Case Number: 3305202/2025

EMPLOYMENT TRIBUNALS

Claimant: Mrs V Puscasu

Respondent: Soho House UK Limited

Heard at: Reading (by video) **On:** 11 September 2026

Before: Employment Judge Hawksworth

Appearances
For the claimant: Mr M Puscasu (claimant's husband)
Romanian-speaking interpreter Ms E Salceanu
For the respondent: Mr J Crozier (counsel)

RESERVED JUDGMENT

1. This claim can proceed to the extent that it relates to a complaint about the claimant's grievance appeal outcome.

2. All other complaints in this claim are prevented from proceeding by cause of action estoppel and by rule 51 of the Employment Tribunal Procedure Rules 2024 and are struck out under rule 38(1)(a).

REASONS

Correct name of the respondent

1. The correct name of the respondent is Soho House UK Limited.

Issue to be decided at this hearing

2. This hearing was a public preliminary hearing to decide whether the claim should be struck out (that means not allowed to proceed).

3. The respondent says that this claim should be struck out for two reasons.

4. First, the respondent says that some of the complaints in this claim have already been included in two previous claims which the claimant made and then withdrew. I am using the shorthand of 'duplication' to refer to this point.

5. Second, the respondent says that even if there are complaints in this claim which are not included in the previous claims, those complaints could and should have been included in the previous claim or claims. I am referring to this point as the 'potential for inclusion' point.

6. The claimant says that the claim should be allowed to go ahead.

7. On 16 February 2026 the claimant made an application to amend this claim by adding two individual respondents. I decided to consider the strike out application first. That seemed to be the appropriate order in which to do things because, if I decide that the claim should be struck out, there would be no remaining claim to amend.

Hearing and documents

8. At the hearing the claimant was represented by her husband. The hearing was translated by a Romanian-speaking interpreter, Ms Salceanu. The respondent was represented by counsel, Mr Crozier.

9. The respondent prepared an electronic file of documents for the hearing. It had 175 pages. Everyone had a copy of it to use during the hearing. Page references in these reasons are to that file of documents (the 'bundle').

10. Mr Crozier prepared a helpful skeleton argument explaining why the respondent says this claim should not be allowed to go ahead. Both Mr Crozier and Mr Puscasu made oral representations at the hearing.

11. There was not enough time in the three hour hearing for me to make my decision and tell the parties what I had decided and why. I explained that I would send my decision and reasons in writing. I am sorry that there has been a delay in sending out my decision. The delay was because of the current workload of the employment tribunal.

The background

12. To make my decision about whether the claim should be struck out, I need to have an understanding of what the parties say happened and when. I include here a broad timeline of the main events in the claimant's employment to date.

13. The information in this section is based on the information in the bundle and the tribunal file. I have not made findings of fact about what happened, because any factual disputes about this would have to be decided by the tribunal at a final hearing. However, there appears to be little or no dispute between the parties about the points in this timeline.

14. The timeline also includes the dates of the claimant's claims, to understand where they fit in. I go on to make findings about the claims in the claims section below.

15. The claimant has been employed by the respondent as a Chef de Partie since 16 May 2022. Her employment is continuing. She is on long-term sick leave.

16. In August 2024 the claimant complained to the respondent that on 19 August 2024 she had been subject to aggressive racial abuse by the respondent's head chef. The respondent investigated and upheld the claimant's complaint. On 28 August 2024 the respondent issued the head chef with a disciplinary warning.

17. The claimant made a grievance on 11 April 2025 about her treatment by colleagues between late 2023 and April 2025, including the incident on 19 August 2024 and retaliatory treatment which she says followed the disciplinary warning the respondent gave to the head chef. The grievance included a complaint about the refusal of annual leave by the head chef and related treatment by a sous-chef (page 145).

18. The claimant began a period of sick leave on 17 April 2025. She remains on sick leave.

19. The respondent decided the claimant's grievance on 13 May 2025. The grievance was not upheld.

20. Claim 1: On 12 June 2025 the claimant presented claim 1 (6021943/2025). Acas had been notified for early conciliation on 12 April 2025 and an early conciliation certificate issued on 15 May 2025.

21. The claimant appealed the outcome of the grievance. On 2 July 2025 the respondent partially upheld the grievance appeal (page 152 and 153). (The appeal outcome letter itself appears to be wrongly dated.) One of the conclusions of the appeal was that 'stronger management oversight and earlier intervention may have helped to address these issues sooner'.

22. Claim 2: On 23 July 2025 the claimant presented claim 2 (3304430/2025). Acas had been notified for early conciliation on 10 July 2025 and an early conciliation certificate issued on 14 July 2025.

23. The claimant withdrew claim 2 on 23 July 2025, the same day she presented it. The claimant made online applications on claim 1 on 29 July 2025 and 4 August 2025 in which she withdrew claim 1. I explain my findings about the withdrawals of claim 1 and claim 2 in the claims section below.

24. A judgment dismissing claim 1 on withdrawal was approved by a legal officer on 11 August 2025 (page 85).

25. Claim 3: On 25 August 2025, the claimant presented claim 3 (this claim, number 3305202/2025). Acas had been notified for early conciliation on 14 July 2025 and an early conciliation certificate issued on 4 August 2025.

26. The judgment dismissing claim 1 was sent to the parties on 18 September 2025 (page 85).

The claims

27. In Cox v Adecco UKEAT/0339/19/AT, the EAT explained that when a tribunal is considering whether to strike out a claim because it has no reasonable prospect of success, reasonable steps must be taken to identify the complaints, and the issues in the complaints. This should be done not only by reference to what the claimant says but also by reference to the pleadings and any core documents that set out the claimant's case.

28. Here the basis on which the respondent says that claim 3 should be struck out is not exactly the same as in Cox v Adecco. But the point about understanding the claims is the same. I am considering whether claim 3 should be struck out because of duplication of and potential for inclusion in the previous claims. For me to decide this, I need to understand what was in each of the claimant's claims.

29. At the hearing we had a long discussion about the content of the claims. I looked at the three claim forms in detail to identify the complaints (the legal labels) and to identify the facts relied on in each of the claimant's three claims. I looked at each claim form as a whole, considering all the information provided by the claimant in the forms (Ali v Office of National Statistics 2005 IRLR 201, CA).

30. I make the following findings about the content of the claimant's three claims. These are findings of fact (Baker v The Commissioner of Police of the Metropolis UKEAT/0201/09/CEA and Redhead v London Borough of Hounslow UKEAT/0409/11/MAA). I also make findings of fact here about the withdrawal of claims 1 and 2 and the dismissal of claim 1.

31. All three claims were brought against the same respondent, Soho Farmhouse. That is a trading name. The legal name of the respondent is Soho House UK Limited.

Claim 1 – 12 June 2025

32. On 12 June 2025 the claimant presented claim 1 (6021943/2025). Acas had been notified for early conciliation on 12 April 2025 and an early conciliation certificate issued on 15 May 2025.

33. The claimant presented claim 1 herself and did not name any representative in section 11 of the ET1 claim form (page 56).

34. In section 8.1 of the ET1 claim form (page 53) the claimant says she is making complaints of:

    34.1. Race discrimination;
    34.2. Another type of claim: 'hate, bullying, sexual remarks, humiliation'

35. In section 8.2 of the ET1 claim form (page 54) the claimant gives further details of her complaints: 'hate, discrimination, bullying and sexual harassment'.

36. In section 8.2 the claimant explains the facts she relies on:

36.1. acts done by the head chef which started ‘after 6 months of employment’;
36.2. the incident on 19 August 2024;
36.3. the claimant feared that reporting the 19 August 2024 incident would anger the head chef even more, and after the disciplinary measures which followed the 19 August 2024 incident, ‘since that moment he formed a group of colleagues’ who systematically bullied, abused, discriminated against, isolated and humiliated her (two are named);
36.4. she was subjected to conduct of a sexual nature;
36.5. the further acts by colleagues are said to have continued up to ‘the last three months’ and there was a plan to make her resign;
36.6. she tried to report the situation to the HR department but they did not complete the necessary investigations.

37. I find that the claimant made complaints of race discrimination and sexual harassment in claim 1. The complaints about the treatment by colleagues cover the period up to 17 April 2025 when the claimant went off sick.

38. I find that a complaint of victimisation (detrimental treatment after making a complaint of unlawful discrimination) is also included in claim 1. That is understandable from what the claimant says about the way she was treated after the disciplinary measure which followed her complaint of racial abuse. The victimisation complaints also concern treatment by colleagues up to 17 April 2025 when the claimant went off sick.

39. I also find that claim 1 includes a complaint about the claimant’s grievance. I find that the references to the claimant’s reports to the HR department and the ‘necessary investigations’ are likely to refer to the claimant’s grievance and the grievance outcome. This is because of the closeness in time of the grievance outcome, the Acas early conciliation for claim 1, and the presentation of claim 1. It is also consistent with the claimant’s appeal against the grievance outcome, in which she said that the grievance investigation failed to interview key individuals. I find that ‘not completing the necessary investigations’ is referring to the same alleged failure.

40. On 29 July 2025 and 4 August 2025 the claimant made applications to withdraw claim 1. She used the tribunal portal which asks the person making the application to select an option to say what their application is about. The claimant made three applications:

40.1. On 29 July 2025 the claimant completed an application and selected ‘withdraw all/part of claim’ (page 79). She selected ‘all claims’.
40.2. Later on 29 July 2025 she completed another application and selected ‘vary/revoke an order’. In the application she asked to cancel the withdrawal (page 80). She said she was under medical treatment and ‘under big stress’;.
40.3. On 4 August 2025 she completed another application to withdraw claim 1 (page 83). She said:

> “I would like to withdraw the claim against Soho Farmhouse for medical reasons.

I am not fit for work”

41. I do not understand the claimant to be saying that her withdrawals of claim 1 were ambiguous or conditional in some way. For completeness, I find that both applications to withdraw claim 1 were unambiguous withdrawals by her.

42. A judgment dismissing claim 1 on withdrawal was approved by a legal officer on 11 August 2025 (page 85). The judgment dismissing claim 1 was sent to the parties on 18 September 2025 (page 85).

43. On 6 March 2026 the tribunal wrote to the parties on the direction of EJ Anstis to say that a claimant cannot revoke or cancel the withdrawal of a claim (page 86). I find that that direction was responding to the claimant’s second application made on 29 July 2025 in which she asked to cancel the withdrawal of claim 1 earlier that day.

Claim 2 – 23 July 2025

44. On 23 July 2025 the claimant presented claim 2 (3304430/2025). Acas had been notified for early conciliation on 10 July 2025 and an early conciliation certificate was issued on 14 July 2025.

45. The claimant named her trade union representative, Lukasz Bemka, as her representative in section 11 of the ET1 claim form (page 96).

46. In section 8.1 of the ET1 claim form (page 93) the claimant says she is making complaints of:

    46.1. Unfair dismissal;
    46.2. Age discrimination;
    46.3. Race discrimination;
    46.4. Whistleblowing detriment/dismissal;
    46.5. Another type of claim: ‘bullying and instigation to a group of colleagues [for] bullying, discrimination.’

47. In sections 8.2 and 14 (pages 94 and 99) the claimant explains the facts she relies on:

    47.1. acts by the head chef and ‘other three colleagues’ (the same colleagues named in claim 1 plus one other);
    47.2. the incident on 19 August 2024 (section 14);
    47.3. retaliatory treatment after the head chef was issued with a disciplinary warning;
    47.4. she made a grievance to HR and the investigator found a gap in the management system.

48. I find that claim 2 includes complaints of race discrimination and whistleblowing detriment. The complaint of whistleblowing detriment is also understandable as a complaint of victimisation under the Equality Act 2010 (retaliatory treatment after making a complaint of racial abuse). The factual basis for these complaints

is the treatment by colleagues in the period up to 17 April 2025 when the claimant went off sick.

49. I find that claim 2 includes a complaint about the claimant's grievance, and also about her grievance appeal. I make this finding because section 8.2 of claim 2 says that a 'gap in the management system' was found. These words appear very likely to be referring to one of the conclusions of the appeal outcome letter, namely that 'stronger management oversight and earlier intervention may have helped to address these issues sooner'.

50. The claimant has ticked the box for age discrimination in section 8.1. The only other reference to age is in section 9.2 of the claim form, the compensation section. In that section the claimant says she is 57 and has nearly 49 years' workplace experience but has never been treated like this before. That is not an allegation of less favourable treatment because of age (or any other type of age discrimination complaint). She says that at her age it is very difficult to get another job. That relates to the compensation she is seeking, rather than being a claim of age discrimination. I find that there is no complaint of age discrimination included in claim 2.

51. As the claimant is still employed by the respondent, she does not have the right to bring a complaint of unfair dismissal or whistleblowing dismissal. She has not been dismissed.

52. On 23 July 2025, the claimant sent an email to the tribunal. That was the same day that she had presented claim 2. It was headed 'Withdrawal case'. It said:

> "I would like to withdraw my claim because was a misunderstanding between me and my representative Union Lukasz Bemka because he said the Union solicitors will do this claim form me !
> Thank you for understanding and I am so sorry for this inconvenience!"

53. Again, the claimant has not suggested otherwise, but for completeness I find that the email was an unambiguous withdrawal of claim 2. However I find that in this email the claimant was not saying she did not want to pursue her claim. In fact, she was saying that it would be presented again, by solicitors on her behalf.

54. No judgment was issued dismissing claim 2 on withdrawal. It is not clear to me from the bundle or the tribunal file whether there was any judicial decision not to issue a dismissal judgment, or whether there was an administrative oversight meaning that there has been no consideration by a judge or legal officer of whether a dismissal judgment should be issued in claim 2. I return to this in my conclusions.

Claim 3 – 25 August 2025

55. On 25 August 2025, the claimant presented claim 3 (this claim, number 3305202/2025). Acas had been notified for early conciliation on 14 July 2025 and an early conciliation certificate issued on 4 August 2025.

56. The claimant named another trade union representative in section 11 of the ET1 claim form (page 12).

57. In section 8.1 of the ET1 claim form (page 9) the claimant says she is making complaints of:

    57.1. Age discrimination;
    57.2. Race discrimination;
    57.3. Sex discrimination;
    57.4. Another type of claim: ‘personal injury (mental health affected) bullying, victimisation, work overload.’

58. In sections 8.2 of the ET1 claim form (page 10) the claimant explains the facts she relies on:

    58.1. acts by the head chef and ‘other colleagues’ (the same three colleagues named in claim 2), including sexual remarks;
    58.2. the acts occurred from September 2024 to April 2025;
    58.3. the incident on 19 August 2024;
    58.4. retaliatory treatment after the head chef was issued with a disciplinary warning;
    58.5. between September 2024 and April 2025 her annual leave request was refused three times;
    58.6. her grievance and appeal and the fact that the appeal had different results from the first investigations.

59. I find that claim 3 includes complaints of race discrimination, sexual harassment and victimisation under the Equality Act 2010. The complaints about the treatment by colleagues cover the period up to 17 April 2025 when the claimant went off sick.

60. The age related points mentioned in claim 2 are included in section 14 in claim 3, but there is no detail of a complaint of age discrimination. I find that claim 3 does not include a complaint of age discrimination.

61. There are two factual matters included in claim 3 which were not included in claim 1:

    61.1. the refusal of the claimant’s annual leave request between September 2024 and April 2025; and
    61.2. the claimant’s grievance appeal.

62. Of these, the grievance appeal was included in claim 2. The refusal of annual leave was not included in claim 1 or claim 2. I find that the refusal of annual leave is part of the complaint about systematic bullying and discrimination, and the plan to make the claimant resign.

The relevant law

Res judicata

63. The question here is whether this claim should be struck out because of duplication with another claim or potential for inclusion in another claim. The relevant legal principles about this are sometimes referred to by a Latin phrase: res judicata. That means 'something that has already been judicially decided'.

64. Two of the principles are potentially relevant here:

    64.1. cause of action estoppel (which I have called duplication); and
    64.2. the principle in Henderson v Henderson (which I have called potential for inclusion).

65. The principles were explained by the Supreme Court in a case called Virgin Atlantic Airways Ltd v Premium Aircraft Interiors UK Ltd [2013] UKSC 36 at paragraph 17:

> "Res judicata is a portmanteau term which is used to describe a number of different legal principles … The first principle is that 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. This is "cause of action estoppel". It is properly described as a form of estoppel precluding a party from challenging the same cause of action in subsequent proceedings. … Fifth, there is the principle … in Henderson v Henderson (1843) 3 Hare 100, 115, which precludes a party from raising in subsequent proceedings matters which were not, but could and should have been raised in the earlier ones. Finally, there is the more general procedural rule against abusive proceedings, which may be regarded as the policy underlying all of the above principles with the possible exception of the doctrine of merger."

Cause of action estoppel ('duplication')

66. At paragraph 20 of the Virgin Atlantic Airways Ltd case, citing an earlier case (Arnold v National Westminster Bank plc [1991] 2 AC 93, HL) the court explained more about cause of action estoppel:

> "Cause of action estoppel arises where the cause of action in the later proceedings is identical to that in the earlier proceedings, the latter having been between the same parties or their privies and having involved the same subject matter. In such a case the bar is absolute in relation to all points decided unless fraud or collusion is alleged, such as to justify setting aside the earlier judgment. The discovery of new factual matter which could not have been found out by reasonable diligence for use in the earlier proceedings does not, according to the law of England, permit the latter to be re-opened."

The principle in Henderson v Henderson ('potential for inclusion')

67. The principle in Henderson v Henderson, also called Henderson v Henderson abuse of process, was explained in Johnson v Gore-Wood & Co [2002] 2 AC1 HL:

> "Henderson v Henderson abuse of process, as now understood, although separate and distinct from cause of action estoppel and issue estoppel, has much in common with them. The underlying public interest is the same: that there should be finality in litigation and that a party should not be twice vexed in the same matter. This public interest is reinforced by the current emphasis on efficiency and economy in the conduct of litigation, in the interests of the parties and the public as a whole. The bringing of a claim or the raising of a defence in later proceedings may, without more, amount to abuse if the court is satisfied (the onus being on the party alleging abuse) that the claim or defence should have been raised in the earlier proceedings if it was to be raised at all. I would not accept that it is necessary, before abuse may be found, to identify any additional element such as a collateral attack on a previous decision or some dishonesty, but where those elements are present the later proceedings will be much more obviously abusive, and there will rarely be a finding of abuse unless the later proceeding involves what the court regards as unjust harassment of a party. It is, however, wrong to hold that because a matter could have been raised in early proceedings it should have been, so as to render the raising of it in later proceedings necessarily abusive. That is to adopt too dogmatic an approach to what should in my opinion be a broad, merits-based judgment which takes account of the public and private interests involved and also takes account of all the facts of the case, focusing attention on the crucial question whether, in all the circumstances, a party is misusing or abusing the process of the court by seeking to raise before it the issue which could have been raised before…. While the result may often be the same, it is in my view preferable to ask whether in all the circumstances a party's conduct is an abuse than to ask whether the conduct is an abuse and then, if it is, to ask whether the abuse is excused or justified by special circumstances."

68. In Agbenowossi-Koffi v Donvand Limited (T/A Gullivers Travel Associates) [2014] EWCA Civ 855, the Court of Appeal considered what is meant by 'abuse of process' in this context:

> "It is true that there is no evidence that the claimant issued the second claim in order to harass or oppress the respondent. But it does not follow that the second claim was not an abuse of process in the particular circumstances of this case. As Lord Millett said in Johnson at p 59E-H, the abuse of process doctrine in this context is a procedural rule "based on the need to protect the process of the court from abuse and the defendant from oppression" and the question was whether "it was oppressive or otherwise an abuse of the process of the court" for the claimant to raise in second proceedings a claim which he could have raised in the first proceedings. The very fact that a defendant is faced

> with two claims where one could and should have sufficed will often of itself constitute oppression. It is not necessary to show that there has been harassment beyond that which is inherent in the fact of having to face further proceedings."

69. In the same case, the court emphasised that the burden of showing that a later claim is an abuse of process lies on the party who is alleging abuse.

70. The question of whether a later claim is abuse of process is not a matter of discretion as there is a right and a wrong answer (Aldi Stores Ltd WSP Group plc [2008] 1WLR 748 CA).

Employment Tribunal Procedure Rules 2024

71. The Employment Tribunal Procedure Rules 2024 (the 'ET Rules') are also relevant here.

72. Withdrawal: rule 50 says:

> "**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.

73. Withdrawal of a claim is an act of a claimant. It brings the claim to an end without requiring any decision of the tribunal.

74. The case of Khan v Heywood and Middleton Primary Care Trust [2006] EWCA Civ 1087 was referred to in the tribunal's letter of 6 March 2026. In that case, the Court of Appeal considered an application by a claimant to retract the withdrawal of their claim under rule 25 of the Employment Tribunal Rules of Procedure 2004, an earlier version of the current ET Rules.

75. Rule 25(3) of the 2004 rules said:

> "…Withdrawal takes effect on the date on which the Employment Tribunal Office (in the case of written notifications) or the tribunal (in the case of oral notification) receives notice of it and where the whole claim is withdrawn, subject to paragraph (4), proceedings are brought to an end against the relevant respondent on that date."

76. The court in Khan held that:

    76.1. The effect of a notice of withdrawal of the whole claim under rule 25(3) was to bring the proceedings to an end and there was no sense in which the proceedings could be deemed merely put to sleep so as to be capable of revival. No application to dismiss was necessary to bring the

proceedings to an end as rule 25(3) expressly said the proceedings are brought to an end.

76.2. The tribunal was specifically governed by the 2004 Regulations which contained no express procedure for allowing a litigant who had mistakenly withdrawn a claim to revive it; and

76.3. It was not within the concept of case management or the "general power to manage proceedings" to permit a claimant to revive a withdrawn claim.

77. Dismissal: rule 51 says

> "**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."

78. Dismissal of a claim is a separate act. It is an act of the employment tribunal. It has the effect that the claimant cannot bring a further claim raising the same or substantially the same complaint.

79. Strike out: The tribunal has the power under the Employment Tribunal Procedure Rules 2024 ('the ET Rules') to strike out a case where it is decided that abuse of process principles mean that it should not proceed. Although the principles are not mentioned specifically in rule 38, this would fall within the power in rule 38(1)(a) to strike out a claim if it is "scandalous or vexatious or has no reasonable prospect of success".

80. Overriding objective: When exercising powers under the ET Rules, the tribunal must always seek to give effect to the overriding objective set out in rule 3, that is to deal with cases fairly and justly. Rule 3(2) says:

> "2) Dealing with a case fairly and justly includes, so far as practicable—
> (a) ensuring that the parties are on an equal footing,
> (b) dealing with cases in ways which are proportionate to the complexity and importance of the issues,
> (c) avoiding unnecessary formality and seeking flexibility in the proceedings,
> (d) avoiding delay, so far as compatible with proper consideration of the issues, and
> (e) saving expense."

Conclusions

81. I have applied these legal principles to the claimant's claims and reach the following conclusions.

Duplication

82. Claim 1: claim 1 has been withdrawn and dismissed.

83. The withdrawal was first made on 29 July 2025. That was an unambiguous withdrawal by the claimant under rule 50. It brought claim 1 to an end. Although the claimant tried to retract her first withdrawal of claim 1, as EJ Anstis has explained in the letter sent to the parties on 6 March 2026, it is not possible to revive a claim that has been withdrawn. Even if it was possible to retract a withdrawal, the claimant unambiguously withdrew claim 1 again on 4 August 2025.

84. The tribunal then dismissed claim 1 under rule 51 of the ET Rules. The decision to dismiss claim 1 on withdrawal was a judicial determination of the claim:

    84.1. even though it was a decision by a legal officer not a judge. The legal officer had the power to issue a dismissal judgment on withdrawal and in doing so was exercising a judicial function (rule 7 of the ET Rules); and
    84.2. even though it was made without hearing any evidence or making any decision on the merits of the claim.

85. As rule 51 explains, a dismissal judgment means that a claimant may not commence a further claim against the respondent raising the same, or substantially the same, complaint. Any attempt to bring another claim including the complaints made in claim 1 will be prevented by rule 51 and by the cause of action estoppel principle, because it is a duplication of a claim which has already been judicially decided.

86. Claim 2: claim 2 was withdrawn on 23 July 2025. That withdrawal brought claim 2 to an end.

87. However, no dismissal judgment was issued in claim 2. No judicial decision has been made dismissing claim 2. As I have explained, it is not clear whether there was a judicial decision not to issue a dismissal judgment. I have decided that the words used by the claimant in her withdrawal of claim 2 do not suggest that she is abandoning claim 2. She said she was withdrawing claim 2 because the union solicitors would do it for her instead. In saying this, the claimant was expressing a wish to reserve the right to make a further claim, and she had a legitimate reason for doing so (she understood the union solicitors would be presenting her claim for her).

88. The claimant did go on to make a further claim, this claim (claim 3). As it happened, the union solicitors did not submit claim 3 on her behalf, she presented claim 3 herself. However, the position remains that, as the claimant explained it in her withdrawal of claim 2, she wanted to bring a further claim. I

have decided that because the claimant said this and because she had a legitimate reason for doing so, a dismissal judgment should not be issued under rule 51 in relation to claim 2. I should not treat the failure to issue a dismissal judgment in claim 2 as an administrative oversight or only a matter of delay. I should not (if the respondent was suggesting this) proceed as if a dismissal judgment has been issued.

89. The absence of a dismissal judgment in claim 2 means that rule 51 and the cause of action estoppel principle about duplication of claims does not apply to claim 2. The potential for inclusion principle might apply. I return to this below.

90. Lastly in relation to claim 2 and duplication, if the claimant had not withdrawn claim 2, there would have been an issue about whether it could go ahead or whether (or to what extent) it was a duplication of claim 1. However, as claim 2 was withdrawn, that question has fallen away.

91. Impact on claim 3: the duplication question therefore arises in relation to claim 1 (but not claim 2). I need to decide the extent to which claim 3 is a duplication of claim 1. As far as claim 3 raises the same or substantially the same complaints as claim 1, it cannot proceed. It is prevented from proceeding by rule 51 and the cause of action estoppel principle.

92. As to the legal basis for the complaints in claims 1 and 3, I have found that both claims include complaints of race discrimination, sexual harassment and victimisation.

93. In terms of the factual basis for the complaints in claims 1 and 3, there is a very significant degree of duplication. The facts relied on in claims 1 and 3 both concern:

    93.1. the treatment by the head chef on 19 August 2024;
    93.2. the treatment by the head chef and a group of colleagues after the disciplinary warning was given;
    93.3. treatment in the period up to 17 April 2025 when the claimant started a period of sick leave from which she has not yet returned;
    93.4. the grievance she made to HR and the inadequate investigation.

94. On all these areas of duplication, rule 51 and the cause of action estoppel principle apply. The claimant is preventing from bringing these complaints in claim 3 because they are duplicates of the complaints she brought in claim 1. I do not have any discretion to permit those duplicated complaints to proceed.

95. I have not found that the claimant is making in claim 3 any new legal complaints which were not included in claim 1.

96. There are two factual matters which are included in claim 3 but not in claim 1. Those are the refusal of annual leave, and the claimant's grievance appeal.

97. The refusal of annual leave happened between September 2024 and April 2025. A complaint about this was included in the claimant's grievance which

was decided on 13 May 2025, before claim 1 was presented. The claimant did not refer to this factual matter in claim 2 either.

98. I have decided that although the refusal of the annual leave was not expressly mentioned in claim 1 or claim 2, it is prevented by rule 51 and the duplication principle from proceeding because it is substantially the same complaint as the complaint in claim 1. It concerns the same time period and is a complaint about treatment by the head chef and by a sous-chef who is named in both claim 1 and claim 3. It is part of the complaint about systematic bullying and discrimination, and the plan to make the claimant resign.

99. The grievance appeal was not a factual matter relied on in claim 1. It happened after the presentation of claim 1. At the hearing before me, Mr Puscasu said that the part of claim 3 which relates to the appeal should be allowed to continue.

100. The grievance appeal was relied on in claim 2, and that claim has come to an end under rule 50, but as it has not been dismissed, the claimant is not prevented by the duplication principle from bringing that claim again.

101. I have decided that the complaint about the grievance appeal is the only part of claim 3 which is not covered by the duplication principle. In other words, it is the only part of claim 3 which is not prevented from continuing for reasons of duplication. All other elements of claim 3 are a duplication of claim 1 and cannot proceed for that reason.

102. In relation to the appeal, I have to go on to decide whether the complaint about the grievance appeal is prevented from continuing by the second principle, that is because of the potential for it to have been included in an earlier claim.

Potential for inclusion in an earlier claim

103. As I have explained, the grievance appeal is the one matter relied on by the claimant in claim 3 which is not prevented from continuing because of being a duplication. I next have to decide whether the complaint about the grievance appeal should be struck out as being an abuse of process under the Henderson v Henderson principle (because of the potential for inclusion in an earlier claim).

104. In other words, I decide whether a complaint about the grievance appeal is something which could and should have been included in claim 1 (or claim 2) such that it is an abuse of process to allow it to continue in claim 3.

105. Considering this point about potential for inclusion requires me to carry out a broad, merits-based judgment which takes account of the public and private interests involved and also takes account of all the facts of the case, focusing attention on the crucial question whether, in all the circumstances, the claimant is misusing or abusing the process of the tribunal by seeking to raise an issue which could have been raised before.

106. The relevant circumstances about the grievance appeal complaint are as follows:

106.1. There is a public interest in the finality of litigation, such that a claimant should not be allowed to bring claims about things which could and should have been part of earlier claims;
106.2. The respondent should not be faced with two claims where one could and should have sufficed, and this will often of itself constitute oppression;
106.3. In this case, the grievance appeal outcome could not have been part of claim 1 when claim 1 was first made because it had not happened at that point;
106.4. The claimant could have applied for permission to amend claim 1 to include a complaint about the appeal outcome. She could have done so between 2 July 2025 (when she received the appeal outcome) and 29 July 2025 when she withdrew claim 1. However, presenting a new claim about things which post-date an existing claim is often done as an alternative to amendment. If the claimant had not withdrawn claim 1, it is very likely that the tribunal would have joined claim 1 and a new claim about the appeal outcome, and heard them together. That is a common approach and exercise of the tribunal's general case management powers in circumstances where a new claim is brought relying on updated factual matters. It is very unlikely that a tribunal would consider the presentation of a new claim relying on facts which post-date an existing claim to be an abuse of process, on the basis that an application to amend the existing claim could and should have been made instead;
106.5. the claimant made claim 3 on 25 August 2025, less than three months after the appeal outcome on 2 July 2025, and a discrimination complaint about the appeal outcome in claim 3 is therefore in time;
106.6. although there has been a judicial determination of claim 1, it was made without a hearing or evidence and it was not made on the merits;
106.7. the claimant was unwell at the time of presenting all three claims. She was being treated by her GP for mental health conditions between August 2024 and August 2025;
106.8. the claimant is not legally represented, English is not her first language and the rules about the presentation of duplicate claims are complex.

107. In those circumstances, I have decided that it is not an abuse of process for the claimant to make a complaint about the appeal outcome in claim 3. As I say, I have in mind that a respondent being faced with two claims where one could and should have sufficed will often of itself constitute oppression, even if there is no intentional or additional harassment. However, in the circumstances as they arose here, for the respondent to have to face a complaint about the appeal outcome in claim 3 does not amount to oppression.

108. The position in relation to the potential inclusion of the appeal outcome complaint in claim 2 is different. This is because I have found that the claimant did refer to the appeal outcome in claim 2. She is not prevented from bringing that claim again under the duplication principle, as there has not been any dismissal judgment or judicial determination of that claim. If and to the extent the principle in Henderson v Henderson applies to claim 2, I would reach the same decision on this point as in relation to claim 1, that it is not an abuse of

process to raise the appeal outcome in claim 3 even though it was already raised and withdrawn in claim 2. The relevant circumstances are:

108.1. there was no hearing, evidence or decision on the merits in claim 2;
108.2. a discrimination complaint about the appeal outcome in claim 3 is in time;
108.3. the claimant was unwell at the time of presenting all three claims. She was being treated by her GP for mental health conditions between August 2024 and August 2025;
108.4. the claimant is not legally represented, English is not her first language and the rules about the presentation of duplicate claims are complex.

109. If I had found that a complaint about the refusal of the annual leave request was not prevented from continuing by the duplication principle, I would have found that it was prevented from continuing by potential for inclusion in earlier claims. It related to the same time period and the same people as the matters raised in claim 1 (and claim 2). The claimant had previously raised the point in her grievance. She could and should have brought this complaint in claims 1 and 2. It would be an abuse of process to allow that complaint to continue as part of claim 3.

Next steps

110. The legal basis for the complaint about the appeal outcome will need to be clarified by the claimant. That will be done at a preliminary hearing for case management. Notice of that hearing will be sent separately.

111. The claimant has made an application to amend her claim by adding two individuals as respondents. The treatment by these individuals appears to relate to those parts of the claim which are prevented from proceeding by the duplication principle. My provisional view is that the duplication principle may also apply in relation to complaints against these two individuals. If the claimant still wants to make this application, it will be considered at the preliminary hearing.

Approved by:
Employment Judge Hawksworth

Date: 2 November 2026

Sent to the parties on: 6 November 2026

For the Tribunals Office

Recording and Transcription

Please note that if a Tribunal Hearing has been recorded you may request a transcript of the recording, for which a charge is likely to be payable in most but not all circumstances. If a transcript is produced it will not include any oral Judgment or Reasons given at the Hearing. The transcript will not be checked, approved or verified by a Judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here: