPLOYMENT TRIBUNALS

Claimant: Mr A Amadi

Respondent: Mitie Ltd

JUDGMENT

1. The Claimant's application for reconsideration of the judgment given orally to the parties on **27 May 2022** is refused because there is no reasonable prospect of the original decision being varied or revoked.

2. The Claimant's email of 28 May 2022 at 16:34 was not an unambiguous withdrawal of the claim (or part of it) and the claim is not at an end.

3. The Claimant's application to strike out the response is refused.

4. The Respondent's application to strike out the claim is refused.

5. At this time, it would be disproportionate to grant the Respondent's request for an Unless Order. However, all of the orders sent to parties on 16 June 2022 must be complied with on time (and, where the date has already passed, within 14 days from the date of this judgment), and if there is any failure to comply with those orders in the future, then parties are at liberty to apply for strike out. (Parties should note that the order contained a typographical error, and date for exchange of witness statements is 22 February 202**3**).

REASONS

1. A hearing took place before me on 27 May 2022. Judgment was given orally and case management orders were discussed and agreed. A final hearing was listed.

2. On 28 May, at 16:34 the Claimant sent an email which included the phrase "That said, I now have no other choice but to withdraw the above claim".

3. In itself, that is ambiguous as to whether he was actually demonstrating that

    a. the email of 28 May, at 16:34 was a withdrawal, (the "former meaning") or whether
    b. (as he claimed in an email of 2 June at 15:37) he was simply saying that he believed he had no choice other than to withdraw, and was

therefore going to have to withdraw the claim at some future date (the "latter meaning").

4. If the email of 28 May had the former meaning, then the rules would not allow him (on 2 June, or any other date) to withdraw or cancel or revoke the withdrawal. Rather the claim would automatically have come to an end at 16:34 on 28 May. This is because, under Rule 51, I must simply make a finding of fact as to whether or not the claimant has informed the tribunal that the claim (or part of it) is withdrawn. If so, that means that Rule 51 has automatically operated to bring the claim to an end from the point at which the Claimant so informed the tribunal. The discretionary part of the decision is under Rule 52, which requires a decision about whether a dismissal judgment should be issued. A decision to decline to issue such a judgment does not mean that the claim continues (because, as a result of Rule 51, the claim has already come to an end).

5. I note that the Claimant's comments about asking for the deposit to be returned and about wishing to spare himself further frustration are potentially consistent with the former meaning. However, they are not unambiguous. For one thing, only one case number was cited (3332877/2018). For another, the deposit order referred to race discrimination allegations, whereas the judgment I gave on 27 May 2022 related to disability discrimination allegations.

6. Rather than an unambiguous withdrawal of the claim, my finding is that the email of 28 May was, in an ambiguous manner, explaining that (a) the Claimant was dissatisfied with my decision (and with previous decisions made in the case at earlier hearings) and (b) he was finding the process frustrating and (c) believed that it would be unfair to him if he had to withdraw, and that (d) he believed he might have to withdraw.

7. The Claimant wrote to the tribunal at 5:02am and again at 14:15 on 29 May. He says that he wishes to "appeal" my decision. An "appeal" is something that would be for the Employment Appeal Tribunal to deal with. However, I will treat as an application for review.

8. Rules 70-72 of the Tribunal Rules provides as follows:

70. Principles
A Tribunal may, either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) or on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration, the decision ("the original decision") may be confirmed, varied or revoked. If it is revoked it may be taken again.

71. Application
Except where it is made in the course of a hearing, an application for reconsideration shall be presented in writing (and copied to all the other parties) within 14 days of the date on which the written record, or other written communication, of the original decision was sent to the parties or within 14 days of the date that the written reasons were sent (if later) and shall set out why reconsideration of the original decision is necessary.

72. Process
(1) An Employment Judge shall consider any application made under rule 71. If the Judge considers that there is no reasonable prospect of the original decision being varied or revoked(including, unless there are special reasons, where substantially the same

application has already been made and refused), the application shall be refused and the Tribunal shall inform the parties of the refusal. Otherwise the Tribunal shall send a notice to the parties setting a time limit for any response to the application by the other parties and seeking the views of the parties on whether the application can be determined without a hearing. The notice may set out the Judge's provisional views on the application.

(2) If the application has not been refused under paragraph (1), the original decision shall be reconsidered at a hearing unless the Employment Judge considers, having regard to any response to the notice provided under paragraph (1), that a hearing is not necessary in the interests of justice. If the reconsideration proceeds without a hearing the parties shall be given a reasonable opportunity to make further written representations. (3) Where practicable, the consideration under paragraph (1) shall be by the Employment Judge who made the original decision or, as the case may be, chaired the full tribunal which made it; and any reconsideration under paragraph (2) shall be made by the Judge or, as the case may be, the full tribunal which made the original decision. Where that is not practicable, the President, Vice President or a Regional Employment Judge shall appoint another Employment Judge to deal with the application or, in the case of a decision of a full tribunal, shall either direct that the reconsideration be by such members of the original Tribunal as remain available or reconstitute the Tribunal in whole or in part.

9. The Tribunal has discretion to reconsider a judgment if it considers it in the interests of justice to do so. Rule 72(1), requires the judge to dismiss the application if the judge decides that there is no reasonable prospect of the original decision being varied or revoked. Otherwise, the application is dealt with under the remainder of Rule 72.

10. In deciding whether or not to reconsider the judgment, the tribunal has a broad discretion, which must be exercised judicially, having regard not only to the interests of the party seeking the review or reconsideration, but also to the interests of the other party to the litigation and to the public interest requirement that there should, so far as possible, be finality of litigation.

11. Under the current version of the rules, there is a single ground for reconsideration: "*where it is necessary in the interests of justice*". When deciding that question, it is important to have regard to the overriding objective to deal with cases fairly and justly, which includes: ensuring that the parties are on an equal footing; dealing with cases in ways which are proportionate to the complexity and importance of the issues; avoiding unnecessary formality and seeking flexibility in the proceedings; avoiding delay, so far as compatible with proper consideration of the issues; and saving expense.

12. In Outasight VB Ltd v Brown 2015 ICR D11, the EAT explained that the revision to the rules had not been intended to make it more easy or more difficult to succeed in a reconsideration application. Although several of the specific grounds set out in the earlier versions of the rules had not been duplicated, an application relying on any of those arguments can still be made in reliance on the "interests of justice" grounds.

13. The situation remains, as it had been prior to the 2013 rules, that it is not necessary for the applicant to go as far as demonstrating that there were exceptional circumstances justifying reconsideration. There does, however, have to be a good enough justification to overcome the fact that, when issued, judgments are intended to be final (subject to appeal) and that there is therefore a significant difference between asking for a particular matter to be

taken into account before judgment (even very late in the day) and after judgment.

14. The Claimant's argues that he did not have sufficient notice of the matters that were going to be considered at the hearing on 27 May 2022. I am satisfied that he did. The issues that needed to be determined had been discussed, for example, by EJ Mason on 15 March 2022 and by me on 8 April 2022. My orders from the 8 April hearing specifically set out that I might be the judge to conduct the 27 May hearing, and to decide relevant matters, and both the Claimant and the Respondent's representative said that understood and that they were content for that to happen.

15. Further, at the hearing on 27 May (as well as on 8 April), the Claimant demonstrated that he had a clear understanding of what decisions had been made in the past, and the grounds on which he was seeking to challenge the decisions, and in which documents he had put those challenges in writing.

16. The Claimant has no reasonable prospects of demonstrating either that he had insufficient notice that the hearing was going to deal with his challenge to EJ Kurrein's decision or that my decision to refuse his application was wrong.

17. On 17 June 2022 and 19 June 2022, the Claimant wrote to the tribunal to state his disagreement with the list of issues.

    a. For 1.2.1(b), the list of issues is amended to change "request" to "requests" and to omit the words in brackets at the end
    b. For 1.2.1(f), the list of issues is amended to remove the words from "while" to "against Jaqir" inclusive
    c. Item 1.2.1(c) is deleted, as the Claimant is not making that allegation
    d. For 1.2.(d), the words "by Area Manager Jamie" are deleted

18. The list of issues is not reframed or amended otherwise, either to add new complaints or at all. In particular, Claim 1 does not contain allegations of disability discrimination or failure to make adjustments. Furthermore, I consider the list to be a fair reflection of the parties' respective positions on the various complaints, as discussed in detail during the hearing.

19. The Claimant's email of 17 June did not supply the further information required by paragraph 4 of the orders of 27 May (sent to parties in writing on 16 June). The Claimant is reminded of the requirement to comply with paragraph 4 (as well as paragraph 5) of the orders.

20. The Claimant's application (17 June 2022) for the response to be struck out is refused. Mitie served grounds of resistance for each of claims 1 and 2, and a list of issues has been drawn up. Their response was sufficient to comply with the rules and, in any event, there has been a lot of case management since the responses were first submitted.

21. The Respondent's application (24 June 2022) for the claim to be struck out is refused. The hearing on 27 May 2022 clarified the issues, and they are as contained in the document sent to parties on 16 June 2022. The Respondent's application pays insufficient attention to the list of issues (and

to paragraph 3.3 of the orders) and to the fact that a deposit was previously ordered, and has been paid by the Claimant.

22. The Claimant's emails of 25 June at 00:41 and 11:04 are noted, but the points raised are already covered above.

23. Rule 2 requires that:

The parties and their representatives shall assist the Tribunal to further the overriding objective and in particular shall co-operate generally with each other and with the Tribunal.

24. It is not appropriate, and is not in accordance with the above-mentioned requirement, for the parties to be sending multi-page applications to the tribunal, especially in circumstances in which there have been a large number of preliminary hearings already. Furthermore, parties must not re-send documents that were previously submitted, unless expressly ordered to do so (and especially when the documents themselves were already considered at previous hearings).

25. Parties must co-operate with each other and must comply with the existing orders. If either party fails to do that, then the other party may apply for strike out and the application might be granted.

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Employment Judge **Quill**

4 July 2022

JUDGMENT SENT TO THE PARTIES ON

20 July 2022

FOR THE TRIBUNAL OFFICE