



# EMPLOYMENT TRIBUNALS

**Claimant:**  
Mr M Summan

**Respondent:**  
v Next Retail Limited t/a Next online

## JUDGMENT ON APPLICATION FOR RECONSIDERATION

In exercise of powers contained in Rule 72 of the Employment Tribunals Rules of Procedure 2013 (“**Rules**”), the claimant’s application of 13 January 2023 for reconsideration of the judgment given on 23 November 2022 is refused because there is no reasonable prospect of the original decision being varied or revoked

### REASONS

1. This application for reconsideration is brought long after the 14 day deadline. For that reason alone, the application might be refused. However, in circumstances where the claimant is unrepresented and did outline difficulties at the hearing in relation to dealing with this claim and the respondent when required, I consider that it is important to engage with the application and provide reasons for its refusal.
2. I conducted a closed telephone case management discussion on 23 November 2022. It was apparent at that hearing that the claimant was not clear about what his claim was intended to cover. He was, at that time at least, still employed by the respondent.
3. During the discussion, the claimant referenced bringing a claim against the respondent for personal injury – although he did not elaborate on this notion and there was no mention of personal injury in the claim we were discussing. He also accepted that the claim he was best describing would be one of constructive dismissal, albeit that he had not yet resigned from his employment. The claimant understood that his claim could not hope to transform into one for constructive dismissal because he had issued these proceedings prior to handing in his notice.

He therefore withdrew the claim at the TCMD and said that he may bring a further claim in the future depending on what he decided to do next.

4. The dismissal upon withdrawal judgment was produced on 23 November 2022 and it is this judgment that the claimant wishes to be reconsidered.

#### *Principles of Reconsideration*

5. When approaching any application, and during the course of proceedings, the tribunal must give effect to the overriding objective found at Rule 2 of the Rules. This says:

*“2 - The overriding objective of these Rules is to enable Employment Tribunals to deal with cases fairly and justly. 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.*

*A Tribunal shall seek to give effect to the overriding objective in interpreting, or exercising any power given to it by, these Rules. The parties and their representatives shall assist the Tribunal to further the overriding objective and in particular shall co-operate generally with each other and with the Tribunal.”*

6. The power to confirm, vary or revoke a judgment is found at Rule 70. That provides that a judgment can be reconsidered “*if it is in the interests of justice to do so*”. Rule 71 of the Rules requires that an application for reconsideration is made within 14 days of the written record being sent to the parties. This application for reconsideration is made in time.

7. Rule 72 (1) provides:

*“An Employment Judge shall consider any application made under rule 71. If the Judge considers that there is no reasonable prospect of the original decision being varied or revoked (including, unless there are special reasons, where substantially the same application has already been made and refused), the application shall be refused and the Tribunal shall inform the parties of the refusal. ...”*

8. Where an Employment Judge refuses an application following the application of Rule 72(1), then it is not necessary to hear the application at a hearing. Rule 72(3) provides that the application for reconsideration should be considered in the first instance, where practicable, by the same Employment Judge who made the original decision. I am the judge who made the decision in respect of which the respondent makes his application for reconsideration.

9. The interest of justice in this case should be measured as a balance between both parties; both the applicant and the respondent to a reconsideration application have interests which much be regarded against the interests of justice (*Outasight VB Limited v Brown [2014] UKEAT/0253/14*).

*Grounds and reasons of reconsideration application*

10. The claimant now says that he has taken advice to the effect that he cannot bring a personal injury claim against the respondent because his previous claim was dismissed upon withdrawal. I am not clear why this advice has been given in this way, but the claimant now wants me to reinstate this claim on the back of that advice. In his application, he accepts that his claim should have been withdrawn but says that the claim should not then have been dismissed by a judgment. It appears that the fact the claimant has brought a previous claim which has been dismissed is now affecting him getting legal representation, although I am not clear why that should be a barrier unless the claimant's complaint is really that the issue of the dismissal is affecting an assessment of his prospects such that no solicitor will take the case on risk.
11. The claimant's request does not explain why it is brought late and it does not explain why revocation of the judgment is necessary in the interests of justice.

*Decision on the reconsideration application*

12. The claimant withdrew his claim in the TCMD and the withdrawal of the claim itself was unequivocal in nature. The claim itself did not advance any legal case but was a narrative of things that have happened that the claimant was unhappy with. It was, really, a grievance and little more. The claim was missing the 'claim', which the claimant himself identified in the TCMD as being constructive dismissal – a claim that it is not legally possible to advance prior to submitting a notice of resignation. Dismissing a claim upon withdrawal does not stop a claimant from bringing another claim against an employer for something different, so long as the Tribunal does not consider that that different thing should have been argued previously. The claimant's first claim was not about personal injury and it could not be about constructive dismissal.

13. Rule 51 states:

*"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 of time, or a wasted costs order."*

14. When, in the hearing on 23 November 2022, the claimant told me that he was withdrawing his claim (on the understanding that it was premature), his claim came to an end. There was no application for costs, or any other application, from the respondent. The claim ended completely in the hearing.

15. Rule 52 states:

*“Where a claim, or part of it, has been withdrawn under Rule 51, the Tribunal shall issue a judgment dismissing if (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 a legitimate reason for doing so; or*
- (b) The Tribunal believes that to issue such a judgment would not be in the interests of justice.*

16. In my view, it was in the interests of justice to issue the judgment. The claimant’s claim did not make sense and did not advance a cause of action. The respondent had been unable to engage with the claim in any meaningful way, and could not offer any contribution at the TCMD because the claim was not understood. Consequently, when the claim was withdrawn, I did not believe that it would not be in the interests of justice to issue the dismissal judgment.
17. This leaves the exception at Rule 52(a). The claimant did mention that he may wish to pursue the respondent for personal injury, but he did not specify what sort of personal injury claim he might want to advance. The claimant was more sure about bringing a claim for constructive dismissal, and said that he would hand in his notice to bring such a claim. That claim plainly cannot be brought under this claim number because this claim was issued prior to the resignation (see eg Capek v Lincolnshire County Council [2000] IRLR 590). In those circumstances, I do not see how Rule 52(a) could help the claimant and I could discern no legitimate reason for the claimant to advance any further claim under this claim number.
18. The claimant said in the hearing that he would bring a new claim in the event that he resigned from his position, and that claim would be for constructive dismissal. The claimant may wish to include a claim for personal injury or injury to feelings as part of the remedy in that claim – it is a matter for him. Such a claim would be different to that put previously, where no particulars of constructive dismissal or personal injury arose. In the hearing, the respondent accepted that the claimant might legitimately bring a new claim for constructive dismissal if he were to resign. Obviously, such a claim would be contested.
19. In conclusion, the claimant’s unequivocal withdrawal of this claim, together with the circumstances where the claim was premature and could not be understood, meant that the claim was dismissed upon withdrawal. I do not consider that it is in the interests of justice to reconsider that judgment now. The claimant asked for his claim to be withdrawn and I confirmed that it would also be dismissed following the hearing. The claimant did not object to that course of action. I cannot discern any reasonable prospect that the original decision being varied or revoked. It would not be fair for the respondent to be prejudiced by reconsideration of the judgment because the claimant has now, months later, sought the legal advice he could have sought prior to the hearing.

**Employment Judge Fredericks**

21 January 2023

Sent to the parties on:

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For the Tribunal Office:

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