



EMPLOYMENT TRIBUNALS

Claimant

Mrs Julie-Anne Coley

Respondent

v

(1) Herongrange Group Limited,
(dismissed from proceedings 16.10.23);
(2) Herongrange Recruitment and
Training Solutions Limited.

Heard at: Cambridge (by CVP)

On: 24 May 2024

Before: Employment Judge M Ord

Appearances

For the Claimant: Mr N Bidnell-Edwards, Counsel

For the Respondent: Mr Kater, Litigation Consultant

JUDGMENT on RECONSIDERATION

The Claimant's Application for Reconsideration of the Judgment dismissing her Claim against the First Respondent Herongrange Group Limited on withdrawal is refused. The Dismissal Judgment stands.

REASONS

1. This matter came before me on an Application for Reconsideration of the Judgment on Withdrawal of the claims against the First Respondent. The relevant history of the matter is as follows.
2. The Claimant issued her Claim against the First and Second Respondents on 6 April 2023, making complaints of sex discrimination. The First Respondent and Second Respondent both entered Responses on 17 May 2023. The First Respondent said that it did not employ the Claimant at any time. The Second Respondent accepted that it was the Claimant's employer but gave no further information in answer to the Claimant's complaints.

3. Despite an Order from Employment Judge Tynan that it do so, the Second Respondent continued to fail to provide that information.
4. At a preliminary hearing on 19 September 2023, the Claimant was represented by Counsel and through counsel accepted that she had been employed by the Second Respondent and agreed that the Claim against the First Respondent should be dismissed on withdrawal.
5. The appropriate order was made and Judgment dismissing the Claim against the First Respondent, dated 6 October 2023, was sent to the parties on 16 October 2023. On the same day Notice to Show Cause and Unless Orders were sent to the Second Respondent. The Second Respondent failed to reply so that their Response was struck out on 16 November 2023.
6. On 20 November 2023, the Second Respondent entered Creditor's Voluntary Liquidation.
7. On 3 January 2024, the Claimant made an Application for a Reconsideration of the Judgment made on withdrawal of her Claim against the First Respondent.
8. The matter subsequently came before Employment Judge L Brown on 19 February 2024 and was adjourned to be heard by me and thus it came before me today.
9. The Claimant's Claim against the First Respondent was dismissed on withdrawal. Under Rule 51 when a Claim, or part of it, is withdrawn by a Claimant either in writing or in the course of the Hearing the Claim, or part, comes to an end subject to any Application by the Respondent for costs.
10. Under Rule 52, where such withdrawal has been made,
 - a. "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 complaints) unless:
 - a. The Claimant has expressed at the time of the withdrawal a wish to reserve the right to bring such a further action and the Tribunal is satisfied that there is a legitimate reason for doing so, or
 - b. The Tribunal believes that to issue such a Judgment would not be in the interests of justice."
11. Neither of those exceptions in Rule 52 applied in this case.
12. Accordingly, since October 2023 the Claimant has proceeded against the Second Respondent alone. The Second Respondent's Response was struck out on 16 November 2023 because the Second Respondent had failed to comply with the Unless Order and the Notice to Show Cause both

issued on 19 September 2023 and sent to the parties on 16 October that year.

13. On 20 November 2023, the Second Respondent entered Creditor's Voluntary Liquidation.
14. However, since the Hearing on 19 September 2023 those representing the Claimant have not asked for the Tribunal to take any further steps against the Second Respondent, or indeed in the case at all until 3 January 2024 when the Claimant made her application for reconsideration of the Judgment of 6 October last year.
15. The withdrawal was made orally at a Hearing on 19 September 2023. At that Hearing the Claimant, who has had legal representation throughout this entire case, was represented by Counsel. Through Counsel the Claimant withdrew her Claim against the First Respondent. She did so on the merits of the case. She accepted that her employer was the Second Respondent and not the First Respondent. There was no application under Rule 51 and thus the matter was confirmed in a written Judgment as required by the Tribunal Rules.
16. Before me today Mrs Coley gave evidence by reference to a statement the truth of which she affirmed. She maintained that at all times she believed that her employer was the First Respondent and that the Second Respondent was simply a payroll company. She said she had, prior to the presentation of her Claim, investigated the relationship between the First and Second Respondent but did not say how. She said that this matter was then taken up by her Solicitors. If that is correct it is incredibly surprising that the Claimant withdrew her Claim against the First Respondent on 19 September 2023.
17. The time for Reconsideration of the Judgment was within 14 days of the date on which the written record of the Judgment was sent to the parties. That was 16 October 2023, therefore the date by which the Application for Reconsideration should have been made was 30 October 2023, but no Application for Reconsideration was made until 3 January 2024.
18. It is surprising to say the least that if the Claimant seeks the Tribunal's discretion in allowing the Application to proceed out of time, that neither in the Application, nor in the Claimant's written submissions, nor in any communication from the Claimant's Solicitors, is any explanation made for the delay. I have been directed by Mr Bidnell-Edwards to the case of Campbell v OCS EAT188/2016.
19. This is clear Authority that I should look at the issue of the Judgment and not just the fact of the withdrawal. But there are material differences, all of which are relevant to the factual matrix between the Campbell case and the instant case.
20. First, the withdrawal in Campbell was made for health reasons, here the withdrawal was made on the merits of the case.

21. Second, the Claimant in Campbell did not have legal representation, here the Claimant has had legal representation throughout the entirety of the proceedings.
22. Third, in Campbell the Application for Reconsideration was made on the very day the Judgment was sent out to the parties, a mere two days after the withdrawal itself. Here the Application is considerably out of time, without as I have said, explanation for the delay other than Mr Bidnell-Edwards referring to the need to obtain advice and issues about funding. The details were not provided.
23. In truth, the central plank of the Claimant's Application is based on the fact that the Second Respondent is now in Creditor's Voluntary Liquidation. The essential concern she has is that she may be left without remedy. However, that is not a good reason to allow Reconsideration of the Judgment dismissing the Claim against the First Respondent. The alleged ambiguity of who was the Claimant's employer has, on her evidence, been of concern to her since the very day she began employment and yet, if that were true, it would be astonishing that she would instruct Solicitors and Counsel to withdraw her Claim against the First Respondent because the First Respondent was not her employer and the Second Respondent was. I am forced to conclude that this is a "concern" which has arisen only because of the liquidation of the employing respondent.
24. Mr Kater has rightly brought my attention to the fact that none of the information on which the Claimant seeks to rely for this Reconsideration is new information. All of it was available to the Claimant and those who have advised her throughout the currency of her claim, in September 2023 when Counsel, on her behalf, withdrew the Claim against the First Respondent.
25. For those reasons the application is refused. It is not in the interests of justice to Reconsider the Judgment, the application has no prospect of success. It is unmeritorious and out of time..
26. The Judgment dated 6 October 2023 and sent to the parties on 16 October 2023 stands.
27. Litigation must have some finality. The fact that the Second Respondent is in Creditor's Voluntary Liquidation does not make it in the interests of justice to set aside the Judgment striking out the Claim against the First Respondent.
28. The Application is out of time, without any proper request to extend time or explanation for the delay.
29. Accordingly, the Claim proceeds against the Second Respondent. The name of the Second Respondent is changed to Herongrange Recruitment and Training Solutions Limited in Voluntary Liquidation.

30. The Second Respondent's Response was struck out on 16 November 2023 and the liquidators entitled to notice of any Hearing and that will be done.
31. I will make Case Management Orders separately for the future conduct of the Claim against the Second Respondent and list the Final Hearing before an Employment Judge sitting alone in accordance with Rule 21.

3 June 2024

Employment Judge M Ord

Sent to the parties on: 19 June 2024.

.....
For the Tribunal Office.

Public access to Employment Tribunal decisions

Judgments and Reasons for the Judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the Claimant(s) and Respondent(s) in a case.

Recording and Transcription

Please note that if a Tribunal Hearing has been recorded you may request a transcript of the recording, for which a charge is likely to be payable in most but not all circumstances. If a transcript is produced it will not include any oral Judgment or reasons given at the Hearing. The transcript will not be checked, approved or verified by a Judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>