



EMPLOYMENT TRIBUNALS

Claimant: Mr Piotr Nikholz
Respondent: Tonbridge Care Ltd

REASONS

1. The following reasons are the reasons for the judgment promulgated on 1 February 2024 and given orally to the parties at the conclusion of the hearing.
2. The claimant brought two claims before the tribunal, the first on the 16th February 2021 claiming race discrimination and the second on the 11th July 2021 claiming race discrimination and unfair dismissal.
3. On 17th November 2022 the claimant approached the respondent by e-mail saying he wanted to settle and over the course of the next few days there were various emails passing between them with offers and counteroffers made. On 27th November 22 the respondent said it would pay the £10,000, which the claimant said he wanted, and on the same date the claimant accepted and sent his bank details. On the 23rd November 2022 the respondent told the claimant that payment had been made and on the 24th November 2022 the claimant sent a letter to the tribunal withdrawing his claim.
4. It was clear in the e-mails passing between the claimant and the respondent leading up to the payment of the £10,000 that the claimant intended it to cover both claims. I note that both claim numbers are cited in the header to the agreement.
5. During this e-mail correspondence, the claimant made reference to seeking advice from his Solicitor and he was waiting for his solicitor to contact him. He now says he had not spoken to his solicitor but had just referred to things on Google and that he thought it looked more professional if he mentioned having a solicitor. The claimant says he did not intend to mislead the respondent by saying he had a solicitor and saying he had been waiting for a response from his solicitor. I do not accept this. It is one thing to say that he had legal advice albeit that advice may have been from Google, but it is another thing to say that a solicitor was actively representing him. If anything, the natural conclusion is that the claimant was putting pressure on the respondent who was not legally represented at that time to agree to settle the claim on the terms the claimant wanted.
6. The e-mail withdrawing the claim is clear in what it says. It says "*good morning yesterday had finally settlement with respondent and I would like to cancel both of*

my cases. I'd be very grateful if you could let me know how to do it".

7. On 3rd December 2022 the claimant wrote to the tribunal: *"hello I'm very sorry for bothering you. I just found out my agreement with respondent did not meet ACAS Code of Practice for and is not legally valid if tribunal did not order to dismiss my cases I would like to continue my tribunal hearing and void previous e-mail from 24th November"*. For some reason, which I do not know, no dismissal judgment was made following the claimant's e-mail of 24th November. A letter was written to the respondent informing the respondent that the claimant had withdrawn but nothing further was done. My colleague, Employment Judge Andrews then instructed a letter to be written saying that the letter from the tribunal informing the respondent that the claimant has withdrawn had been sent in error.
8. As explained at the outset of the hearing, tribunal proceedings can be terminated in a variety of ways. There can be an ACAS facilitated agreement, a formal settlement agreement, or a claimant can withdraw his or her claim at any time by writing to the tribunal to say that the claim was withdrawn. An ACAS agreement or settlement agreement is often required by the Respondent in to prevent the Claimant from bringing further proceedings relating to the issues in the case. This does not mean that a claim cannot be settled without an ACAS facilitated agreement or settlement agreement.
9. I find that at common law a contract has been entered into. The claimant instigated the settlement by way of his e-mail on 17th November 2022. It is clear from the e-mail correspondence that he was intending to settle both claims before the tribunal. Ultimately, his offer to withdraw his claim for payment of £10,000 was accepted by the respondent. All the constituent elements of a contract are present, offer acceptance, intention to create legal obligations and consideration (i.e. the £10,000). The claimant then wrote to the tribunal as set out above.
10. Today, the claimant alleges that the letter of 24th November 2022 was not intending to withdraw his claim but was asking about how he could withdraw his claim. I do not accept this. The letter clearly says he has reached a settlement with the respondent and clearly says he wants to withdraw his claim. This automatically is taken by the tribunal as a withdrawal of the claim and the claim comes to an end. It is not, then possible for the claim to be resurrected or the withdrawal to be withdrawn in circumstances where there was clearly no coercion or other pressure put on the claimant to settle. In all the circumstances the claimant validly withdrew his claim and his claim is dismissed on his withdrawal.

Approved by Employment Judge Martin

Date: 25 June 2024