



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms E Donkor-Baah

**Respondent:** University Hospitals Birmingham NHS Foundation Trust  
and others

## JUDGMENT

The claimant's application dated 15 November 2020 for reconsideration of the para 1 of the judgment sent to the parties on 2 November, that the claimant's claim under Regulation 12 of the Agency Workers Regulations 2010 is dismissed on withdrawal, is refused.

## REASONS

I find that that there is no reasonable prospect of the original decision being varied or revoked because:

1. The claimant's claim under Regulation 12 of the Agency Workers Regulations 2010 was withdrawn in the following circumstances:
  - a. Having heard representations from the parties I determined that the Regulation 12 AWR claim had little reasonable prospect of success. Having given oral reasons for that decision I informed the parties that this claim would be subject to a deposit order. The claimant told me that she wanted to withdraw the claim because she feared I would make the maximum deposit order. I reassured the claimant that I would not make any deposit order without considering her means. The claimant nevertheless insisted that she wished to withdraw that claim. I asked the claimant to consider this carefully and encouraged her not to do so but for her to allow me to assess her means and make the deposit order. She would then have time to consider whether she wanted to continue with the claim or not. The claimant was adamant that was she wanted to

withdraw. In the circumstances I was therefore satisfied that the withdrawal was clear, unambiguous, and unequivocal.

- b. I am satisfied that the claimant understood that she was withdrawing her claim and what that meant. She gave me no indication that she failed to understand the implications of this step, indeed despite the fact the claimant is a litigant in person she has clearly the time to research the Employment Tribunals rule and presented me with clear legal arguments. I have no reason to question her judgment. I offered her the chance to change her mind and this was refused. Taking into account fairness and the overriding objective I am satisfied that the decision to accept the claimant's withdrawal and to dismiss that claim was correct in the circumstances taking into account the guidance in *Drysdale v Department of Transport (Maritime and Coastguard Agency)* (CA, [2014] EWCA Civ 1083).
  - c. At the time the claimant withdrew her claim she did not express a wish to reserve the right to bring a further claim and therefore it was appropriate for me to dismiss the claim under Rule 52.
2. The claimant has referred to matters relating to the hearing and my decision, although not strictly relevant to my decision on this reconsideration I will comment on these in brief terms.
- a. The claimant submitted an electronic bundle which runs to 382 pages for an in-person open preliminary hearing in addition to the bundle which had been prepared on behalf of the respondents. I consider that the size of that bundle is disproportionate for a one-day preliminary hearing. However the difficulties at this hearing were caused by the fact that the claimant did not provide a hard copy of that bundle. I can now see from the email sent to the employment tribunal that the email attaching the bundle was sent to the tribunal and the respondents at 19.04 the evening before the hearing. I was not aware of its existence until the hearing commenced and, due to the size of the electronic file, it took over an hour for it to be "delivered" to the inbox on my laptop in the course of the hearing. I did not criticise the claimant for the time it took the file to be delivered to my laptop. However my difficulties in the hearing were compounded by the fact that the claimant, when addressing me, repeatedly failed to tell me what document in her bundle she was looking at, appeared to switch between documents without telling me and did not give me time to find the relevant place in a large electronic bundle. I therefore had to interpret her on a number of occasions. I do not accept that that I severely criticised the claimant nor did I fail to have due regard to the overriding objective.
  - b. The claimant has misrepresented what I had said in the course of the hearing about Regulation 16 of the AWR and other matters including relating to my decision that her claim under Regulation 12

had little prospect of success. It is clear that she disagrees with my decision. However, it is not necessary or appropriate for me to comment on those matters because they are not relevant to the reconsideration of the judgment under Rule 52 dismissing the claim on withdrawal.

3. I am satisfied that a reconsideration of this matter would not be in the interests of justice.

Employment Judge Cookson  
07 December 2020