



## EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case no: 8000639/2023

Final Hearing held in Dundee on 29 October and 11 November 2024

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Employment Judge A Kemp  
Tribunal Member W Canning  
Tribunal Member P Fallow

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**Mr A Shields**

**Claimant  
In person**

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**Rainbow Bright Childcare Limited**

**Respondent  
Represented by:  
Mr T Muirhead,  
Consultant**

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### JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Claim having been withdrawn by the claimant is dismissed under Rule 52.

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### REASONS

#### Introduction

1. This was a Final Hearing into claims made by the claimant for
  - (i) direct discrimination on grounds of gender reassignment under section 13 of the Equality Act 2010,
  - (ii) harassment related to gender reassignment under section 26 of that Act, and

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- (iii) unauthorised deductions from wages under section 13 of the Employment Rights Act 1996.
2. The claimant is a party litigant and the respondent is represented by Mr Muirhead. At a first Preliminary Hearing a claim under section 10 of the 2010 Act was dismissed, confirmed by a Judgment then issued.
3. A Preliminary Hearing had also been held on 31 May 2024 which addressed the history of the case to that point, and set out details of the claims that the claimant was making. Case management orders were also made on 25 July 2024. The respondent commented on the claimant's claims and the claimant replied to that thereafter. Notice of the Final Hearing was sent to the parties on 9 September 2024.
4. The claimant mentioned that he also pursued a health and safety claim. The Judge explained that that claim had not earlier been identified at the Preliminary Hearings referred to, and that although an amendment could be sought that was not likely to be allowed given the lateness of the issue being raised, and the impact on the hearing. After considering that the claimant confirmed that he did not seek to pursue such an application for amendment.
5. In correspondence with the claimant there had been reference to his circumstances, and although no disability discrimination claim was made whether he sought any adjustments. That was again raised with him, and apart from help about identifying wages properly due he did not seek anything further. The Judge did raise with him the possibility of using an aide memoire when giving his evidence in chief.
6. The respondent accepts that the claimant had the protected characteristic of gender reassignment. Otherwise it disputes the claims.

### **Final Hearing**

7. At the commencement of the hearing the Judge explained that the Tribunal could assist the claimant to an extent under the terms of the overriding objective in Rule 2, as he was a party litigant and the respondent was represented by Mr Muirhead a professional representative, but that it could not do so as if his solicitor. The Judge

explained that all evidence a party wished to refer to required to be tendered at this hearing, that documents were not before the Tribunal as evidence unless spoken to by a witness, and about questioning witnesses. In that regard the Judge explained that any point not disputed in cross examination, or put to the witness that the witness had not covered in evidence which the witness was anticipated to know about, may lead to the contrary evidence having little if any weight. The Judge explained about re-examination, and about the giving of submissions. Issues were proposed and agreed with by the parties.

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10 8. The claimant gave his evidence, was cross examined by Mr Muirhead, and answered questions from the Judge. He gave some evidence in re-examination. He confirmed that that concluded the evidence for the claimant.

15 9. Mrs Johanna Borzasi then gave evidence for the respondent. During the course of cross examination by the claimant the Judge sought to explain to the claimant the need for relevant questions, being those relevant to the claims he was making. He set out the need to identify some "link" between the treatment about which he complains and the protected characteristic he relies on, as simply referring to conduct he did not agree with or like was not sufficient. That had followed questions to the witness concerning her religious beliefs. The claimant then asked a question in relation to the former Prime Minister Rishi Sunak, and the Judge repeated his comment, stressing that the claim was about gender re-assignment as the protected characteristic not other protected characteristics.

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25 10. At that point the claimant indicated that he did not wish to continue, was withdrawing his claim in effect, and apologised for wasting time, as he put it. The Judge sought to allow him time to reflect further over the lunch break that was about to happen, but the claimant did not respond. The Judge informed Mrs Borzasi and Mr Muirhead that the case would call again at 2pm.

30 11. The clerk attempted to telephone the claimant during the break to inform him that the Judge had decided to reconvene at 2pm lest the claimant had decided to withdraw in the heat of the moment, and to check on his welfare. Despite three attempts the clerk could not make contact with him.

12. The case called again at 2pm. In light of the events that had transpired the Tribunal considered that the claimant had withdrawn his claims, and that the Claim should therefore be dismissed under Rule 52.

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**A Kemp**

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**Employment Judge****12 November 2024****Date of judgment**

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**Date sent to parties****15 November 2024**