EMPLOYMENT TRIBUNALS

Claimant: **Mr T Bullock & others (see schedule)**

Respondent: **Do & Co Event Airline Catering Limited**

Heard at: Watford (by video) **On:** 7 June 2024

Before: Employment Judge Maxwell

Appearances
For the Claimants: Mr Uduje, Counsel
For the Respondent: Mr Sampson, Counsel

JUDGMENT

The Respondent's application for a reconsideration is refused.

REASONS

1. Whilst I have identified an error in my earlier reasons, it is not in the interests of justice to revoke the judgment or revise its terms.

Background

2. The Respondent airline caterer dismissed a large number of employees following a downturn in business connected with the Covid pandemic and lockdown. Many of those employees brought claims in the Employment Tribunal. Among these were two large multiples, where the Claimants were represented by OH Parsons:

   2.1 on 7 April 2021, a claim of unfair dismissal was presented by Mr Rai and others ("the Rai multiple");

   2.2 on 13 May 2021, claims of unfair dismissal, redundancy pay, notice pay holiday, other payments and for a failure to consult were presented by Mrs Patel and others ("the Patel multiple").

3. These two multiples and the claims of various other Claimants (some individuals and some smaller multiples) have required extensive case management. In the course of this process, the Respondent identified a significant amount of duplication including a number of Claimants who appeared in both of the two large multiples and raised its concern with the Tribunal.

4. A case management hearing began on 5 July 2023, to address the claims of unfair dismissal, redundancy and about collective consultation. The orders I made thereafter included a requirement that any Claimant pursuing the same complaint in more than one claim (i.e. under more than one case number) must withdraw the duplicate by 11 August 2023. In the absence of withdrawals, I indicated I would consider strike out of the duplicates as an abuse of process:

> **48. By 11 August 2023, any Claimant currently pursuing the same complaint in more than one claim (i.e. under more than one case number) must write to the Tribunal withdrawing any such duplicate. If this is not done, then a hearing will be listed to consider strike out of such claims as an abuse of process.**

5. A further case management hearing began on 12 July 2023, addressing the money claims and discrimination. Following this, I made a similar order with respect to duplicated claims:

> **54. By 11 August 2023, any Claimant currently pursuing the same complaint in more than one claim (i.e. under more than one case number) must write to the Tribunal withdrawing any such duplicate (stating which claim is withdrawn under which case number). If this is not done, then I will consider strike out of such claims as an abuse of process.**

6. OH Parsons not having complied with the 11 August 2023 deadline, the Respondent wrote to the Tribunal chasing this failure. I caused a letter to be sent to the Claimants' solicitor requiring a substantive response.

7. The letter from OH Parsons of 9 November 2023 stated that various Claimants in the Patel multiple wished to withdraw their claims but asked that these not be dismissed because they may seek to pursue holiday pay elsewhere. Following a list of Claimants' names, their solicitor wrote:

> **For all of these Claimants we confirm to the Tribunal that they withdraw their claims in the Patel multiple, whilst continuing with their claims in the Rai multiple but they apply to withdraw and ask that under rule 52A that the Tribunal does not issue a Dismissal Judgment as each of these Claimants intend to pursue a claim for holiday pay in the County Court.**
>
> **That claim is currently live in the Employment Tribunal but it would be procedurally complicated to try and transfer that discrete claim to the Rai multiple and the Claimants think that it would be more appropriate to simply withdraw the holiday pay claim at this stage and to bring that claim in the County Court.**
>
> **On that basis they make an Application under rule 52A that the Tribunal does not issue a Judgment dismissing the claim.**

8. On receipt of this email, I caused an email to be sent to the parties in following terms:

> **Is there any reason why judgement cannot be issued in these terms:**
>
> **The claims of the following Claimants [name & case number in the Patel multiple] are all dismissed upon withdrawal, save for their holiday pay claims, which although withdrawn are not dismissed because the Claimants have indicated they will pursue the same in the County Court.**

9. By letter of 13 November 2023, the Respondent opposed this course of action. It criticised the conduct of the litigation by OH Parsons in various respects including: the failure to withdraw duplicates previously despite much correspondence from the Respondent in this regard; an intention to apply to amend the claims of the Claimants in the Rai multiple to add holiday pay had been intimated but not made; and the failure to comply with the order I made requiring withdrawal of duplicates by 11 August 2023. The Respondent said a hearing should be listed to consider strike out of the duplicates as an abuse of process. The letter included:

> **Further, having considered the administrative burden placed upon the Tribunal and the prejudice to the Respondent by OH Parsons' late attempt to include holiday pay claims in Rai for those Claimants it duplicated in Patel, the Respondent objects to OH Parsons' application for these claims to remain live, and believes they should be withdrawn in their entirety.**
>
> **[…]**
>
> **The Respondent asserts that the resolution proposed by OH Parsons is unjust, and not in accordance with the overriding objective insomuch that those Claimants who were duplicated in Patel, due to OH Parson's error, gain an advantage over others in Rai by being permitted to continue with claims for holiday pay when EJ Maxwell has already excluded them, for sound reasons, as explained in paragraphs 7 & 8 of the Record of a Preliminary Hearing sent to the parties on 14 July 2023.**
>
> **[…]**
>
> **OH Parson's purported intention was to bring holiday pay claims in the County Court for Rai Claimants who are on their list provided to Han Law (attached) on 10 July 2023, yet they have failed to do so.**
>
> **The Respondent asserts that by not applying to amend the claims in the same forum as the ongoing Rai claim, which has been live in the Tribunal since 2021, is an abuse of process.**

10. OH Parsons wrote again on 16 November 2023:

> **It is the Claimants' position that they would agree to a Judgment in the terms set out in that letter ie the following Claimants would withdraw their claims save for their holiday pay claims which although withdrawn are not dismissed because the Claimants have indicated that they will pursue the same in the County Court. The Tribunal will note this list also includes the claims of Mr Hasmukh Patel and Mrs Jasbinder Suri in the Patel multiple:-**

[…]

We also write to address the e-mail from the Respondent's Solicitors dated 13 November 2023 which we take to be an Application that the claims should be struck out in their entirety.

This is strenuously opposed by the relevant Claimants.

The letter from the Respondent's Solicitors suggests that there should be some criticism of the Claimants and the Claimants' Solicitors for not yet pursuing holiday pay claims either by way of an amendment to the Tribunal claim or separately in the County Court.

As the Tribunal is aware there are Claimants who have only pursued a claim in the Patel multiple who have holiday pay claims before the Tribunal.

The Claimants in the Rai multiple have never put in a holiday pay claim.

There are then the duplicate claims that this letter addresses.

The intention of the Claimants is to wait to see the outcome of the Patel multiple's holiday pay claims in the Tribunal, either because they get settled by the Respondent or there is a finding of the Tribunal. Based on that finding the remaining Claimants who have not got a holiday pay claim at the Tribunal can then consider whether to pursue a County Court claim or not. It seems a waste of costs at this stage to lodge a County Court claim with the effect of increasing costs when the outcome of the Patel multiple claims will probably decide the issue in effect for all Claimants.

We respectfully suggest that it would not be reasonable within the overriding objective for the Tribunal to preclude these Claimants from pursuing a claim in the County Court when if they had not launched a holiday pay claim at all they would not have that restriction.

When the dismissals took place, they were done in a chaotic manner with limited documentation and as a result inadvertently the Claimants were listed in two claims rather than just one. We appreciate that has created an administrative issue for the Tribunal and we are grateful to the Respondents for their assistance in resolving the issue but with respect we do not believe that has caused any significant prejudice to either party or indeed increased costs in any significant way, especially in the context of a claim with over 200 Claimants all pursuing significant and multiple claims.

11. The Claimants' letter continued with representations as to the propriety of their actions and said that strike out for late withdrawal would be a draconian sanction.

12. Having considered the parties representations, I gave judgement on 28 November 2023 (sent on 30 November 2023) in the following terms:

The claims of Mr T Bullock under case number 3306714/2021 and other Claimants under various case numbers (see schedule) are all dismissed upon withdrawal, save for their holiday pay claims, which although withdrawn are not dismissed because the Claimants have indicated they

will pursue the same in the County Court (if not settled or otherwise disposed of).

13. The Respondent subsequently applied for written reasons and these were provided, being sent to the parties on 3 January 2024. These included a brief summary of the procedural history. Notably, however, at paragraph 9 I stated:

> **9. Whilst there is an overlap between the claims pursued in the two large multiples, there is also difference. Whilst both sets pursue unfair dismissal, only the Rai Claimants have holiday pay claims. The Claimants withdrawing their claims in the Rai multiple indicated an intention to pursue any holiday monies owed in the County Court.**

14. In this paragraph I have mistakenly transposed the names Rai and Patel. It is, of course, only the Patel Claimants who have holiday pay claims. The Rai claim is limited to unfair dismissal.

15. Having reminded myself of rule 52, the reasons concluded:

> **15. The Claimants expressed at the time of withdrawing their claims a wish to reserve the right to bring holiday pay claims. They gave a legitimate reason for this, namely their wish not to be barred from pursuing claims for unpaid annual leave in the County Court. This falls within rule 52(a).**
>
> **16. I was satisfied that a judgment dismissing those claims would not be in the interests of justice, as it might serve to bar the pursuit of holiday monies in Civil Court proceedings. The withdrawals had not involved a belief by the Claimants that their substantive holiday pay claims were without merit or should be abandoned entirely. They had been presented along with duplicate Tribunal claims, made in haste following a large scale dismissal exercise conducted by the Respondent. In such circumstances, Solicitors will be anxious about the risk of failing to present claims in time. With long lists of prospective Claimants and incomplete information provided by their union, there may be some duplication. Contemporaneously, the risk of bringing the same claim twice is likely to be seen as the lesser of two evils. It will almost always be easier to withdraw a duplicate at a later stage than obtain an extension of time for presenting a new one after the primary limitation period has expired.**
>
> **17. Awaiting the outcome of holiday pay claims for the non-duplicate Claimants in Rai multiple is a proportionate approach. If those claims succeed, the withdrawing Claimants can then commence proceedings relying upon the findings already made. The Respondent may in such circumstances have an incentive to settle. Equally, however, if the holiday pay claims currently before the Tribunal fail, then the withdrawing Claimants may decide not to go to the County Court after all. The interests of justice are not served by barring holiday pay claims entirely (or risking that) on the part of those Claimants whose names ended up in both the large multiples, simply because they have withdraw their 'Rai' claims.**

16. Once again, I mistakenly transposed Rai and Patel. The mistake was not, however, reflected in the judgment I had previously given, which correctly

identified the claims being withdrawn as those in the Patel multiple, with their relevant case numbers.

17. By letter of 16 January 2024, the Respondent applied for a reconsideration. Three grounds were advanced:

> **Ground 1 : Contrary to paragraph 9 of the Written Reasons, there is no pleaded holiday pay claim in the Rai multiple. This was confirmed at paragraph 8 of the Judge's PH Record 12 July.**
>
> **Ground 2: The Written Reasons do not address the Respondent's point in (unnumbered) paragraph 10 of its letter dated 13 November 2023 that (in accordance with paragraph 48 of the PH Record 5 July) a hearing be listed to consider whether all duplicate claims should be struck out in their entirety because in breach of that Order, O H Parsons LLP failed to withdraw these duplicate claims by 1 1 August 2023 as ordered.**
>
> **Ground 3: Claimants who were duplicated in the Patel multiple have wrongly been given permission to mount claims that they do not have within the Rai multiple in which they have always been listed. This is wrong in principle, and they unjustly gain an advantage over other claimants in the Rai multiple by being permitted to continue with claims for holiday pay when such claims in the Rai multiple have already been excluded as explained in paragraphs 7 & 8 of the PH Record 12 July.**

18. The Respondent's grounds were then developed at length over several pages.

19. The terms of the Respondent's reconsideration application prompted me to re-read the Rai claim form. I saw that whereas my reasons said the Rai Claimants had holiday pay claims, their claim forms and particulars did not. Unfortunately, at that stage I did not have the opportunity to read back into the matter fully. Whilst something appeared to have gone awry, I identified the wrong potential mistake:

    19.1 I thought the Claimants had withdrawn their Rai claims and I had mistakenly proceeded on the basis these included holiday pay;

    19.2 I now (on determining this application) realise it was Patel claims that were withdrawn and dismissed by my judgment, it was only in the subsequent reasons that I had mistakenly transposed the names Rai and Patel.

20. I did not have any assistance from the Claimants in this regard, as they did not respond to the Respondent's application.

21. I directed a letter, which was sent to the parties on 14 February 2024, giving my provisional view in the hope that they may be able to agree upon an appropriate way forward:

> **1. I set out my provisional view on the Respondent's reconsideration application below. In the event the parties cannot arrive at a common position in light of this, then I am likely to list the matter for a 2-day hearing (albeit the parties may only be required to attend on the first day).**
>
> **2. I may have proceeded under a misapprehension when giving judgment, in that I understood the Claimants to have holiday pay claims under the**

> **relevant case numbers. If they did not, then the judgment I gave which referred to such claims having been withdrawn but not dismissed would be in error and should be varied to remove this reference.**
>
> **3. I am unlikely to be satisfied it is proportionate to dismiss claims merely for late compliance with the order to withdraw duplicate claims.**
>
> **4. For the avoidance of doubt if a party presents two sets of proceedings, complaining of A & C in the first, followed by B & C in the second, and wishes to arrive at a position where it its continuing with only one claim for each of A, B & C, then the appropriate thing to do would be to withdraw the claim for C in the second set of proceedings. In that way, one claim for each of A, B & C would continue, albeit under different case numbers.**

22. The matter was next referred back to me by the Tribunal administration on 8 May 2024. At that stage I decided to list a hearing to further consider the Respondent's application.

23. For the hearing today I had the benefit of a bundle of relevant documents prepared by the Respondent and a copy of the Respondent's email of 13 February 2024 to the Claimant, which I had located on the Tribunal's file.

24. Mr Sansom produced a detailed opening note, in which he developed his arguments on the three grounds. I received oral submissions from both Mr Samson and Mr Uduje.

Law

<u>Reconsideration</u>

25. Rule 70 provides:

> **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.**

26. The interests of justice test in rule 70 replaces the rather more complex and compartmentalised formulation in the 2004 rules governing reviews.

27. HHJ Eady (as she then was) reviewed the change in the rules and previous case law in **Outasight VB Limited v Mr L Brown UKEAT/0253/14/LA** before observing:

> **33. The interests of justice have thus long allowed for a broad discretion, albeit one that must be exercised judicially, which means 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.**

28. In exercising this broad judicial discretion the Tribunal should, of course, consider the overriding objective:

> **The overriding objective of these Rules is to enable Employment Tribunals to deal with cases fairly and justly. Dealing with a case fairly and justly includes, so far as practicable—**
>
> > **(a) ensuring that the parties are on an equal footing;**
> >
> > **(b) dealing with cases in ways which are proportionate to the complexity and importance of the issues;**
> >
> > **(c) avoiding unnecessary formality and seeking flexibility in the proceedings;**
> >
> > **(d) avoiding delay, so far as compatible with proper consideration of the issues; and**
> >
> > **(e) saving expense.**
>
> **A Tribunal shall seek to give effect to the overriding objective in interpreting, or exercising any power given to it by, these Rules. 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.**

Withdrawal

29. A Claimant may withdraw their claim, in part or whole, at any time and does not need the Tribunal's permission to do so. Once this is done, the relevant claim or claims comes to an end. Rule 51 provides:

> **Where a claimant informs the Tribunal, either in writing or in the course of a hearing, that a claim, or part of it, is withdrawn, the claim, or part, comes to an end, subject to any application that the respondent may make for a costs, preparation time or wasted costs order.**

30. Following a withdrawal, judgment dismissing the claim will be usually issued, save unless the Claimant expresses a wish to bring a further claim and the test in rule 52(a)&(b) is satisfied:

> **52. 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.**

31. Rule 52 is a novel development in the 2013 rules. Its purpose was discussed by Hand J in **Manda v USB AG [2016] 6 WLUK 375**:

> **29. What rule 52 does is make the position in the Employment Tribunal analogous to that in the civil courts where it has always been recognised that the discontinuance of proceedings does not operate as a bar to the**

> **bringing of further proceedings based on the same facts and/or cause of action. Rule 52 creates an exception to the previous situation in which withdrawal of a claim made to the Employment Tribunal operated as a dismissal of the claim and it does so by giving the Employment Tribunal a limited discretion to either accept a reservation of right to bring further proceedings in the Employment Tribunal on the basis that there is a "legitimate reason for doing so" or state a belief that it is not "in the interests of justice" to prevent such further proceedings. […]**

Strike Out

32. So far as material, rule 37 provides:

> **37. Striking out**
>
> **(1) At any stage of the proceedings, either on its own initiative or on the application of a party, a Tribunal may strike out all or part of a claim or response on any of the following grounds—**
>
> > **(a) that it is scandalous or vexatious or has no reasonable prospect of success;**
> >
> > **(b) that the manner in which the proceedings have been conducted by or on behalf of the claimant or the respondent (as the case may be) has been scandalous, unreasonable or vexatious;**
> >
> > **(c) for non-compliance with any of these Rules or with an order of the Tribunal;**
> >
> > **(d) that it has not been actively pursued;**
> >
> > **(e) that the Tribunal considers that it is no longer possible to have a fair hearing in respect of the claim or response (or the part to be struck out).**

33. Guidance on strike out orders was given by the Court of Appeal in **James v Blockbuster Entertainment Ltd [2006] IRLR 630 CA**; Per Sedley LJ:

> **21. It is not only by reason of the Convention right to a fair hearing vouchsafed by article 6 that striking out, even if otherwise warranted, must be a proportionate response. The common law[…] has for a long time taken a similar stance […] What the jurisprudence of the European Court of Human Rights has contributed to the principle is the need for a structured examination. The particular question in a case such as the present is whether there is a less drastic means to the end for which the strike-out power exists. The answer has to take into account the fact if it is a fact that the tribunal is ready to try the claims; or as the case may be that there is still time in which orderly preparation can be made. It must not, of course, ignore either the duration or the character of the unreasonable conduct without which the question of proportionality would not have arisen; but it must even so keep in mind the purpose for which it and its procedures exist. If a straightforward refusal to admit late material or applications will enable the hearing to go ahead, or if, albeit late, they can be accommodated without unfairness, it can only be in a wholly exceptional case that a history of unreasonable conduct which has not until that point caused the claim to be struck out will now justify its**

> **summary termination. Proportionality, in other words, is not simply a corollary or function of the existence of the other conditions for striking out. It is an important check, in the overall interests of justice, upon their consequences.**

34. Default with respect to Tribunal orders will not automatically result in a strike out and the Tribunal must consider whether there may still be a fair trial; see **De Keyser Ltd v Wilson [2001] UKEAT/1438/00**, per Lindsay P:

> **24.. As for matters not taken into account which should have been, the Tribunal nowhere in the course of their exercising their discretion asked themselves whether a fair trial of the issues was still possible. In a case usefully drawn to our attention by both sides' Counsel, namely Arrow Nominees Inc -v- Blackledge [2000] 2 BCLC 167 the Court of Appeal had before it a case where the Judge below had more than once declined to strike out the proceedings on the basis that whilst one party had, in the course of discovery, disclosed forged documents and had lied about the forgeries during the trial, a fair trial was, in his view, still possible. We pause to reflect on the magnitude of the abuse there in comparison with Mr Pollard's and De Keyser's. Whilst in other respects the context of the Arrow Nominees case is very different, there are passages in the judgment in the Court of Appeal of relevance. Thus at page 184 there is a citation from Millett J.'s judgment in Logicrose -v- Southend United Football Club Ltd (1988) The Times 5th March 1998 as follows:—**
>
> > **"But I do not think that it would be right to drive a litigant from the judgment seat without a determination of the issues as a punishment for his conduct however deplorable, unless there was a real risk that that conduct would render the further conduct of proceedings unsatisfactory. The Court must always guard itself against the temptation of allowing its indignation to lead to a miscarriage of justice."**

Conclusion

Ground 1

35. As already identified earlier in these reasons, the Respondent is correct with respect to ground one. Indeed, having now read back in fully the point is entirely obvious. When providing the previous reasons, I made a mistake, transposing the names Rai and Patel. This is a small point and as Mr Uduje correctly observed, one that could have deal with under the slip rule, had either party sent a short email or letter drawing this to my attention.

36. Importantly, however, this mistake does not affect the judgement. Whilst I had incorrectly transposed Rai and Patel in the reasons, the judgement correctly identified the Claimants and their case numbers in the Patel multiple.

37. The correction of this mistake does not call for the judgment to be varied or revoked.

Ground 2

38. It is neither necessary nor appropriate to list a hearing to consider strike out because of the Claimants' failure to comply with my orders to withdraw duplicate claims by 11 August 2023.

39. A Claimant cannot, properly, pursue the same complaint in more than one claim before the Tribunal (i.e. under different case numbers). To seek to do so would be an abuse of process. In this litigation that improper position was arrived at for some of the Claimants because they were included in both the Rai and Patel multiples. They were, therefore, pursuing a complaint of unfair dismissal (about the same termination of employment by the Respondent) in two separate sets of proceedings (one in the Rai multiple, one in the Patel multiple).

40. The need to withdraw duplicate claims should be an obvious point, at least for a represented party. I hoped, therefore, this duplication could be dealt with by the Claimants withdrawing their duplicate claims rather than it being necessary for me to make an order striking them out.

41. Unfortunately and not for the first or last time in this litigation (the Respondent's frustration in that regard is understandable) OH Parsons did not either do as they had been ordered by the time set or as Mr Samson, correctly suggested they ought, apply to the Tribunal explaining their difficulty and asking for a short extension.

42. Eventually, OH Parsons did write to the Tribunal withdrawing all the claims of the Claimants in the Patel multiple, who were also Claimants in the Rai multiple. Thus leaving them with only their unfair dismissal claims in the Rai multiple. OH Parsons did, however, invite me not to give judgment dismissing the holiday pay claims, in the circumstances described above.

43. Pausing there, as at 16 November 2023 the Claimants represented by OH Parsons had, belatedly, done as ordered. It would be disproportionate to strike out claims as a sanction for late compliance in circumstances where the defaulting party had now complied with a case management order and a fair trial could still be had. Whilst I agree with Mr Samson that Tribunal orders must be complied with – they are not mere requests or statements of aspiration – the draconian sanction of strike out should not be used simply as a punishment for previous bad behaviour.

44. Further and separately, the Respondent's position on strike out for default with respect to my order is misconceived. My order required the withdrawal of duplicate claims. The only duplicated claims made by the withdrawing Patel Claimants were their complaints of unfair dismissal. Those claims have not only now been withdrawn, they have also been dismissed. There is nothing left to strike out in that regard.

45. To the extent the withdrawing Patel Claimants also had complaints before the Tribunal as part of that multiple with respect to redundancy pay, notice pay, holiday, other payments and for a failure to consult, these were not duplicate claims susceptible to strike out as an abuse of process. The orders I made following case management hearings beginning on 5 and 12 July 2023, did not

require the withdrawal of these other claims. The Claimants could have chosen to continue with those complaints. They might have simply withdrawn their unfair dismissal claims.

46. If follows, therefore, even if contrary to my view it had been appropriate to consider strike out at a hearing for non-compliance with my orders, that could not affect the holiday pay claims.

Ground 3

47. Contrary to the Respondent's final ground, the withdrawing Patel Claimants have not been permitted to add anything to their claims as part of the Rai multiple:

    47.1 the complaints the withdrawing Patel Claimants had pursued as part of that multiple (including for holiday pay) have now been withdrawn, they are at an end and do not continue before the Tribunal to any extent;

    47.2 judgment dismissing all of the withdrawn complaints save holiday pay has been given;

    47.3 the fact of non-dismissal of the holiday pay claims of the withdrawing Patel Claimants does not mean any claim in that regard is continuing before the Tribunal;

    47.4 the claims of all Claimants in the Rai multiple (including those who have now withdrawn their claims as part of the Patel multiple) are limited to a complaint of unfair dismissal only.

48. The withdrawing Patel Claimants are in no better position than the other Rai Claimants. They have a single claim before the Tribunal, namely unfair dismissal. All of those Claimants could make an application to amend to add claims for holiday pay, although for reasons which have been previously rehearsed they may face an uphill struggle in that regard. Another course open to the withdrawing Patel Claimants would be to bring contractual holiday pay claims in the County Court. The other Rai Claimants could do exactly the same thing. Further and in any event, whilst I do not accept that the withdrawing Patel Claimants are in a better position than others in the Rai multiple, that is scarcely a matter for the Respondent or as Mr Uduje put it, neither here nor there.

49. Rather than the withdrawing Patel Claimants being in a better position than others in the Rai multiple, the effect of acceding to the Respondent's application would be to put them in a worse position. If the Rai Claimants were to bring holiday pay claims in the County Court, it seems likely – given its approach before the Tribunal – that the Respondent would mount a procedural / jurisdictional defence including a **Henderson** argument, namely that holiday pay claims ought to have brought in the Tribunal. If judgment dismissing the holiday pay claims is given, then the withdrawing Patel Claimants would be in a worse position than others in the Rai multiple, as in their cases the Respondent could also argue res judicata / issue estoppel.

Generally

50. Having taken the opportunity to read back into this case far more fully than when I caused a letter to be sent to the parties in February, it has become entirely obvious that I made a simple error in my reasons, namely transposing the names Rai and Patel.

51. It is, however, equally clear that my subsequent slip did not affect the correctness of my earlier judgment, which properly identified the Claimants and their associated case numbers in the Patel multiple.

52. Nor did my error undermine the substance of the reasons given for the judgment. Once the name Rai is deleted in the material paragraphs and replaced with Patel, the decision is correct.

53. The withdrawing Patel Claimants have sought to reserve a right to bring holiday pay claims in the county court. There is a legitimate reason for this course of action. The holiday pay claims have been withdrawn as part of a tidying up exercise. They have not said they are withdrawing these claims because they believe them to be without merit, on the contrary they wish to pursue them in the elsewhere. They do, however, intend to await the outcome of the holiday pay claims of the remaining Patel Claimants, in the expectation that rulings in those cases will be relevant to their claims.

54. I am satisfied it is in the interests of justice not to dismiss the holiday pay claims of the withdrawing Patel Claimants. I repeat what I have said about the legitimacy of their reasons and also the relevant passages in my previous reasons (deleting “Rai” and inserting “Patel”).

55. During the hearing today, Mr Samson criticised my paragraph 16, saying this was speculative and there was no evidence to this effect. It would be most unusual to hear evidence before making a decision on judgment following a Claimant withdrawing claims, where a right to pursue claims elsewhere was sought to be reserved. Typically, a decision is made in light of any written representations. In his letter of 16 November 2023, Mr Wood of OH Parsons described the dismissals as taking place in a chaotic manner and that with limited documentation the names of the withdrawing Patel Claimants ended up in both multiples inadvertently. He went on to point out there were some 200 Claimants. My paragraph 16 included some general observations about the difficulties that tend to present when Claimant solicitors are trying to pull together large multiple claims at short notice, within the applicable time limits and erring on the side of caution drawing up lists of names. The interests of justice would still, very clearly, call for the same decision without these observations. Even if Mr Wood is to blame, even if he could and should have made sure there was no duplicated claims, it would not affect the correct approach when the withdrawing Patel Claimants sought to put the matter right. Furthermore, as pointed out above, only the unfair dismissal claims were duplicated. The holiday pay claims need not have been withdrawn at all.

56. It would be contrary to the interests of justice to give judgment dismissing the holiday pay claims in such circumstances

EJ Maxwell

Date: 7 June 2024

Sent to the parties on:

24 June 2024

For the Tribunal Office:

…

Mr	Subash	Dharmarajan	3306704/2021
Mr	Inderpal	Dharmi	3306694/2021
Mrs	Anjna	Dhaul	3306698/2021
Mr	Caetano	Franco	3306717/2021
Mrs	Kulwinder	Gill	3306695/2021
Mrs	Neelam	Khullar	3306699/2021
Mr	Husan	Lal	3306734/2021
Mrs	Violet	Lopez	3306723/2021
Mr	Tariq	Mehmood	3306688/2021
Mrs	Manchuwani	Mohanadas	3306726/2021
Mrs	Sukhwinder	Monjal	3306727/2021
Mr	Anilkumar	Mruthyunjayan	3306728/2021
Mr	Hasmukh	Patel	3306735/2021
Mr	Emmanuel	Perrin	3306705/2021
Mrs	Neelam	Saroyia	3306700/2021
Mr	Paramjit	Sidhu	3306692/2021
Mr	Rashpal	Singh	3306711/2021
Mrs	Jasbinder	Suri	3306708/2021