



EMPLOYMENT TRIBUNALS

Considered at: London South **Error! Reference source not found.**

On: 30 October 2023

By: Employment Judge Ramsden

In the matter of Miss S Dossu v G4S Facilities Management (UK) Limited

Consideration of judgment reached on: 9 November 2022

JUDGMENT ON RECONSIDERATION

1. The Respondent's application for reconsideration of the judgment given in this matter on **15 May 2023** is refused, and the decision in that judgment is confirmed.

APPLICATION

2. The Claimant applied, under Rule 71 of the Employment Tribunals Rules of Procedure 2013, for reconsideration of the decision of the Employment Tribunal, made by Lalini Nazareth, Legal Officer, on 9 November 2022 to dismiss the Claimant's claim following her apparent withdrawal of that claim on 24 October 2022.
3. The Claimant's reason for doing applying for a reconsideration is that neither she nor her representative (her husband, Mr Baxter) sent that email, or any of the other three emails apparently withdrawing her claim.

REASONS

4. The Claimant's claim was understood to have been withdrawn by the Claimant by reason of an email sent from her husband's email account, the nominated

point of contact with the Tribunal, on 24 October 2023. In fact, three emails were sent to the Tribunal on that date, and a further one on 26 October 2023, purportedly setting out that the Claimant wished to withdraw her claim (the **Withdrawal Emails**).

5. As the Withdrawal Emails were sent from the nominated contact email account for the Claimant, the burden of proving that those emails were not in fact sent by her or on her behalf sits with the Claimant.
6. The Claimant has offered no evidence whatsoever, besides her own witness evidence and that of her husband, Mr Baxter, that Mr Baxter's email account was "hacked".
7. The position put forward by the Claimant and Mr Baxter, that a former colleague of Mr Baxter's with a grudge against him:
 - a) intercepted emails from the Employment Tribunal and the Respondent relating to this claim and deleted those before Mr Baxter could read them – including emails about the final hearing of the Claimant's claim;
 - b) sent the Withdrawal Emails the same week as the final hearing was due to be heard; and
 - c) did not delete any other emails, or send any other emails, so far as Mr Baxter is aware,

is an improbable one. Not only would that have relied on the hacker determining to cause the "mischief" the Claimant alleges in relation to her claim alone, when there may well have been other ways that a grudge could have been pursued in relation to Mr Baxter personally, it would also rely on timely monitoring of Mr Baxter's emails (so as to "beat Mr Baxter to it" in reading and deleting those emails when he did have regular access to his email account during lunch breaks and before and after work). In a situation where the final hearing was scheduled for the very week the Withdrawal Emails were sent, when the Claimant and Mr Baxter were apparently unaware of that hearing, supposedly because the hacker had deleted the notices and correspondence concerning it, more "mischief" could perhaps have been achieved by not withdrawing the claim and the Claimant's non-attendance.

8. Moreover, the improbability of this assertion increases when it is considered that the Withdrawal Emails included:
 - i) an appreciation of the legal procedure involved in withdrawing a County Court claim, when Mr Baxter has been involved in some County Court litigation; and
 - ii) knowledge of the Claimant's employment with the Respondent (referring to her no longer wishing to work within the NHS, when she had been placed in an NHS setting in her employment with the Respondent).

9. This degree of improbability means that cogent evidence would be needed to prove, on the balance of probabilities, that these events occurred in the way the Claimant and Mr Baxter allege – but the only evidence provided to the Tribunal is their witness statements that they did not send the Withdrawal Emails, and Mr Baxter’s oral evidence of his having conducted an “investigation” into what happened, speaking to an IT expert, and his having been assisted in understanding that his former colleague had accessed his email account using his kindle by a Mr Whiken. No evidence was provided by the IT expert or by Mr Whiken.
10. In light of the above, the Claimant has failed to demonstrate that, on the balance of probabilities, it is in the interests of justice that the decision to dismiss her claim should be revoked or varied.

DECISION

11. For all of the above reasons, the Claimant’s application fails.

Employment Judge Ramsden

Date 30 October 2023