



EMPLOYMENT TRIBUNALS

Claimant: Mr T Bullock & others (see schedule)

Respondent: Do & Co Event Airline Catering Limited

REASONS

1. On the Respondent's application, these reasons are provided for the Judgment of 28 November 2023.

Background

2. At a preliminary hearing on 5 July 2023, the Respondent contended there were duplicate claims, with some Claimants seeking to bring the same claim in more than one set of proceedings.
3. The various claims before the Tribunal arising from the large scale dismissal exercise carried out by the Respondent include two large multiples (Rai and Patel). It was said that some of the Claimant's names had been included in both, with the result they were pursuing the same claim more than once. Plainly, if this were so, it would be an abuse of process.
4. I made an order requiring any Claimant who was pursuing a duplicate claim to withdraw the same by 11 August 2023, failing which I would consider strike out.
5. At the next preliminary hearing, which took place on 12 July 2023, the Respondent identified what it said were further duplicate claims. I made the same order with respect to the claims before me on that day, as I had on 5 July 2023.
6. Subsequently, correspondence was received from various Claimants withdrawing their claims (either because they were duplicates or otherwise). Such claims were then dismissed.
7. On 25 October 2023, the Respondent emailed the Tribunal saying that despite recent correspondence passing between the parties, a number of duplicate claims had still not been withdrawn. The Tribunal wrote to the solicitors (OH Parsons) representing the relevant Claimants requiring their response.

8. By a letter of 9 November 2023, OH Parsons provided a schedule with the names and case numbers of those amongst their clients, who it was believed had duplicate claims as a result of being party to both the Rai and Patel multiples, with an application to withdraw. The letter did, however, request that dismissal judgments not be made.
9. Whilst there is an overlap between the claims pursued in the two large multiples, there is also difference. Whilst both sets pursue unfair dismissal, only the Rai Claimants have holiday pay claims. The Claimants withdrawing their claims in the Rai multiple indicated an intention to pursue any holiday monies owed in the County Court.
10. Shortly thereafter, a letter was written to the parties on my instruction, saying:

Is there any reason why judgement cannot be issued in these terms:

The claims of the following Claimants [...] are all dismissed upon withdrawal, save for their holiday pay claims, which although withdrawn are not dismissed because the Claimants have indicated they will pursue the same in the County Court.
11. In a letter of 13 November 2023, the Respondent contended the withdrawing Claimants' claims should be dismissed entirely. It said that if these claims were withdrawn, the affected Claimants would not currently be pursuing holiday pay claims in either the Tribunal or the County Court.
12. On 16 November 2023, OH Parsons wrote to the Tribunal saying they agreed with the wording I had proposed for a dismissal judgment. They disagreed with the Respondent's position. Their letter said they wished to await the outcome of the holiday pay claims (be that judgment or settlement) of the non-duplicate Claimants in the Rai multiple before deciding whether to commence elsewhere. This approach was intended to avoid incurring costs unnecessarily.
13. I gave judgment on 28 November 2023 in the terms I had previously proposed, which was promulgated on 30 November 2023.

Law

14. Rule 52 provides:

Dismissal following withdrawal

52. 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.

Conclusion

15. The Claimants expressed at the time of withdrawing their claims a wish to reserve the right to bring holiday pay claims. They gave a legitimate reason for this, namely their wish not to be barred from pursuing claims for unpaid annual leave in the County Court. This falls within rule 52(a).
16. I was satisfied that a judgment dismissing those claims would not be in the interests of justice, as it might serve to bar the pursuit of holiday monies in Civil Court proceedings. The withdrawals had not involved a belief by the Claimants that their substantive holiday pay claims were without merit or should be abandoned entirely. They had been presented along with duplicate Tribunal claims, made in haste following a large scale dismissal exercise conducted by the Respondent. In such circumstances, Solicitors will be anxious about the risk of failing to present claims in time. With long lists of prospective Claimants and incomplete information provided by their union, there may be some duplication. Contemporaneously, the risk of bringing the same claim twice is likely to be seen as the lesser of two evils. It will almost always be easier to withdraw a duplicate at a later stage than obtain an extension of time for presenting a new one after the primary limitation period has expired.
17. Awaiting the outcome of holiday pay claims for the non-duplicate Claimants in Rai multiple is a proportionate approach. If those claims succeed, the withdrawing Claimants can then commence proceedings relying upon the findings already made. The Respondent may in such circumstances have an incentive to settle. Equally, however, if the holiday pay claims currently before the Tribunal fail, then the withdrawing Claimants may decide not to go to the County Court after all. The interests of justice are not served by barring holiday pay claims entirely (or risking that) on the part of those Claimants whose names ended up in both the large multiples, simply because they have withdrawn their 'Rai' claims.

EJ Maxwell

Date: 28 December 2023

Sent to the parties on:

.....3 January 2024.

For the Tribunal Office:

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Case Number: 3306714/2021 & others (see schedule)

Mr	Subash	Dharmarajan	3306704/2021
Mr	Inderpal	Dharmi	3306694/2021
Mrs	Anjna	Dhaul	3306698/2021
Mr	Caetano	Franco	3306717/2021
Mrs	Kulwinder	Gill	3306695/2021
Mrs	Neelam	Khullar	3306699/2021
Mr	Husan	Lal	3306734/2021
Mrs	Violet	Lopez	3306723/2021
Mr	Tariq	Mehmood	3306688/2021
Mrs	Manchuwani	Mohanadas	3306726/2021
Mrs	Sukhwinder	Monjal	3306727/2021
Mr	Anilkumar	Mruthyunjayan	3306728/2021
Mr	Hasmukh	Patel	3306735/2021
Mr	Emmanuel	Perrin	3306705/2021
Mrs	Neelam	Saroyia	3306700/2021
Mr	Paramjit	Sidhu	3306692/2021
Mr	Rashpal	Singh	3306711/2021
Mrs	Jasbinder	Suri	3306708/2021