



EMPLOYMENT TRIBUNALS

Claimant: Mrs W. Wickett

Respondent: Sproull Solicitors LLP

Heard at: Bodmin

On: 21 May 2025

Before: Employment Judge Smail

Representation

Claimant: In Person

Respondent: Mr A Pincott, Counsel

JUDGMENT having been sent to the parties on 4 June 2025 and written reasons having been requested at the Hearing, the following reasons are provided:

REASONS

1. On 21 May 2025 I made a Reconsideration Judgment in these terms:
 1. The Judgment dated 10 December 2024 dismissing the claim upon withdrawal is revoked.
 2. It is not in the interests of justice to dismiss the claim following withdrawal because the withdrawal was premised on a clear mistake, express on the face of the withdrawal, namely that the case had settled through ACAS.
 3. Whilst the original claim has been withdrawn, the Claimant is not precluded from issuing a fresh claim being the same claim on the same facts. That claim will then follow its course, if made.
2. The claimant was employed by the respondent between 2 January 2018 and 30 May 2023 as a Receptionist. She resigned claiming constructive dismissal. The claimant suffers from a mental health disability of anxiety and depression; this is now accepted by the respondent. She brought a claim of unfair dismissal and disability discrimination in a claim form presented on 30 August 2023.

3. The case proceeded typically. There was a case management hearing before Employment Judge Bax on 22 February 2024. He ordered a preliminary hearing on the question of disability on 19 August 2024, a five day final merits hearing was listed for 16 – 20 December 2024. In the event, disability was conceded.
4. Settlement negotiations then took place. ACAS was involved. The respondent was represented by Donna Morcom, the Managing Director of a firm called Sekoya.
5. On 2 December 2024, she wrote to ACAS stating that the respondent was trying to settle the matter, the final five-day hearing was taking place in eighteen days' time.
6. I see from the ACAS records that there was an exchange about figures. On 5 December 2024, £12,000 was agreed. The respondent asked for some draft ACAS wording to be sent to them. The claimant was informed by ACAS that she would be sent some draft wording as soon as possible. ACAS sent draft wording to the respondent on 5 December 2024, Sandra Hunt of ACAS wrote at 11.02am:

“Further to our recent discussion about the draft terms of the agreement COT3 wording please see the attached wording as requested. Phone me to confirm that you either want to agree the terms or suggest any amendments. If you tell me that you are satisfied with the terms I will send them to the claimant for their consideration. I will confirm their response to you. If the claimant confirms to me that they accept the offered terms, a legally binding agreement would be reached to end this dispute. I will inform the tribunal the case has been settled and then I will send the PDF document of the agreement to the parties to sign.”

7. A draft wording was sent, it was very much in the terms that were eventually agreed with a few minor adjustments.
8. Sekoya made what they described as two small tweaks to that wording that day. That was on 5 December 2024 at 13.19. The tweaks related to confidentiality. The wording was then sent to the claimant on 5 December 2024 at 2.24pm. There was a covering email from ACAS to the claimant which read as follows:

“Please see attached draft wording to look at and feel free to seek legal advice if you so wish. Once you have read the terms carefully and ready to discuss it with me, please phone at your convenience to confirm that you either want to agree to the terms and to enter into a legally binding agreement. Reject the terms and offer a right version which I will send to the respondent for their consideration. Talk about any queries that you have; I can explain the terms but cannot advise you if you should accept them.

Important. If I am advised that offered terms are accepted then it becomes legally binding then the matter is resolved and I will inform the tribunal the case has been resolved and legally binding and I will

then create and send a PDF document of the agreement for parties to sign.

You are only required to write to the tribunal as per Clause 8 Appendix 1 to withdraw the claim, only do this when this is confirmed as legally binding by ACAS and not before.”

9. The respondent then on 6 December 2024, sent in a slightly amended COT3, the amendments were only a couple of typos, there was no change to the substantive terms of the proposed previous COT3. The terms included a provision, as proposed by ACAS and accepted by the respondent, that the claimant email the tribunal with the following words as part of the terms of settlement.

“I refer to the above case and confirm that the parties have agreed settlement of the claim. Accordingly, I hereby withdraw my claim”

10. On 9 December 2024, the claimant withdrew her claim. Sandra Hunt of ACAS was unaware of this when she sent to the claimant the version of the COT3 with a couple of typos corrected. She did this on 10 December at 8.24 in the morning.
11. On 10 December 2024, ACAS emailed the claimant at 2.40pm.

“Dear Wendy

Thank you for your email. I understand from the tribunal that you have withdrawn your claim as per an email you sent to them dated 9 December 2024 at 6.49am stating that the parties have agreed a settlement but no settlement has been confirmed as legally binding via ACAS. I refer you to the email I sent from 5 December where it stated important” (and that important paragraph was repeated).

12. At 3.35pm ACAS emailed the claimant in these terms:

“There is no case for ACAS to settle as it has been withdrawn. You may wish to seek legal advice on your options you may want to contact the Employment Tribunal to explain what has happened if there is anything they can suggest.”

13. The claimant did immediately make contact with the Tribunal. ACAS had also sent a copy of the email to the respondent in which it said there was no case for ACAS to settle as it has been withdrawn and the response Donna Morcom gave to that was “looks great to me”.
14. It is clear what has happened here, the respondent accepts the claimant made a mistake. She purported to comply with the settlement prior to ACAS declaring it binding. There has been some discussion in submission today about which version of the agreement was the one the claimant was purporting to act under. That, it seems, was the version sent to her on 5 December. The subsequent version only had a couple of typos corrected and as far as I can see the typos related to clause 1 of a version. Clause 1 reads

“without admission of liability, pay the claimant the sum of £12,000.” The typo corrected version reads “without admission of liability the respondent will pay the claimant the sum of £12,000”. The typo was to make clear what was in any event self-evident: that it was the respondent that would be paying the sum of £12,000.

15. The version in relation to which the claimant sent her email to the tribunal withdrawing the claim on the basis the case was settled was identical in substance to the typo corrected version. The claimant purported to accept and act in accordance with the settlement proposed by the respondent as communicated by ACAS, by withdrawing her claim to the tribunal.
16. The respondent has sought to capitalise upon this error, they have not recognised a mistake and honoured the settlement, they have ran with the idea that the claimant withdrew her claim so there is no claim for them to deal with.
17. In my judgment that is most unattractive, indeed unconscionable opportunism on their part. They proposed the settlement, adopting wording provided by ACAS. Plainly the claimant thought she was accepting that settlement and made the procedural error of writing to the Tribunal, withdrawing her claim before ACAS had declared the settlement as binding.
18. I have been assisted today by Mr Pincott’s skeleton argument. He rightly refers me to the relevant provisions of the now 2024 Employment Tribunal procedural rules.

Rule 50 end of claim.

Where a party advancing a claim informs the Tribunal either in writing or in the course of the 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 applying to the claim may make for a costs order, preparation time order or wasted costs order.

Rule 51 dismissal following withdrawal.

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 applying 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; (b) The tribunal believes that to issue such a Judgment would not be in the interests of justice.

19. We are engaged with that last provision. Does the tribunal believe that to issue such a Judgment would not be in the interests of justice? A legal officer has issued the Judgment dismissing the claim on withdrawal on 10 December 2024, I have the power nonetheless to reconsider that Judgment.
20. Rule 68 paragraph 1.
The tribunal may either on its own initiative, which may reflect a request from the Employment Appeal Tribunal, or on the application of a party, reconsider

any Judgment where it is necessary in the interests of justice to do so. A Judgment under reconsideration maybe confirmed varied or revoked.

21. If the Judgment under consideration is revoked the tribunal may take the decision again. In doing so the tribunal is not required to come to the same conclusion.
22. I accept, although this has not been argued as fully as it might have been, that the claim has been withdrawn. It was withdrawn on the mistaken assumption that the case had settled; that was mistaken but was not in my judgement ambiguous. I rule that the withdrawal was unambiguous, although full argument on that matter was not heard, the Claimant being a litigant in person.
23. I accept counsel's submission that we are looking at Rule 51(b) and I arrive at the conclusion that it cannot be in the interests of justice to issue a dismissal judgment based upon a clear mistake by the claimant. She thought - and this is express on her withdrawal letter - that a settlement had been reached. She thought she was accepting the proposal from the respondent. While she was substantially right about that, she had acted prior to ACAS declaring the settlement binding. ACAS would have declared it binding had the claimant waited communication upon Sandra Hunt's return to work. I accept what the claimant says in her witness statement about what happened. She says the following:

"Paragraph 17

Between 29 November 2024 – 5 December 2024, there are a number of phone calls, emails with counter offers, we finally agreed an amount on 4 December 2024.

Paragraph 18

On 5 December 2024 I was sent a COT3 agreement to review and was told within the body of that email that I had to write to the tribunal using the wording in the document to withdraw the claim.

Paragraph 19

I looked at the COT3 and asked a friend of mine who is a HR professional and not a solicitor to look at it for me.

Paragraph 20

As you are aware from the details of my claim I have a disability and mental health impairment. With my understanding, at the time when it was all agreed, I had to send the wording which had been written for me in an email to the tribunal in order to comply with the document I was sent.

Paragraph 21

I was completely confused and did things in the wrong order.

Paragraph 22

As soon as the ACAS conciliator pointed out and stated to me I was distraught and immediately contacted the Tribunal for guidance. Guidance as such was not given but listing a reconsideration hearing was facilitated.”

24. I have no hesitation in setting aside the Judgment dismissing the claim upon withdrawal. That dismissal was the result of a clear mistake, a mistake that was acknowledged by the respondent.
25. Whilst I benefited from a number of authorities put to me by counsel for the respondent, there is no authority closely to this position, where a claimant believes a claim has been compromised and acts with the withdrawal provision prior to the compromise actually being effective.
26. What does this mean? This means the claim remains withdrawn; but it does not prevent the claimant if she so wishes to issue a new claim, claiming the same remedies on the same basis. If she wanted to do that, she would need, if the point is taken, just an equitable extension of time; and her argument on why it would be just and equitable is clear from the above. It would not prejudice the respondent. There is nothing stopping the respondent from simply honouring the original settlement proposed by them.

Employment Judge Smail

Date: 25 September 2025

REASONS SENT TO THE PARTIES ON
19 October 2025

Jade Lobb
FOR THE TRIBUNAL OFFICE