EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr N Cooper	**v**	**Colgate-Palmolive (UK) Limited**

JUDGMENT ON AN APPLICATION FOR RECONSIDERATION OF A JUDGMENT UNDER RULE 71 OF THE EMPLOYMENT TRIBUNAL RULES OF PROCEDURE 2013

1. The claimant has applied for a reconsideration of the withdrawal judgment sent to the parties on 19 August 2024 under r.71 of the Employment Tribunal Rules of Procedure 2013. It was referred to me on 30 September 2024. Having considered the application under r.72(1), I consider that there is no reasonable prospect of the judgment being varied or revoked on the grounds that it is in the interests of justice to do so. The application for a reconsideration is rejected.

2. The procedure for an application for a reconsideration is set out in rule 72 of the Rules of Procedure 2013. It is a two stage process. If the employment judge who made the judgement considers that there is no reasonable prospect of the original decision being varied or revoked the application shall be refused under rule 72(1) and the Tribunal shall inform the parties of the refusal. Otherwise the Tribunal shall send a notice to the parties setting a time limit for any response and seeking the views of the parties on whether the application can be determined without a hearing. That notice may set out the Judge's provisional views on the application. Unless the judge considers that a hearing is not necessary in the interests of justice, if the application is not rejected under rule 72(1), then the original decision shall be reconsidered by the employment judge who made the original decision.

3. The power to reconsider a judgement under rule 70 can only be used if it is necessary to do so in the interests of justice. That is apparent from the wording of the rule itself and, as it was held, by HH Judge Shanks in Ebury Partners UK Limited v Acton Davies [2023] IRLR 486 EAT a central aspect of the interests of justice is that there should be finality in litigation.

"It is therefore unusual for a litigant to be allowed a 'second bite of the cherry' and the jurisdiction to reconsider should be exercised with caution. In general, while it may be appropriate to reconsider a decision where there has been some procedural mishap such that a party has been denied a fair and proper opportunity to present his case, the jurisdiction should not be invoked to correct to suppose that error made by the ET after the parties have had a fair opportunity to present their cases on the relevant issue. This is particularly the case where the error and it is one of law which is more appropriately corrected by the EAT." (Para 24 of the judgement of HHJ Shanks).

4. The claimant applied on 27 August 2024 for a review or reconsideration of the judgement sent to the parties on 19 August 2024. That was a withdrawal judgement issued under rule 52 ET Rules of procedure Regulations 2013. The rules governing withdrawal of the claim are rules 51 and 52 which provide as follows:

"51. End of claim

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, subject to any application that the respondent may make for a costs, preparation time or wasted costs order.

52. Dismissal following withdrawal

Where a claim, or part of it, has been withdrawn under rule 51, the Tribunal shall issue a judgment dismissing it (which means that the claimant may not commence a further claim against the respondent raising the same, or substantially the same, complaint) unless—
(a) the claimant 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."

5. The effect of rule 51 is that the claim comes to an end when the claimant informs the tribunal that is withdrawn. By rule 52, the Tribunal is directed to issue a judgement dismissing the claim when it has been withdrawn, unless the claimant has expressed when withdrawing the claim that they wish to reserve the right to bring a further claim raising the same, or substantially the same complaint or the Tribunal believes it to be in the interests of justice to refrain from issuing the judgment. Mr Cooper did not express the desire to reserve the right to bring further claim when withdrawing the present one. The question for the employment judge in that situation is whether there has been an unambiguous withdrawal of the claim. If there has, then the judgement shall be issued dismissing the claim unless one of the exceptions applies.

6. The claimant's application refers back to orders made on 8, 9 and 10 January 2024 when the hearing of the claimant's claim was first postponed from 8

January to 9 January, and then from 9 January to 10 January. Eventually, on 10 January 2024, the final hearing was vacated and relisted to happen on 19 to 23 August 2024. I happened to be a member of that tribunal panel. The reasons for our decision not to the grant the claimant's application for a postponement of the final hearing on 8 January 2024 but to postpone for a short period for the claimant to obtain further information are set out in the orders and reasons sent to the parties on 16 January 2024. We granted a renewed application for postponement on 10 January 2024. The orders made on that date incorrectly date the hearing as 8 January 2024. Corrected case management orders and a certificate of correction will be sent along with this judgment. It was on 10 January and not 8 January that the rearranged dates were set.

7. Mr Cooper complains in his application that he should not have been made to attend the initial tribunal - which I take to mean on the dates 8 to 10 January 2024 - but felt he had no option but to attend. The tribunal granted his application when he had provided the further information that we considered to be lacking when considering the application on 8 January 2024. The decision not to postpone the final hearing on 8 January has not been appealed, so far as I am aware.

8. The relevant chronology prior to the claimant's withdrawn on 14 August 2024 is as follows. Mr Cooper initially applied to postpone the rearranged final hearing on grounds of an eye appointment arranged for 12 August 2024. That application was made on 18 July 2024. It was resisted by the respondent, who pointed out that the eye appointment did not conflict with the listed hearing dates of 19 to 23 August.

9. On 23 July 2024 the claimant renewed his application suggesting that the hearing be reduced to a time estimate of four days. On 23 July 2024 the respondent queried the application given that the eye appointment did not appear to conflict with the hearing dates. In the evening of 23 July 2024 Mr Cooper sent a further email explaining that, due to the stress of illness at the time of the previous tribunal, he clearly made an administrative error. Presumably he meant an administrative error about the dates. He continued in his second email of 23 July to state that he had an unspecified commitment that he was unable to move on 22 and 23 August 2024. He asked for the tribunal either to be postponed or reduced to a time estimate of three days, or for the case to be heard in his absence on the two days for which he could not attend.

10. The respondent renewed their objection to the application; they pointed out that the hearing date had been confirmed in writing by the Tribunal when the orders were sent to the parties on 16 January 2024. They also pointed out that the commitment was unspecified and no supporting evidence was provided. Regional Employment Judge Foxwell rejected the application on 29 July 2024 for the reasons given by Legal Officer Freeman in her letter of that date.

11. On 14 August 2024 Mr Cooper wrote an email to the Tribunal in which he said that he felt he had no option but to withdraw the claim. When the file was referred to me that day, taken as a whole it was not clear to me whether he was withdrawing an application he had made for a review of Judge Foxwell's order refusing the postponement application or withdrawing the claim itself. A letter asking for clarification was sent by the Tribunal on 14 August 2024. The claimant emailed on 14 August 2024 at 12:36 PM saying "in response to your letter, I am asking that the claim be withdrawn."

12. He did state in his withdrawal email that he considered that he had been in no fit state to attend the January tribunal hearing and should not have been asked to confirm his availability on that occasion. Whatever the merits of that argument, I understood that email to be an unambiguous withdrawal of the claim. The claimant's application for reconsideration does not contend otherwise. He appears now to regret his decision, but nevertheless it was clearly and unambiguously communicated and there was no reason for me to think his second email did not represent his genuine intention, given the clarification I had sought and received.

13. It is, perhaps, understandable that he is disappointed that he did not receive the withdrawal judgement until after the final hearing was due to start. He had apparently logged into the video hearing on 19 August with his witnesses expecting the hearing to take place. I cannot answer for the administration but it would not be unreasonable to presume that a claimant who has withdrawn their claim does not intend to attend the hearing. The claim comes to an end when the claimant withdraws it.

14. Although no submissions were sought from the claimant before the claim was dismissed following the withdrawal that is not necessary: Campbell v OCS Group Ltd UKEAT/0188/16. In any event, if there is - as there was in this case - an unambiguous withdrawal and no request to reserve the right to bring a subsequent claim, there is no discretion to decline to issue judgement.

15. The claimant clearly feels that he was dealt with unsympathetically when the tribunal considered and ultimately agreed to his application for postponement of the final hearing in January 2024. Nevertheless, he does not dispute that he withdrew the claim. He appears to regret that he was put in the position where he made an administrative error about the dates arranged for the hearing. However, the notice of hearing was sent to the parties on 16 January 2024 when any confusion should have been cleared up.

16. I saw nothing when considering the file on 14 August to suggest that by his second email he was withdrawing in the heat of the moment or was acting irrationally and any ambiguity in the original withdrawal email was clarified by the second. Neither of the two exceptions in rule 52 applied. The present application appears to argue that the claim should not have been dismissed because the claimant made a mistake when asked on 10 January whether he

was available for particular dates in August 2024 because he was unwell at the time. That does not explain why he did not notice subsequently what the date of the hearing was when it was confirmed in writing. That is not a situation which is likely, in my view, to mean that it is in the interests of justice to refrain from dismissing the claim when the claimant has taken the decision to withdraw it.

17. In those circumstances there are no reasonable prospects of the application for reconsideration of the withdrawal judgement succeeding and it is refused. The extent of my role at this stage is in deciding whether the reconsideration application should proceed.

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Employment Judge George

Date: …3 October 2024……..

Sent to the parties on: 16 October 2024.

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For the Tribunal Office