



EMPLOYMENT TRIBUNALS

Claimant: Mr. J. Whitby
Respondent: East of England Ambulance Service, NHS Trust
On: 2 February 2024
Before: Employment Judge H. Mason

DECISION ON RECONSIDERATION APPLICATION

The decision of EJ H. Mason is that the Claimant's application for a review is refused because it is not necessary in the interests of justice to reconsider the Judgment and there is no reasonable prospect of it being varied or revoked under Rule 70 of the Employment Tribunals (Constitution and Rules of Procedure) 2013 ("the Rules")

REASONS

Background

1. This case was listed before me for a telephone Preliminary Hearing for the purposes of case management to take place on 30 October 2023. Prior to the hearing, on 27 October 2023 at 17.15, the Claimant sent an email to the Employment Tribunal as follows:
"Dear whomever it may concern, please note I have just this minute signed a COT3 form with EEAST, therefore this meeting is no longer required"
The Claimant did not attend the hearing and there was no response when the clerk telephoned his mobile (number ending 1554).
Mr. Jenkins, solicitor, attended the hearing and told me that terms of settlement had been agreed and were set out on an Acas COT3 form and that the Claimant had withdrawn his case.
As the Claimant was not in attendance and was not legally represented, I gave judgment on 30 October 2023 as follows:
"BY CONSENT: Terms of settlement having been agreed by the parties (ACAS COT3) this case is adjourned to allow those terms to be implemented. If by 27 November 2023 neither party has made an application to re-list the matter for hearing the case will stand dismissed without further order."
That judgment was then sent to the parties by the Tribunal on 10 December 2023.

2. On 11 December 2023 at 11.53, the Claimant emailed the Employment Tribunal (cc the Respondent) as follows:

“Due to recent circumstances, whereas EEAST [the Respondent] have breached their own COT3 agreement by initiating a personal attack from management banning me from my own partners funeral due to “conflict of interest” and further defamation stating she committed suicide due to me, I wish to initiate proceedings as soon as possible”

The Claimant also set out at the foot of this email an email from Henry O’Carroll, Acas conciliator, also dated 11 December 2023. Mr. O’Carroll states that “...the settlement was not declared legally bound by Acas through a COT3 Agreement” and “... the Claimant withdrew his case prior to Acas being informed of a potential settlement in progress” and “as the Case had already been withdrawn,... there was no case to answer”; he concludes: “In short, there may have been a withdrawal of the Case, however Acas had no involvement in the agreement that took place between the parties.”

There is no record on the Tribunal file of a response from the Respondent.

The law (reconsideration requests)

3. Rule 70: A Tribunal may reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration, the decision may be confirmed varied or revoked.
4. Rule 71: An application must be made within 14 days of the date the decision was sent to the parties and shall set out why reconsideration of the decision is necessary
5. Rule 72(1): If an Employment Judge considers an application made under Rule 71 and considers that there is no reasonable prospect of the original decision being varied or revoked, the application shall be refused and the Tribunal shall inform the parties of the refusal

Decision

6. In accordance with Rule 65 “a Judgment ... takes effect from the day when it is given or made, or on such other later date as specified by the Tribunal”. In this case, the judgment date specified (in the absence of a preceding application to reinstate the proceedings) was 27 November 2023. The Claimant’s application to reinstate the proceedings was not made until 11 December 2023. I am conscious that the judgment was not sent out to the parties until 10 December and that the Claimant was not present at the hearing, but Rule 65 is clear. It was not open to the Claimant to reinstate the proceedings after 27 November 2023. However, I have then treated this as an application for reconsideration of the judgment under rule 70.
7. The Claimant’s application was received in time and I have therefore gone on to consider the merits of the application.
8. I find that it is not in the interests of justice to review the judgment as I am satisfied that the Claimant withdrew his application and agreed terms of settlement with the Respondent (which or may not have been set out in a COT3). It is implicit in the

Claimant's email of 27 October 2023 that he was not pursuing the case and this is supported by Mr. O'Carroll (Acas conciliator) who says the Claimant had withdrawn his case (hence he was unable to retrospectively issue a COT3). In accordance with Rule 51, if a claim is withdrawn, then it comes to an end and the Tribunal has no further jurisdiction.

9. The Claimant is aggrieved because he says the Respondent has breached the settlement terms but enforcing the terms of a settlement agreement (whether endorsed on an Acas COT3 or otherwise) is outside the Tribunal's jurisdiction.

EJ H. Mason
2 February 2024

Sent to the parties on:
7 February 2024

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For the Tribunal Office: