



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr P Leigh

**Respondent:** Ministry of Defence

**Heard at:** Reading (in public) **On: 7 May 2024**

**Before:** Employment Judge Gumbiti-Zimuto

## Appearances

For the claimant: Not attending and not represented

For the respondent: Mr J McHugh, counsel

## JUDGMENT ON PRELIMINARY HEARING

The claimants complaints have no reasonable prospect of success and are dismissed.

### REASONS

1. In a claim form presented on 23 March 2023 the claimant made a complaint to the Tribunal which appears to be a complaint that the claimant was subjected to detriments and unfairly dismissed because he made protected disclosures.
2. The respondent denied the claimant's claims and contends that the claims should be struck out because they are significantly out of time and also because the claimant has previously brought proceedings arising out of the same facts and the claimant is therefore estopped from bringing these proceedings.
3. The hearing today has been listed to consider the respondent's application to strike out the claim.
4. In a letter that appears to be dated 30 April 2024 the claimant wrote that: "*I feel I have no option in my now mental state to follow the withdrawal of my claim- taking up the independent advice ... and withdraw my claim to attend the hearing on 7 May 2024.*" The claimant then goes on to state that: "*I would wish... to seek to seek a stay on proceedings.*" The claimant then states in the final paragraph that :"*I am*

*not clear in my own mind ... and not in the most robust of mental or physical health.”*

5. The claimant also appears to have written a further letter to the Tribunal on 20 March 2024, this letter which was copied to the respondent does not appear to have reached the Tribunal file. In that letter the claimant appears to be withdrawing his claim on the basis of his ill-health. The letter contains the following comments: *“My medical health I have discussed in detail with my cited medical doctor, and her and my conclusion is that I am neither sufficiently robust nor mentally alert to face a public preliminary hearing – and that therefore, I accept that the Employment Tribunal case should be struck out because it has ‘no reasonable prospect of success”.*
6. The claimant has also written to the respondent on 6 April 2024 stating: *“I am in no mental state to defend myself successfully upon the accusations made against me by my former employer.”*
7. The claimant’s case was listed before me today. The claimant didn’t attend. The respondent was represented by counsel.
8. It appears to me that there are three courses of action potentially open to me, firstly to accept that there has been a withdrawal of the claim and to dismiss the claim; secondly, to interpret the overall effect of the recent correspondence not as a withdrawal but an application to stay the proceedings and to stay the proceedings for an undefined period of time; and thirdly, to proceed to consider the respondent’s application and make a decision on the merits of the application.
9. The claimant can withdraw all or part of his claim at any time. The effect of a withdrawal is that the claim comes to an end. Taking all the claimant’s recent correspondence into account I am not satisfied that the claimant is intending to withdraw the claim, it appears to me that he started off intending to withdraw but has in fact indicated that he wishes to seek a stay.
10. I have considered whether the proceedings should be subject to a stay. I have come to the conclusion that bearing in mind the comments that the claimant has made about his health that a stay is not in the interests of justice unless there was some utility in staying the proceedings, for example that there was some prospect of the claimant being able to present an arguable case that the claim has a reasonable prospect of success.
11. I have therefore considered whether the claimant has any prospect of successfully defeating the respondent’s contention that the claim has no reasonable prospects of success. My conclusion is that the claimant cannot.
12. In my view the position succinctly set out in the respondent’s response to the claim is incontestable. The claimant’s claim of constructive unfair dismissal relates to an employment that came to an end in over 11 years before the issue of these proceedings in March 2023. It is clearly the case that the proceedings could have been brought earlier because in fact they were brought earlier, on at least two

previous occasions. There is no prospect of the claimant being able to argue that it was not reasonably practicable for the claimant to bring the proceedings earlier.

13. The matters claimed in these proceedings arise out of the same facts and subject matter as the previous proceedings which have in the first iteration been settled and in further iterations struck out. There is no prospect whatsoever that the claimant will be able to proceed to a hearing at which he has any prospect of succeeding in this claim. The claim should be struck out as having no reasonable prospect of success.
14. A stay of the proceedings in my view would have no utility save that it would delay the inevitable, which in my view would not be in the best interest of the parties.

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**Employment Judge Gumbiti-Zimuto**

Dated: 7 May 2024

Sent to the parties on:

25/6/2024

For the Tribunal:

N Gotecha