



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8000623/2024 Preliminary Hearing by Cloud Video Platform at Edinburgh on 9 September 2024

Hamed Darragi

**Claimant
Not Present and
Not Represented**

Jet2.Com Limited

**Respondent
Represented by
Mr J Bryan
Barrister
Instructed by
Mr F Eastwell Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The claims, having been withdrawn by the claimant, are dismissed under Rule 52 of the Rules contained in Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.

REASONS

1. The claimant presented a claim to the Employment Tribunal on 9 May 2024 in which he complained that he had been unfairly dismissed, discriminated against on the grounds of race, disability and religion or belief, and unlawfully deprived of certain payments by the respondent.
2. The respondent submitted an ET3 response in which they resisted all claims made by the claimant.
3. A Preliminary Hearing was listed to take place at 10.30am on Monday 9 September 2024.

4. Both parties presented agendas in advance of the Hearing, and the respondent helpfully drafted and produced a draft List of Issues for discussion at the Hearing.
5. On 8 September 2024, at 2218 and 2219, the claimant sent 2 identical emails to the Tribunal in the following terms:

“Dear Judge,

I’m writing this email to apologise for not attending the meeting tomorrow.

Sorry for my short notice but following my health issues I can see I’m not fit to hold the meeting. The Company has had a very impact on my health.

All my evidence and witnesses are ready and everything I have said is true and I believe I have a very strong case.

I want to take the chance to tell you as well the company has breached their contract with my colleague [MM] and they have sex discriminated against her as she used to have the same hairstyle as me and we used to get called the twins. I was asked to be a witness about this but I was out of the country for treatment of my health issues. I was never questioned about my hairstyle or asked to change.

Again Judge, the company has acted illegally in some points and many colleagues have suffered this treatment.

My apologies for not attending as I’m really going through a very bad time following my mental health.

Kind regards

Hamed Darragi”

6. The Tribunal wrote to the claimant indicating that it was interpreted as an application for postponement of this Hearing, but noted that the claimant had failed to intimate the application to the respondent’s agents, and also that he had not provided any medical evidence in support of his application.

7. The Hearing commenced at shortly after 10.30am. The claimant did not attend, nor was he represented. Mr Bryan, Barrister, appeared for the respondent, supported by Mr Eastwell, Solicitor.
8. It is not necessary here to record the details of the discussions, which related to the scope and nature of the claimant's claims, and the need to seek further specification and information in relation to the claim and to the claimant's claimed disability. An adjournment was taken at 11.12am in order to allow the respondent's representatives to consider a proposal made by the Employment Judge with regard to further procedure in the case.
9. At 11.15am, a further email was received from the claimant, once more not intimated to the respondent's representatives.
10. On resumption of the Hearing at approximately 11.20am, I read to the respondent's representatives the email, which read as follows:

"Good Morning

Sorry I think there has been a misunderstanding. I have not asked for a postponement.

Due to health reasons, I am unable to continue with this case.

Regards

Hamed Darragi"

11. Once more, having instructed the clerk to forward the claimant's email to the respondent's solicitor, I granted a further adjournment to allow counsel to seek instructions on the email.
12. On resumption, Mr Bryan submitted that the terms of the email, read in conjunction with the emails of 8 September, made clear that the claimant intended to withdraw his claim. The words were unambiguous. He invited the Tribunal to dismiss the claim following withdrawal under Rule 52, on the basis that none of the exceptions in that Rule had been brought to the Tribunal's attention, nor were they applicable in the circumstances.
13. I agreed. The original emails of 8 September 2024 were interpreted as an application to postpone the Hearing, but once read in conjunction with the claimant's email of 9 September it was quite clear to the Tribunal that the claimant was intimating his wish to

withdraw his claim, on the basis that the statement “I am unable to continue with this case” was intended to clarify that intention.

14. There is no reason, in my judgment, for the unambiguous withdrawal of this claim not to lead to the dismissal of the claimant’s claim. Rule 52 of the Employment Tribunals Rules of Procedure 2013 provides that:

“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.”

15. The claimant expressed no wish to reserve any rights upon withdrawal of his claim, and it is my judgment that it is in the interests of justice to issue such a judgment. The claimant has plainly withdrawn his claim under Rule 51, which has the effect of bringing the claim to an end. It is in the interests of justice to allow both parties a clear understanding of the litigation, and finality in that litigation upon withdrawal is plainly consistent with the interests of justice.

16. Accordingly, the claimant’s claim is dismissed following its withdrawal, under Rule 52.

Employment Judge: M A Macleod
Date of Judgment: 9 September 2024
Entered in register: 10 September
2024
and copied to parties

I confirm that this is my Judgment in the case of Darragi v Jet2.Com Limited and that I have signed the Judgment by electronic means.