

Neutral Citation Number: [2025] EAT 36

Case No: EA-2023-000222-LA

**EMPLOYMENT APPEAL TRIBUNAL**

Rolls Building  
Fetter Lane, London, EC4A 1NL

Date: 13 March 2025

**Before :**

**JUDGE J KEITH**

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**Between :**

**MRS M GRIFFITHS**

**Appellant**

**- and -**

**SCARISTA LIMITED (1)**

**- and -**

**KKR PRIVATE CREDIT OPPORTUNITIES PARTNERS LP (2)**

**- and -**

**ALCENTRA LIMITED (3)**

**Respondents**

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The **Appellant** did not attend and was not represented  
The **Respondents** did not attend and were not represented

Hearing date: 13 March 2025

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**JUDGMENT**

## **SUMMARY**

### **PRACTICE AND PROCEDURE**

The Employment Judge (EJ) had erred when, at the conclusion of a Preliminary Hearing at which a judgment was not given or made, it is said that he told the parties, who had yet to reach agreement on the terms of settlement of the claims, that a judgment would be promulgated on a specified future date, if before then the parties had not reached agreement. Before that specified date, the parties reached settlement, and the Appellant had written to the Employment Tribunal withdrawing her claim and seeking to have it dismissed. The EJ erred procedurally in not treating the claims as having been withdrawn and dismissing them on that basis and instead issuing a substantive judgment dismissing claims against two of the three Respondents. Additionally, the EJ had erred in failing to consider that the Appellant's withdrawal of her claims brought them to an end, and instead he treated them as 'live' when promulgating his judgment and in refusing to reconsider his judgment. It was appropriate to reconsider the EJ's substantive judgment and to dismiss the Appellant's claims on her withdrawal of them.

**JUDGE J KEITH:**

1. These written reasons reflect the full oral judgment which I gave at the end of the hearing.

**The litigation history**

2. The Appellant challenges the decision of Employment Judge J Burns, who, following an open Preliminary Hearing on 15 December 2022, had struck out claims against the Second and Third Respondents, with full reasons, including an analysis of witness evidence, and then refused a reconsideration request of that judgment. The Hearing had ended at around 6.30pm, as recorded in the reasons and the EJ reserved his judgment. The final relevant part of that judgment is at the end, which states:

“J S Burns Employment Judge  
London Central  
15/12/2022  
For the Secretary of the Tribunals  
Date sent to the parties: 19/12/2022”

3. The following events are taken from the Appellant’s skeleton argument:

“7. At the end of the preliminary hearing on the 15<sup>th</sup> of December, Employment Judge Burns explained he would reserve his judgement until Monday the 19<sup>th</sup> of December 2022. He made a point of telling us exactly on which day he would issue his judgement.

8. On Saturday the 17<sup>th</sup> of December 2022 the parties entered into a settlement agreement. Although I was a litigant in person at the August and December 2022 hearings, I appointed a legal professional to represent my interests when it came to the settlement agreement. The agreement was drafted, and reviewed, by legal professionals. The settlement agreement contained the exact wording I was to send to the tribunal (as quoted below). My understanding is that all (represented) parties entered the settlement agreement on the common understanding that if I withdrew my claims before the 19<sup>th</sup> of December 2022, the judgement would not get published. Legal representatives for all parties worked through the weekend to ensure I was in a position to withdraw all claims before the Monday.

9. On Sunday the 18<sup>th</sup> of December at 9.57am I wrote to the tribunal, with the respondents in copy, as follows: “ I confirm that I wish to withdraw the claims above before the employment tribunal in respect of case number 2204698/2022 and 2207498/2022, as the parties have reached settlement and I agree to the proceedings being dismissed. As a result of withdrawing the claims above, I also wish to revoke the order made by Employment Judge Burns on 17<sup>th</sup> of August 2022 in relation to case number 2204698/2022 that reinstated me into my employment so that it no longer applies”

10. On Monday the 19<sup>th</sup> of December 2022, at 11.25am, the tribunal sent all parties the judgement. The judgement was signed by Employment Judge Burns as of 15 December 2022 and stated “ sent to the parties 19<sup>th</sup> of December 2022” .

11. I wrote back to the tribunal at 12.04 pm as follows: *“Thank you. As per email sent yesterday (18<sup>th</sup> December) at 9.57am, this claim is withdrawn. I rang the tribunal this morning who confirmed that the below email had been safely received. I am forwarding below a copy of the email for convenience. All parties are in copy. I would be grateful if safe receipt could be acknowledged, and confirmation provided that the claims have been withdrawn. Thanking you in advance.”*

12. At 2.40pm that day I wrote again as follows *“For the attention of Judge J Burns. I write to notify Judge Burns that as per email sent to the tribunal on the 18<sup>th</sup> of December 2022 (see below) I have withdrawn both claims above. Following a conversation with Aldith at the tribunal earlier today, I understand that I should request as a result, directly to the judge, that the judgment is not promulgated / published. I hope that makes sense. Thanking you in advance. “*

13. I heard nothing further from the tribunal and then on the 10<sup>th</sup> of January 2023, the preliminary judgment was published on the public database.

14. On the 11<sup>th</sup> of January 2023, the parties received a letter from Judge Burns stating as follows *“EJ Mr J Burns has requested me to inform you as follows: Following the claimant’s recent emails and phone call/s to the tribunal- a judgement will be issued dismissing the claims against R1 on withdrawal by her. The judgement signed by EJ Burns on 15 December 2022 in relation to R2 and R3 was promulgated on his instruction on the 19<sup>th</sup> of December 2022. The judgement was effective as claims are live until dismissed on withdrawal and the claims had not been dismissed on the 19<sup>th</sup> of December 2022. As such he declines to revoke it. If the parties have come to terms those terms may have provided for the termination of the Claimant’s employment but that employment having been re-instated at the claimant’s request, continued until any settlement which may have terminated it. In these circumstances he also declines to revoke the interim relief judgement.”*

15. On the 20<sup>th</sup> of January 2023 I wrote to the tribunal again, seeking clarification / trying to understand why the judgement had been published and whether the publication could be reversed. I asked for my email to be put in front of EJ Burns.

16. On the 30<sup>th</sup> of January all parties were sent a response/ decision from EJ Burns, which is the decision I seek to appeal.”

4. The EJ’s response of 30 January 2023 was as follows:

*“Employment Judge J Burns has received the Claimant’s further email of 20 January 23. He has requested me to inform the Claimant that he does not think he has power to order a published judgment to be withdrawn from the Register but that, even if he had such power, he would not exercise it in the circumstances. A considerable amount of Tribunal administrative and judicial time was spent, at the request of the parties, in determining the matters dealt with in the judgments and in drafting the judgments, which were both finalised and promulgated before the proceedings were dismissed. There is a significant legal difference between a party withdrawing a claim and the claim being dismissed and the proceedings are live until the dismissal. The judgments were regular when promulgated and published and it is in the interest of open justice for such judgments to be published. Employment Judge J Burns does not wish to receive any further correspondence on the subject.”*

## **The Notice of Appeal**

5. The Appellant then filed her Notice of Appeal on 13 March 2023. She complained that she had withdrawn her claim and had given permission for her claim to be dismissed, prior to the substantive judgment being issued on 19 December and later published on the Tribunal Register. She reiterated that the Preliminary Hearing had taken place on Thursday, 15 December 2022. The EJ had reserved judgment saying he would issue it on Monday, 19 December 2022. The parties had entered into a settlement agreement on Saturday, 17 December and the Appellant had emailed the ET on Sunday, 18 December 2022, withdrawing her claim and giving her consent to dismissal of it. Despite this, a substantive judgment was issued on 19 December and published in January 2023. The Appellant added that for the avoidance of doubt, she was not appealing the judgment to dismiss her claim, but rather the decision to issue a judgment with written reasons, and to publish it after she had withdrawn her claim and none of the parties had requested written reasons. She reiterated her right to withdraw her claim, which the EJ had ignored.

## **The grant of permission**

6. His Honour Judge Beard granted the Appellant permission to appeal on 17 April 2024. In his decision, he stated:

“2. The Appellant appeals the Decision of EJ Burns sent in a letter dated 30 January 2023 not to reconsider the promulgation and consequent publication of their Judgment, firstly indicating that they doubted that they had the power to rescind publication and that in any event because of the judicial and administrative work that had been undertaken it was not appropriate to order its removal.

3. The Judgment is not the subject of the appeal but the timetable to promulgation is of relevance. The Preliminary hearing and written Judgment are dated 15 December 2022 and the Judgement was, apparently, signed by the Judge on 15 December 2022 as a reserved decision.

4. The Judgment as would be usual was passed to the administration for promulgation and this was done and dated 19 December 2022.

5. On the 18 December 2022 the claimant had communicated with the tribunal having come to a settlement agreement withdrawing the claim.

6. Rule 51 of the 2013 rules provides that , upon withdrawal, the claim comes to an end rule 52 states that upon withdrawal a claim “shall” be dismissed.

7. Rule 65 of the 2013 rules provides that judgment or order takes effect from the day when it is given or made, or on such later date as specified by the Tribunal.

8. It appears arguable that rule 51 in conjunction with rule 52 in its mandatory terms means that any withdrawal takes immediate effect upon communication. If so the question then becomes when is a judgment “made” (it appears to me “given” must

refer to oral decisions). It appears to me arguable that “made” could mean upon signature by the Judge or could mean upon promulgation by the administration (there being no formal handing down system as with court judgments).

9. If the claim comes to an end, because of withdrawal, before the judgment is made it is arguable that any recorded decision would not be a judgment and therefore should not have been published.”

### The parties’ positions on the appeal

7. Following the grant of permission, this Tribunal received indications from each of the Respondents that they did not wish to participate in the appeal, nor did they oppose to it. I therefore do not have the benefit of any submissions from them.

8. Without criticism of the Appellant, she has referred to a subsequent set of Employment Tribunal Rules (2024) rather than the Rules applicable the reconsideration refusal (2013). However, the same principles applied in both sets of Rules to this case. The EJ’s point that he did not have power to order a published judgment to be withdrawn from the Register was beside the point. The Appellant had withdrawn her claim, and any interest in open justice ignored her right to respect for her private life under Article 8 of the European Convention on Human Rights. She also argued that the EJ had the power to cure any procedural error and the infringement of her Article 8 rights. A judgment being ‘made’ meant its communication, which was after her withdrawal of her claim.

### Conclusions

9. It is unnecessary for me to decide when a judgment is ‘made,’ for the purposes of the **Employment Tribunals Rules of Procedure 2013** or **2024**, given the specific circumstances of this case. On the Appellant's case, the EJ gave representations to the effect that he would not make or give his judgment until 19 December 2022, to give the parties a chance to reach settlement. The Appellant has referred to her email to the ET of 18 December, in which she withdrew her claim. Pursuant to **Rule 51** of the **ET Rules 2013**, her claim came to an end at that point. I am conscious that the withdrawal was communicated over the weekend, but the Appellant took the precaution of telephoning the ET at the first opportunity on the morning of 19 December, to alert staff to her e-mail. On that basis, the assurances given that a judgment would not be made until 19 December, before when the parties could reach settlement, appear not to have been fulfilled, and that is the

procedural error which the EJ failed to address in his decision in which he appeared to refuse reconsideration (although he did not expressly state it as such).

10. However, even if the Appellant misunderstood what was said to her on 15 December about a judgment not being made until 19 December, to allow the parties to reach settlement, clearly the judgment was not sent to the parties until 19 December, after the Appellant's withdrawal. The EJ erred in law in his correspondence of 30 January 2023, in which he described his judgment as 'regular', when it was promulgated (i.e. sent to the parties) and later published on the Register. His reasons that despite withdrawal of the claim, the proceedings were 'live', ignores the **Rules** that the claim comes to an end. The EJ might have reasoned that he had already made his judgment before the Appellant's withdrawal was received and read. He did not. In refusing reconsideration, his reasons contained a procedural error of law.

**Disposal of proceedings**

11. I have considered how proceedings should be resolved and whether it is appropriate, as is usual, to remit the matter for the EJ to reconsider his substantive judgment. However, that will only take up further judicial resources for the Employment Tribunal, when there is only one answer to reconsideration of the substantive judgment. That is to revoke the judgment sent to the parties on 19 December 2022 pursuant to **Rule 68(2)** of the **ET Rules** and to dismiss the Appellant's claims against all the Respondents upon withdrawal by her, pursuant to **Rule 51**. There is no objection from any party, and this is what the Appellant seeks.

12. On that basis, I have reconsidered the EJ's substantive judgment myself and set it aside. I also regard it as appropriate to record that the Appellant's underlying Tribunal Claim, case number: 2204698/2022, is dismissed upon withdrawal by the Appellant. It also follows that, pursuant to **Rule 65**, no copy of the judgment dismissing the Appellant's claim needs to be entered on the Register.