



EMPLOYMENT TRIBUNALS

Claimant: Mr A Conteh

Respondent: HCA International Limited

RECORD OF A PRELIMINARY HEARING

Date: 20 January 2023

Before: Employment Judge James

At: Sheffield (by telephone)

Appearances

For the claimant: In person

For the respondent: Mr A McIntyre, solicitor

DECISION

- (1) Following a discussion at today's hearing, the claimant agreed to withdraw his claim. That brings these proceedings to an end and the Tribunal's file will now be closed.
- (2) For the reasons set out below, the Tribunal does not consider that this is an appropriate case where the claim should be dismissed, following withdrawal, pursuant to Rule 52 Employment Tribunal Rules of Procedure 2013.

REASONS

1. At the outset of today's hearing, the claimant was asked to explain the basis of his Employment Tribunal claim. He stated that he was doing a course about safety on the railways. He had been sent on the course by his local Jobcentre. The training company, Intertrain UK Ltd, sent him to both Express Medicals Limited and Platinum

Medical Centre, for a medical certificate. The claimant says that a doctor at Platinum Medical Centre (he cannot remember their name) said words to the effect that a medical certificate could not be issued because he had schizophrenia. That meant he could not continue on the course.

2. The claimant said he had submitted a claim against two other respondents, Intertrain UK Ltd, and Express Medicals Limited. It was explained to the claimant that those claims were rejected, because the claimant had not obtained an ACAS Early Conciliation Certificate against those respondents. The Tribunal Rules require claims to be rejected in such circumstances; there is no discretion given to a Tribunal to do otherwise.
3. The claimant accepts that Platinum Medical Centre is not a legal entity. He accepted that the Centre is run by HCA International Ltd. By consent therefore, HCA International Ltd is substituted as the correct respondent for this claim.
4. It was explained to the claimant that because he had not been an employee or worker of the respondent, he could not bring a claim in the Employment Tribunal, in the circumstances he describes. Those circumstances do not give rise to a valid claim against HCA International Ltd which can be brought in the Employment Tribunal.
5. The claimant asked whether he could bring a claim elsewhere. The Tribunal explained that advice about other possible claims could not be given to the claimant. The Tribunal was nevertheless satisfied that the claimant wants to bring a claim elsewhere, if he is able to do so. It was also explained to the claimant that in relation to this Employment Tribunal claim, even if it had been accepted, there were time limit issues; and that there may well be time limit issues in relation to other claims he may wish to pursue elsewhere; as well as costs implications (in that a costs order might be made against him if he pursued a claim elsewhere). Those are matters which the claimant may want to take into account, in deciding whether to try to take the issue any further.
6. Rule 52 Employment Tribunal Rules of Procedure 2013 provides:

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.*
7. Mr McIntyre asked the Tribunal to dismiss the claim under Rule 52. He could not see what further claim could be brought against the respondent, arising out of what had been said. The respondent had already had to reduce a response, and attend today's hearing. That has led to costs being incurred, and time being spent, defending a claim which should never have been brought. The Tribunal appreciates that the respondent has been put to such time and expense.
8. In relation to rule 52 (a), the Tribunal is satisfied that the claimant wants to reserve the right to bring a further claim. On the basis of the information given, the Tribunal

cannot however be satisfied that there would be a legitimate reason for doing so. There is no more than the theoretical possibility of another claim. However, given that such a theoretical possibility arises, the Tribunal does not consider that it would be in the interests of justice to issue a judgement dismissing the claim. That would prevent the claimant from taking the matter any further, if having received further advice, he decided that was an appropriate thing to do.

9. In leaving open that possibility, the Tribunal is in no way encouraging or advising the claimant to take the matter any further or to seek further advice about it. The Tribunal is simply recognising that the claimant may wish to do so. The Tribunal also notes that there may well be time limit issues in relation to any other claims; and if the claimant pursues those claims elsewhere, he may end up with a costs award being made against him, if his claims do not succeed. The Tribunal appreciates the time and costs incurred by the respondent so far in defending the Employment Tribunal claim; but does not consider that is sufficient reason in itself to justify dismissing the claim, in the light of what the claimant has said.
10. For all of the above reasons, it is noted and recorded that the claim has been withdrawn and that brings an end to these proceedings. In the circumstances however, it is not in the Tribunal's judgment in the interests of justice to dismiss the claim on withdrawal.

Employment Judge James

20 January 2023