



# EMPLOYMENT TRIBUNALS

**Claimant**

Kwan San Hui

v

**Respondent**

University of East Anglia

**Heard at:** Watford by CVP

**On:** 20 March 2025

**Before:** Employment Judge W Anderson

**Appearances**

**For the claimant:** In person

**For the respondent:** D Patel (counsel)

## JUDGMENT

1. The claimant's claim is dismissed upon withdrawal.

## REASONS

**Background**

1. This matter came before me on 20 March 2025 as the claimant withdrew his claim in an email to the tribunal on 3 February 2025, then sought to retract the withdrawal a few hours later on the same day. The respondents says that a withdrawal cannot be retracted, or a withdrawn claim cannot be revived, and that a dismissal judgment should now be issued. The claimant says that the withdrawal of his withdrawal is valid and in any event no dismissal judgment should be issued.
2. The respondent wrote to the tribunal seeking a dismissal judgment on 7 February 2025. EJ Graham, in a letter dated 18 February 2025, said that as the withdrawal had not been processed the claim remained live. In a letter dated 25 February 2025 EJ Hutchings said that no dismissal judgment had been issued and the tribunal should, at the hearing on 20 March 2025, consider whether the withdrawal communication constitutes a dismissal. In a letter dated 3 March 2025 EJ George said that the matter for consideration at the hearing was whether the claimant's communication of 3 February 2025 at 08:48 pm was an unequivocal withdrawal of his claim. If it was the tribunal must then apply Rule 51.

3. It is the matters set out by EJ George in the letter of 3 March 2025 that I considered and decided today.

### **The Hearing**

4. The parties filed a joint bundle of documents. The claimant and Mr Patel both filed a skeleton argument. Mr Patel also filed a copy of the EAT decision in *Campbell and OCS Group UK Ltd and others (UKEAT/0188/16)*.
5. I heard submissions from both parties on whether a withdrawal, once filed, could be withdrawn and made my decision on that matter. I then heard arguments on whether a dismissal judgment should be made and made my decision on that matter. Brief oral judgment was given at the hearing, and I told the parties I would provide more comprehensive written reasons.

### **The Law**

6. Employment Tribunal Procedure Rules 2024

#### *Part 8 Withdrawal*

##### *End of claim*

*50. Where a party advancing a claim informs the Tribunal, either in writing or in the course of a hearing, that their claim, or part of it, is withdrawn, the claim, or part, comes to an end, subject to any application that the party responding or replying to the claim may make for a costs order, preparation time order or wasted costs order.*

##### *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.*

### **Relevant Facts**

7. The claimant issued a claim for unfair dismissal against the respondent on 11 October 2024 using the online system.

8. On the morning of 3 February 2025, the claimant withdrew his claim, again using the online system. Notification of the withdrawal was sent automatically to the respondent at 08:48am. The withdrawal notification reads as follows:

*Dear Sir/Madam,  
I hope this letter finds you well.  
I am writing to formally withdraw my claim against University of East Anglia in the Employment Tribunal, referenced under case number 6014737/2024.  
After careful consideration, I have decided not to proceed further with this matter.  
I would be grateful if you could update the Tribunal's records accordingly and confirm receipt of this withdrawal at your earliest convenience.  
Thank you for your time and assistance throughout this process. I appreciate the Tribunal's consideration of my case.  
Yours sincerely,  
K S Hui*

9. Approximately three and a half hours later the claimant sent a further communication using the online system setting out his withdrawal of his earlier 'withdrawal of claim'. This communication was automatically notified to the respondent at 12:10pm. The text is set out below:

*Dear Sir/Madam,  
I hope this message finds you well.  
I am writing to formally withdraw my application to 'withdraw my claim', which I submitted on 3 February 2025.  
Following further discussions, I have received confirmation from the legal representative for the University of East Anglia (UEA) that, although they have not received instructions to make an offer to settle the claim at this time, they have indicated that should I present an offer, they would be able to put it forward to UEA.  
In light of this new information, I wish to continue with the proceedings and would be grateful if you could update the Tribunal's records accordingly.  
I am very sorry for the inconvenience.  
Thank you for your attention to this matter.  
Yours sincerely,  
K S Hui*

10. On 13 March 2025 the claimant made an application to amend his claim to include a claim of discrimination on the basis of a philosophical belief in the importance of confidentiality.

#### **Submissions on Rule 50**

11. For the respondent Mr Patel set out in his skeleton argument and in oral submissions the respondent's position that once a claim has been withdrawn the tribunal has no jurisdiction to agree to a retraction of the withdrawal. He relied on the case of *Segor v Goodrich Actuation Systems Ltd [2012] UKEAT/0145/11* in which the EAT held at paragraph 11 that 'As a matter of principle we consider that a concession or withdrawal cannot properly be accepted as such unless it is clear, unequivocal and unambiguous.' Mr Patel

said that the claimant's withdrawal was clear, unequivocal and unambiguous. He said that following the Court of Appeal decision in *Khan v Heywood & Middleton Primary Care Trust* [2006] EWCA Civ 1087, it was clear that where a claim was withdrawn, the proceedings were at an end and could not be revived. He quoted from *Campbell v OCS Group UK Ltd and others* (UKEAT/0188/16) at paragraph 13, '*The effect of withdrawal, as before, is to bring the proceedings to an end subject only to any application that might be made by the respondent for costs. The claim cannot be revived, but that does not mean that absent dismissal a fresh claim on the same facts cannot be made*'.

12. Mr Hui said that the tribunal had discretion to accept the withdrawal of his withdrawal as he had retracted within four hours, his decision was not fully considered, no dismissal judgment had been issued and he had legal and significant issues about his belief in confidentiality that should be heard by the tribunal. Mr Hui said that he was under huge pressure from his family and that the case of *Khan v Heywood & Middleton Primary Care Trust* was authority for his argument that the tribunal had a discretion to allow him to withdraw the withdrawal. In his skeleton Mr Hui referred in addition to a statement from the tribunal that a withdrawal does not take effect until a dismissal judgment is issued.

#### **Decision on withdrawal**

13. I agree with Mr Patel that the tribunal does not have the power to accept the retraction of a withdrawal where the withdrawal is clear and unambiguous. The case law on that, as set out above in paragraph 11, is explicit. It is my decision that the claimant's withdrawal was clear and unambiguous. He notes that he is withdrawing 'after careful consideration'. He was not under any pressure from the respondent to do so and did not explain why there was financial pressure. I do not find that the fact that he sought to retract the withdrawal four hours later detracts from its clarity and disambiguation.
14. I do not agree with the claimant that the tribunal has discretion to consider accepting a retraction and I agree with Mr Patel that the case of *Heywood* supports this position, i.e. that there is no discretion. In that case LJ Wall carries out a careful consideration of the relevant tribunal rules, their history and their purpose and concludes that the rules were drafted in such a way that had there been an intention to allow a litigant who had withdrawn a claim to revive it, that procedure would need to be expressly set out in the rules. It is not. In *Segor* there was a complex set of facts concerning whether or not a claimant had withdrawn a particular part of her claim following a hearing at which all other parts of the claim had been determined. It was in this case that the EAT stated that the withdrawal of a claim or part of a claim by a litigant in person cannot be accepted as such unless it is clear, unequivocal and unambiguous. This is not the same as the tribunal having a discretion. In *Segor* and in *Campbell* it is clear that the decision is that it is only where the withdrawal is ambiguous or, is made before a tribunal and the tribunal has reason, from its knowledge of the proceedings up to that point, to be concerned about whether the withdrawal is genuine, that it might seek to clarify the position with the claimant. There were no such circumstances in

this case. The claimant's claim was clearly withdrawn, it cannot be revived and these proceedings are at an end.

15. On the matter of whether, as set out by the claimant in his skeleton, the tribunal said a withdrawal does not take effect until a dismissal judgment is issued, I find that it did not. EJ Hutchings said that a claim is not dismissed until a dismissal judgment has been issued. However, I accept that the various communications from the tribunal were confusing. The correct position was not stated until it was set out by EJ George on 3 March 2025.

#### **Submissions on Rule 51**

16. The claimant said that it was in the interests of justice for his case to be heard and relied particularly in this respect on his allegation that he had been discriminated against on the grounds of his philosophical belief in confidentiality. He said that his wife was worried about the financial and emotional stress but after withdrawing he sat down and thought about it carefully. He said the whole disciplinary hearing was unfair. The claimant set out in his written submissions that there would be no prejudice to the respondent in allowing the claim to proceed.
17. Mr Patel said that the normal course of action would be to dismiss the claim unless there was a good reason to do otherwise. He said that there would be prejudice to the claimant if the claim was dismissed but also to the respondent in defending a new claim. He said the claimant had simply changed his mind and the reasons he gave on 3 February for wishing to continue with the claim indicate that he wanted to pursue the claim unless or until he could achieve a settlement, i.e. this could be a situation in which the claimant sought to maintain a speculative claim hoping for an offer of settlement and may withdraw at the doors of the court where none is forthcoming. Mr Patel referred to the case of *McPherson v BNP Paribas (London Branch) [2004] EWCA Civ 569*, in support of this point. He noted the reasons now being given for the withdrawal are inconsistent with those set out on 3 February and are unevicenced. It was not in the interests justice, not to dismiss the claim.

#### **Decision on dismissal**

18. It is my decision that the claimant has not shown that to issue a dismissal judgment would not be in the interests of justice. He withdrew his claim, stating that he had given the matter careful consideration before doing so. He stated clearly when he tried to retract his withdrawal that he was doing so as he believed he might now secure a financial settlement. This does not fit with the argument put forward today about emotional family pressure and financial pressure, which has been set out in no more detail than that assertion, and I accept Mr Patel's point about the possibility of a further claim being brought simply because a settlement may be secured. I have taken into account that the claimant is a litigant in person. I note also that his grounds of claim are clear and cogent, and he has obviously considered the law on unfair dismissal when drafting them. His communications with the tribunal since filing his claim are clear and evidence that he is an educated man who has carefully considered his claim and the relevant law. I note that he was employed in a senior academic position.

19. The claimant's written and oral submissions about not being able to litigate his claim were focused mainly on a claim of holding a protected philosophical belief. That is not part of his claim. The claim was one of unfair dismissal and the discrimination claim is the subject of an amendment application made after the claim was withdrawn.
20. Undoubtedly there is prejudice to the claimant if he cannot now issue a second claim for unfair dismissal on the same grounds as the one withdrawn, but there is prejudice to the respondent in having to defend a second claim. In any event this is not a balance of prejudice type test. As set out in *Campbell* the tribunal simply needs to dismiss the proceedings on withdrawal unless there is a good reason not to. I am not convinced that there is a good reason not to.
21. I am not convinced that issuing a dismissal judgment would not be in the interests of justice and the claim is dismissed.

Approved by:

Employment Judge W Anderson

Date: 7 April 2025

Sent to the parties on: 01/05/2025

For the Tribunal Office