



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr Y Wiseman

**Respondent:** (1) Neathouse Partners Limited (2) Sayeem Ahmed

**Heard at:** Cardiff Employment Tribunal (by video)      **On:** 7 November 2024

**Before:** Employment Judge E Macdonald

## Representation

Claimant: Mr Wiseman (litigant in person)

Respondent: Ms Firth of Counsel

**JUDGMENT** having been sent to the parties on 13 November 2024 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

## REASONS

1. The issue for determination at this Preliminary Hearing was whether the Claimant should be permitted to withdraw his withdrawal of his claim. I determined that he could not, and duly issued a judgment dismissing the claim upon withdrawal pursuant to r 52 of the Tribunal Rules. These Reasons explain that decision.
2. On 28 May 2024 the Claimant had presented a Form ET1 by which he brought a number of complaints against the Respondents. The claim was resisted by the Respondents. A preliminary hearing was then listed for 7 August. Before the hearing could take place, on 9 July 2024 the Claimant e-mailed the Tribunal in the following terms:

Withdrawal of Claim - Case Number: 1601348/2024 Wiseman vs Neathouse

Partners Ltd/ Sayeem Ahmed

I am writing regarding the above referenced employment tribunal case.

Due to personal reasons, I have decided to withdraw my claim in full and no longer wish to proceed any further with this case.

I would be grateful if you could confirm receipt of this withdrawal and take the necessary steps to close my case. Thank you for your assistance throughout this process.

Yours faithfully,

Yahya Wiseman

3. Subsequently, on 2 August the Tribunal acknowledged receipt of the Claimant's withdrawal, and vacated the hearing listed for 7 August 2024. The Claimant, in response, said the following insofar as is material (by email of the same date, timed at 3.27pm):

This is a misunderstanding apologies, withdrawal application was taken back and my understanding was that tribunal still going ahead. May I please request that it not be cancelled and proceed with 7th August Preliminary hearing.

4. That e-mail was followed by a further e-mail which stated insofar as is material:

Thank you for your email and for forwarding the attached document from the Tribunal.

It appears there has been a miscommunication and misunderstanding regarding my claim.

I want to clarify that I am not withdrawing my claim. I have requested that the tribunal hearing be rescheduled if the 7th of August is not available.

Thank you for your assistance and I look forward to hearing from you.

5. That gave rise to the issue to be determined.
6. Mr Wiseman, a solicitor, represented himself. The Respondent was represented by Ms Firth of Counsel. Mr Wiseman had provided a witness statement; he attested to its truth and was cross-examined on its

contents. Ms Firth also produced a very helpful skeleton argument. I heard oral submissions from Mr Wiseman and Ms Firth.

7. I made the following findings of fact on the balance of probabilities, insofar as is necessary to determine the issue.
8. The Claimant unequivocally wrote to withdraw his claim on 9 July 2024, as cited above. The words used were clear and left no room for doubt.
9. In oral evidence the Claimant asserted that he was not thinking straight at the point at which he withdrew his claim. He said that his intention had not been to withdraw.
10. In my view, the Claimant's evidence was not credible. It was not consistent. For example, when cross-examined on an e-mail exchange spanning 8 and 9 May 2024, his response was evasive. When asked about the phrase "the IT equipment" as it appeared in those e-mails, he initially maintained that the phrase "the IT equipment" referred to equipment owned by him, but subsequently resiled from this and accepted that it included equipment owned by the Respondent. That must have been the case in any event: the email cited contained a contrast (against "the other items belonging to you") and the response asked whether there was anything else the Claimant could do to assist with the insurance process. That necessarily implied that "the IT equipment" must have included equipment owned by the Respondent.
11. Similarly, the Claimant's account of the withdrawal of his claim (i.e. the events of 9 July 2024) had been inconsistent. He at times asserted that he did not know what he was doing: that was the position advanced in his statement. At other times he asserted that the withdrawal resulted from various factors combined which "made everything too much" – i.e., as a result of being under excessive pressure. His oral evidence contradicted his written evidence (in particular, Paragraph 4 of his witness statement).
12. When asking the Tribunal for the case to be closed, the Claimant must, in my view, have understood that the case would come to an end.
13. At the material time, the Claimant was in work. If he was competent to be advising others at the time, then he was competent to understand what he himself was doing. I carefully considered his written evidence, but concluded that his level of disability was not as significant as his written evidence implied. In particular, I concluded that he did not lack understanding of his actions.
14. As to whether there was a sound medical explanation for the withdrawal, I considered that there was some evidence which might have explained

the decision, but not such as to indicate that the Claimant was incapable of making rational decisions. Quite the opposite: the clearly-articulated withdrawal decision, and the fact that he was at work at the material time, combined with the oral explanation for the decision (in terms, that it was a response to excessive stress) suggest that this was a clear example of a rational decision reflecting the stresses that he was under at the time.

## **Law**

15. Rule 51 of the Tribunal Rules provides:

### End of claim

51. 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.

### Dismissal following withdrawal

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.

16. The case of **Khan v Heywood & Middleton Primary Care Trust [2006] EWCA Civ 1087** addresses the position under the previous procedural rules. In that case Wall LJ held that the Tribunal has no power to set aside a withdrawal or revive a withdrawn claim; withdrawal itself does not create an issue or cause of action estoppel, whereas a dismissal does.
17. Ms Firth for the Respondent submitted that **Khan** applies (by close analogy) to the instant claim. Having considered the previous procedural rules, I agree. Ms Firth made the cogent point that under the existing Rules, a dismissal under r 52 happens automatically (subject to exceptions) whereas under the previous comparable rule (r 25(4)) it was necessary for a respondent to apply for dismissal.
18. The issue is put beyond doubt by **Campbell v OCS Group UKEAT/0188/16**, in which Simler J (as she then was) said at Paragraph 30:

“ . . . There is no jurisdiction for a notice of withdrawal to be rescinded or revoked and no scope at all under the Rules for the Claimant to revive those claims.”

19. For completeness, the authorities cited above also establish the following principles:

(1) Tribunals faced with an application to withdraw should consider whether the material available amounts to a clear, unambiguous and unequivocal withdrawal

(2) Tribunals are entitled to make such enquiries as appear fit to check whether a party who is self or lay represented intends to withdraw

(3) There is no obligation to enquire into the reasons for the decision to withdraw

(4) If a party has withdrawn, then dismissal must follow unless one of the specified exceptions applies

20. As to whether dismissal should follow automatically, the test is whether it would be an abuse to raise the same claim again: **Khan** paragraph 48. If there is material available which puts a Tribunal on notice that a party seeking to withdraw his claim intends to resurrect the claim in fresh proceedings, or puts the Tribunal on notice that the decision to withdraw the claim was ill-considered or irrational for some reason, or that there are other good grounds for suspecting that dismissal may not be in the interests of justice in the particular circumstances of the case, those would all afford a proper basis for enquiries to be made of the withdrawing party before moving to a decision to dismiss: **Campell** at paragraph 24.

21. As to whether a later action amounts to an abuse, the question is whether, applying a broad merits-based approach, the Claimant's conduct in all the circumstances would be an abuse of process: **Dexter Ltd (in administrative receivership) v Vlieland-Boddy [2003] EWCA Civ 14**

22. It is unreasonable and unacceptable to use withdrawal as an alternative to adjournment: **Campbell** paragraph 33.

### **Conclusion**

23. The material available amounted to a clear, unambiguous and unequivocal withdrawal.

24. There is no jurisdiction for a notice of withdrawal to be rescinded or revoked: **Campbell** at paragraph 30 (cited above).
25. The Claimant had unequivocally withdrawn his claim before later suggesting that he wished to resurrect his claim, and also argued that the decision to withdraw had been irrational. In the light of those issues enquiries were made with the Claimant: he had the opportunity to produce written evidence; he gave oral evidence and was cross-examined; he was asked questions by the Tribunal in the normal manner.
26. The Claimant's decision was neither ill-considered nor irrational. This was a case in which the Claimant was attempting to use withdrawal as an alternative to adjournment. The Claimant had not expressed at the time of withdrawal a wish to reserve the right to bring a further claim; there would not in any event have been a legitimate reason for doing so; further, I did not accept that to issue a dismissal judgment would not be in the interests of justice.
27. Any attempt to re-litigate the same case through a fresh set of proceedings would amount to an abuse of process.
28. In plain terms, Mr Wiseman had withdrawn his claim. None of the specified exceptions applies. Dismissal must therefore follow.

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Employment Judge **E Macdonald**

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Date  
**23 December 2024**

REASONS SENT TO THE PARTIES ON

06 January 2025

Katie Dickson

FOR THE TRIBUNAL OFFICE