



EMPLOYMENT TRIBUNALS

Claimant: Mrs S Copeland

Respondent: Rotherham Metropolitan Borough Council

Heard at Sheffield

ON: 6 March 2026

BEFORE: Employment Judge Brain

REPRESENTATION:

Claimant: In person, assisted by Mrs C Gregory, friend

Respondent: Mr D Jones, counsel

JUDGMENT having been sent to the parties on 9 March 2026 and written reasons having been requested by the claimant on 20 March 2026, in accordance with Rule 60(4A) of the Employment Tribunals Rules of Procedure 2024 the Employment Tribunal provides the following:

REASONS

1. The claimant applied for a job with the respondent as a casual children's practitioner. She was interviewed on 8 February 2023 and was offered the role on 10 February 23, subject to satisfactory references. The claimant's case is that in August 2023, the respondent withdrew the conditional job offer because sadly she had been diagnosed with cancer. The respondent's case is that the references were unsatisfactory and did not satisfy their requirements.
2. On 28 September 2023 the claimant submitted her first claim to the Employment Tribunal arising out of this matter. This was given case number 6001940/2023. She brought a claim of disability discrimination pursuant to the Equality Act 2010.
3. On 15 November 2023 the claimant presented her second claim to the Employment Tribunal arising out of this matter. This was given case number 6002351/2023. The particulars of claim were in substance very similar to those in the first claim. It was about the same matter, brought pursuant to the 2010 Act.
4. A Legal Officer directed that the first and second claims were to be heard together. This direction was given on 22 January 2024. The matter was then discussed at a

case management hearing which came before Employment Judge Ayre on 5 April 2024. The cases were listed for hearing in July 2024.

5. On 24 June 2024 the claimant wrote to say that she wished to withdraw the claims. A Legal Officer issued a judgment on withdrawal for the first claim only. No mention was made in the judgment of the second claim. The claimant did not in her email of 24 June 2024 seek to reserve any right to pursue a further claim.
6. By rule 51 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 (which were in force at the time) , where a claimant informs the Tribunal, either in writing or in the course of a hearing, that a claim, or part of it, is withdrawn, the claim, or part, comes to an end.
7. By Rule 52 of the 2013 Rules, where a claim, or part of it, has been withdrawn under 51 the Tribunal shall issue a judgment dismissing it (which means the claimant may not commence a further claim against the respondent raising the same, or substantially the same, complaint) unless— (a) the claimant 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.
8. The claimant then wrote on 25 October 2024 to ask if the cases could go ahead. The matter came before me on 28 April 2025. I ruled that the claimant's letter of 24 June 2024 was a withdrawal of both claims. I also ruled that it was not in the interests of justice to issue a judgement on withdrawal of the second claim.
9. The Legal Officer who issued the judgment on withdrawal of the first claim acted pursuant to the provisions in rules 51 and 52 of the 2013 Rules. The 2013 Rules were revoked with effect from 6 January 2025 when the Employment Tribunal Procedure Rules 2024 came into effect. Rules 51 and 52 of the 2013 Rules were substituted by Rules 50 and 51 of the 2024 Rules. They are substantially to the same effect.
10. On 6 May 2025 the claimant presented a third claim. This was initially rejected for lack of an ACAS early conciliation certificate but was in the event subsequently accepted on 19 August 2025.
11. On 6 January 2026, Employment Judge Lancaster directed there be a hearing to decide whether the third claim should be struck out as an abuse of process. This was because the first claim had been dismissed and the second claim had been withdrawn, both of which appear to be on the same facts as third claim.
12. The claimant confirmed today's hearing that all three claims are based upon the circumstances described in the first paragraph of these reasons.
13. Where an order dismissing a claim under rule 52 of the 2013 Rules or rule 51 of the 2024 Rules has been made by an Employment Tribunal, cause of action estoppel is likely to present a bar to subsequent Employment Tribunal proceedings based on the same subject matter.
14. A cause of action estoppel arises where a party seeks to pursue a cause of action that has been dealt with in earlier proceedings involving the same parties. For a cause of action estoppel to arise, there must be a judicial decision.
15. A withdrawal is not a judicial decision. It is then open to a party to bring a fresh claim (although the party cannot simply revive the withdrawn claim: **Khan v Heywood and Middleton PCT** [2007] ICR 24, CA). There is no automatic right to

pursue a new claim in such circumstances. The tribunal will need to consider if the fresh claim constitutes an abuse of process.

16. However, a judgment on withdrawal is a judicial decision. Thus, a judgment issued following withdrawal will bar a fresh claim by a cause of action estoppel. In the absence of any reservation of the right to bring a fresh claim, then the claimant shall be taken to abandon the cause of action.
17. In the hearing, I referred to **Ochieng v Stantonbury Campus** EAT 0304/15. Here, the claimant initially brought three claims covering, inter alia, complaints of disability discrimination, victimisation and harassment. Although she subsequently withdrew the third claim, she later sought to reinstate it but was refused permission to do so on the basis that the employment tribunal had formally dismissed that claim upon withdrawal pursuant to rule 52 of the 2013 Rules (now rule 51 of the 2024 Rules), thus bringing it to an end. The claimant then submitted a fourth claim covering much of the same territory as before, including the discrimination, victimisation and harassment allegations. An Employment Judge struck out the fourth claim as an abuse of process (save for one specific aspect of the disability discrimination complaint that had not been canvassed in the preceding claims).
18. On appeal, the Employment Appeal Tribunal upheld this decision. Given that the claimant was making substantively the same complaints in the fourth claim as she had made in her previous complaints, the employment judge had correctly concluded that a cause of action estoppel arose under the principle of *res judicata*, thus prohibiting the bringing of the fourth claim.
19. On the facts of Mrs Copeland's claim, the third claim is to all intents and purposes identical to the dismissed first claim and the withdrawn second claim. It is the dismissal of the first claim which creates an insuperable obstacle for her on the authority of **Ochieng**. Accordingly, it is otiose to consider whether the third claim is an abuse of process because the second claim was withdrawn but not dismissed.

Approved by Employment Judge Brain

Date: 30 March 2026.

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