



EMPLOYMENT TRIBUNALS

Claimant: Mrs S Bradley
Respondent: The Royal Mint Ltd
Heard at: By video
On: 23 January 2025
Before: Employment Judge S Moore

Representation

Claimant: Mr Jackson, Solicitor
Respondent: Ms Moss, Counsel

JUDGMENT having been sent to the parties on 5 February 2025 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

Background and introduction

1. The claim is listed for a remedy hearing on 10 – 17 June 2025. A dispute arose between the parties as to whether the Claimant had withdrawn a claim for damages to personal injury following a withdrawal by the Claimant. This issue was listed for a preliminary hearing on the above date. The Claimant requested written reasons on 12 February 2025 but this was not drawn to Judge Moore's attention by the administration until 20 February 2025. These written reasons have been prepared at the first available date given other sitting and writing commitments.

The withdrawal

2. On 23 March 2023 there was a Preliminary Hearing before Judge Lloyd-Lawrie and it was noted in her Case Management Order at paragraph 23, that the Claimant was seeking compensation for psychiatric injury in the event she succeeded with her discrimination complaints. She was given permission to submit an expert medical report by 4 May 2023 should she

wish to rely on the same. There was a discussion recorded that the Claimant may no longer seek to bring a personal injury complaint. Judge Lloyd-Lawrie directed that should the Claimant decide this to be the case she was to notify the Respondent that the report would no longer be required.

3. Thereafter, on 6 April 2023, the Claimant's solicitors wrote to the Tribunal, copying in the Respondent, attaching post amendments to a list of issues which was attached to that covering email. In the document described as an amended agreed list of issues, at paragraph 20 under Remedy, it was stated as follows:

Without impact on consideration of any award for injury to feelings, the Claimant withdraws any discreet claim of compensation for psychiatric injury.

4. In light of that communication on 19 April 2023, the Respondent wrote to the Tribunal and the Claimant confirming that as the Claimant was not pursuing a claim for psychiatric injury, they would no longer seek to permission to instruct their own medical expert on this particular issue. After the Respondent's communication on 19 April 2023, the file was referred and Judge Jenkins made a number of orders on 28 April 2023 but no dismissal judgment pursuant to what was then Rule 52, was issued.
5. On 3 May 2023 the Claimant's solicitor, Mr Jackson, wrote to the Respondent's solicitors setting out why the expert report was needed. In that email he referred to the above withdrawal wording communicated on 6 April 2023 and asserted it had been a "proposed amendment" to the list of issues and that no amendment had been accepted by the Tribunal.
6. Thereafter there was further correspondence between the parties following the claimant's indication she intended to pursue a personal injury complaint notwithstanding her withdrawal. This was referred and Judge Harfield decided that a further Preliminary Hearing would need to be listed. There followed a Preliminary Hearing before Judge Brace order on 18 May 2023 and her Order sets out how the dispute had subsequently arisen. I do not repeat those background details here. She set out the discussion by Judge Lloyd-Lawrie and then the correspondence of 6 April 2023 and 19 April 2023.
7. In Judge Brace's order she recorded that the issue had arisen between the parties as to whether or not the Claimant had withdrawn the complaint for personal injury. She directed that this issue would be decided by the trial judge, either at the main hearing or subsequently. That is how the Preliminary Hearing has come about.

The Law

8. Rule 51 of the Employment Tribunal Rules of Procedure 2024 provides:

Dismissal following withdrawal

51. Where a claim, or part of it, has been withdrawn under rule 50 (end of claim), the Tribunal must issue a judgment dismissing it (which means that the party advancing it may not commence a further claim against the party responding or replying to it raising the same, or substantially the same, complaint) unless—
(a) the party advancing the claim 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.

9. I wrote to the parties in advance of the hearing as neither of their advance written submissions mentioned the EAT decision in **Campbell v OCS UKEAT/0188** which I considered to be highly relevant. This decision summarised all the authorities thus far on this area, specifically the case of **Khan v Heywood and Middleton Primary Care Trust [2006]**. It held that where a claimant withdraws a claim, it comes to an end and cannot be revived (Rule 51 of the 2013 Rules). A tribunal must issue a dismissal Judgment following withdrawal unless either of the exceptions in Rule 52 apply. Tribunals are not under a mandatory obligation to invite representations from the parties before dismissing a withdrawn claim but depending on the facts and circumstances of the particular case, may in exercise of their power to manage proceedings fairly, and in accordance with the overriding objective, do so. Whether or not to do so is a matter of judgment falling squarely within the margin of a tribunal's discretion.

Conclusions

10. Having regard to those authorities, in my judgment, the wording of the withdrawal contained in the proposed amended list of issues dated 6 April 2023, could not have been any clearer. It was a clear, unambiguous and unequivocal withdrawal of the discreet claim for compensation for psychiatric injury. I reject the argument that this was in some way an application that was not granted. It was not worded as an application to amend or even as an application to withdraw. Further, Rule 51 does not require an application to be made nor is there any requirement for judicial consideration regarding the withdrawal (other than the dismissal) neither is any permission required to withdraw the claim.
11. Rule 51 provides that where a claim, or part of it, has been withdrawn under rule 50 (end of claim), the Tribunal **must** issue a judgment dismissing it unless—
(a) the party advancing the claim 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.
12. Rule 51 (a) did not apply in this case. I therefore considered whether there were any of the circumstances that could lead me to conclude it would not be in the interest of justice to issue the judgment dismissing the complaint.

13. In doing so I have taken into account that the Claimant was legally represented by solicitors and had had a conference with Counsel and her instructing solicitors before the withdrawal was communicated to the Tribunal. In the Claimant's submissions it was asserted that the decision, notwithstanding it had been taken after a meeting with Counsel and solicitors, had arisen from the Claimant's disability. It was submitted that at the time the decision was made the Claimant appeared to have good insight into her condition and moreover that her advisers were completely unaware of the possibility of masking, which is a reference to ADHD behaviours. The Claimant submitted that at the time it was understood the Claimant understood the legal consequences of withdrawing the claim but further evidence has come to light which should mean that that decision making process should be treated with a great degree of caution. In effect, the decision making process arose from the Claimant's disability and therefore, that it would not be in the interests of justice to issue the dismissal judgment.
14. The Claimant also relies on s119 and s124 EQA not requiring an expressly pleaded PI claim within an ET1. I agree with Ms Moss that this is very different to this case where it was pleaded and the unequivocally withdraw.
15. The consequence of not issuing the judgment on withdrawal would be to enable to Claimant to either present a fresh complaint for personal injury or resurrect the claim that has been withdrawn.
16. The Claimant did not dispute that the Respondent has relied upon the withdrawal in withdrawing an application for their own medical expert. The Claimant says this does not matter as experts are now needed for other aspects of remedy in any event. This does not take into account the prejudice one party would experience should another party be permitted to withdraw claims and revive them. There must be finality to litigation in particular in this case to have enabled the Respondent to make informed decisions on the litigation risk when proceeding to the final hearing.
17. I have taken into account the only evidence I have on masking that is before me contained in the judgment on liability at paragraph 125 where we quote what the experts says about masking in the agreed joint statement. The experts agreed that it is common for people with ADHD to exhibit masking behaviours, more so with females and it was likely to have applied to the Claimant. however they go on to say that it was difficult in retrospect, to quantify the degree of masking behaviour the Claimant exhibited around the material time. That is the only evidence I had before me as to how masking might have affected the Claimant.
18. I do not have any specific evidence that the time she gave instructions to her Representatives to withdraw the personal injury complaint, that she was experiencing masking or that masking influenced that decision. Had this been the case I would have expected a witness statement from the Claimant setting out such evidence and perhaps further medical evidence. In fact, what I know about that decision, does not support that masking could have been in play. There was explicit sensible reasoning set out by her legal team for the withdrawal namely that the decision to withdraw a separable claim

for damages for personal injuries and psychiatric loss was thought to be appropriate, balancing the limited amount of expected damages over and above the compensation for injury to feelings against the potential delays and costs of attaining expert evidence.

19. For those reasons it is in the interests of justice to dismiss the claim.

Employment Judge S Moore

Date 4 March 2025

REASONS SENT TO THE PARTIES ON

7 March 2025

Kacey O'Brien

FOR THE TRIBUNAL OFFICE