



# EMPLOYMENT TRIBUNALS PUBLIC PRELIMINARY HEARING

**Claimant**

**Respondent**

**Mr D Ryan**

**V**

**Forza Foods Limited**

**Heard: By CVP**

**On: 31 March 2025**

**Before:**

**Employment Judge JM Wade**

**Representation:**

**Claimant:**

**In person**

**Respondent:**

**Miss A Smith, counsel**

## JUDGMENT

The claimant's allegations Section 15 allegation 5.5.1 and allegations of a failure to make reasonable adjustments 2020 to 2023 before medical/ill health suspension are dismissed. His complaints of unfair and discriminatory dismissal proceed to a hearing as separately ordered.

## REASONS

### Introduction

1. Today's hearing was to address preliminary issues (issue estoppel/abuse of process/time limits). I had a witness statement from the claimant in preparation for today and Miss Smith did not wish to challenge any of its contents.
2. I raised the issue of a redaction which had not been agreed by the claimant and the contents were read to me. In essence they went to the reason why a previous claim was withdrawn, the claimant saying that he was threatened by letter with costs totalling £10k if he continued. The respondent's position was that the claimant's comments were about without prejudice communications – hence the redaction.

3. The parties did not provide a copy of the correspondence on the basis of which I could have determined admissibility (or not) of the claimant's comments, and there were emails from the claimant to the Tribunal and containing the same information which was not redacted. The claimant 's email withdrawing his 2023 case, said this: *"After careful consideration I'd like to withdraw my case in its entirety as I believe the best outcome, I can get is by working with them as I look to returning back to work with forza"*. At the time the claimant was on paid health and safety suspension (I understand from his comments today).

#### Findings

4. The claimant was employed by the respondent, a company that manufactures and supplies meat, as a Factory/Hygiene Operative from 11 August 2020 until 12 February 2024 when he was dismissed.
5. The respondent has conceded that the claimant is a disabled person due to Hereditary Hemorrhagic Telangiectasia ("**HHT**"), a condition which causes him fatigue and nosebleeds and in respect of which he requires transfusions of both blood and iron. The claimant says that bleeding can be triggered by bending and lifting.

#### **Previous claim**

6. On 15 July 2023 the claimant issued a claim for disability discrimination against the First Respondent ("**the Previous Claim**"). The Previous Claim was given case number 6001293/2023 and a Preliminary Hearing took place before Employment Judge Davies on 26 October 2023. At that hearing, it was clarified that the claims being made by the claimant were for discrimination arising from disability, failure to make reasonable adjustments and victimisation. The claim was listed for final hearing in March 2024.
7. On 6 December 2023 the claimant wrote to the Tribunal in the terms above withdrawing the claim. He was at the time still employed by the respondent. On 11 December the claimant wrote to the Tribunal seeking to retract his withdrawal. On 15 January, a letter was sent to the claimant which said that whilst the withdrawal could not be retracted, the claim would not be dismissed as it would not be in the interests of justice to do so.
8. The Tribunal's rules provide that on a withdrawal a claim comes to an end. The claimant did not express a wish to bring the claims again.
9. On 12 February 2024 the claimant was dismissed at a meeting with confirmation in writing approximately seven days later. Early conciliation started on 15 March 2024 and ended on 28 March 2024. A second claim form was presented on 19 April 2024 and includes complaints of unfair dismissal and discriminatory dismissal both Section 15 and direct discrimination.
10. Causes of action brought both in the first claim and the second claim are:

- 10.1. A section 15 allegation that in 2023 the claimant was not allowed to work overtime;
- 10.2. Reasonable adjustment allegations about PCPs practices applies to him between 2020 and August 2023 (in the first claim the PCP was the requirements of his role and the adjustment sought was “a desk based role”; in the second claim the PCPs are more detailed (cleaning in toilets in 2020, 2020-2021 working on fast lines/at all times being required to bend and lift) and the adjustments more specific (slower line work/no bending or lifting/a job as a trainer (which was an example of a desk based role from June 2023 in the first claim) and providing materials in the first aid room.

### The Law

11. The well established principles are:
  - 11.1. “cause of action estoppel”: “once a cause of action has been held to exist or not to exist, that outcome may not be challenged by either party in subsequent proceedings” (Virgin Atlantic Airways Limited v Zodia Seats Limited [2013] UKSC 46 at paragraph 18;
  - 11.2. A party is precluded from raising in subsequent proceedings matters which were not, but could and should have been raised in the earlier ones (Ibid) (sometimes referred to as the rule in Henderson v Henderson (1843) Hare 100,115.)

### Conclusions

12. The claimant brought his first claim to an end, preferring to work with the employer and fearful of costs. That was rational and unequivocal and there was no reservation of the right to pursue the same matters again. A dismissal judgment was not given. There is no judicial determination other than that the claims, pursuant to the rules, have come to an end by the withdrawal.
13. The decision for me today is whether the claimant should be permitted to raise the same (and slightly differently put reasonable adjustments allegations which could have been presented then) in this second claim.
14. I consider that he should not, applying the rule in Henderson v Henderson. In simple terms, that would be a misuse of the Tribunal.
15. The Tribunal will in three days determine a complaint about the dismissal of a disabled person in 2024. This will inevitably involve consideration of some background traversed in the first claim, as background. The claimant’s schedule of loss for this second claim properly seeks a remedy for his dismissal, and seeks injury to feelings for that dismissal. It does not seek remedy for the previous events (and I am told he received full pay during medical suspension.)
16. He tells me that it was unjust to dismiss when he had a care plan and was much improved in 2024 (compared with his position in 2023 when medically suspended). His dismissal case will inevitably involve consideration of less discriminatory alternatives in 2024 – including making reasonable adjustments in the light of his health and the employer’s circumstances in 2024.

17. It seems to be that justice is not served by now permitting the historical complaints (2020 to 2023 medical suspension) in respect of which there could and would have been a determination in March of 2024, when the evidence was fresh, had he not withdrawn. I consider justice is served by a hearing of the dismissal complaints and the 2020 to 2023 complaints are dismissed.

Employment Judge JM Wade  
31 March 2025