When does the withdrawal of a claim take effect?

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The sudden withdrawal of a claim can often catch employment advisers unawares so it's important to stay familiar with the issues that can arise here.

I'll unpack the topic in three stages. First, let's recap on the procedural mechanism for withdrawal. Second, let's consider some practical difficulties and third, in light of that, I'll give my view on the exact timing of withdrawal before exploring the wider implications for the administration of justice.

I. What the rules say

The Employment Tribunal Procedure Rules 2024 ('**the 2024 Rules**'), like their 2013 predecessor, specify the consequences once a party withdraws a claim or part of it. Rule 50 of the 2024 Rules is entitled '***End of claim***': ominously or fortuitously, depending on who's asking. It provides that where a claimant informs the Tribunal that all or part of their claim is withdrawn, the claim (or part of it) '*comes to an end*' other than for the purposes of any costs application by the other party or parties. Rule 51 requires the Tribunal to issue a judgment dismissing a withdrawn claim unless one of two conditions are satisfied: (a) the withdrawer has expressed a wish at the time of withdrawal to reserve their right to bring a further claim against the respondent/s raising the same or substantially the same complaint and the Tribunal is satisfied there would be a legitimate reason for doing so; or (b) judgment dismissing the withdrawn claim/s would not be in the '*interests of justice*'.

Employers who dispute the application of one or other of the exceptions in rule 51 may apply to the Tribunal to request that a withdrawn claim is dismissed (although the rules require the Tribunal to make a decision either way in any event).

If either of the rule 51 exceptions are met, the Tribunal must issue a judgment recording that the claim is withdrawn but not dismissed. Withdrawal brings a claim to an end but because it does not involve a formal judicial decision, the same or similar complaint may be re-litigated

(*Dattani v Trio Supermarkets Ltd* [1998] IRLR 240, CA at p883E-F, *per* Mummery LJ). By contrast, a judgment dismissing a withdrawn claim will usually make re-litigation impossible: dismissal is a formal, final judicial decision (see *Barber v Staffordshire CC* [1996] IRLR 209, at p386D-E *per* Mummery J, as he was). Attempts to re-litigate a dismissed claim will usually be struck out for abuse of process. Thus the potentially serious consequences of withdrawal tend to focus minds on all sides.

II. Practical difficulties

Uncertainty over whether a party intends to withdraw a claim (or part of it) is common in practice, particularly where they are not professionally represented. Where a potential withdrawal notice is provided in writing, you'd hope that might narrow the scope for dispute. Equivocal language ('*I can't continue with all this', 'I wish to bring this matter to a close*…') may be open to interpretation, prompting further correspondence.

The acid test is whether the withdrawal is '*clear, unequivocal and unambiguous*' (see *Segor v Goodrich Actuation Systems* Ltd UKEAT/0145/11 (10 February 2012, unreported) at §11 *per* Langstaff P, as he was). If it is, the withdrawal binds the withdrawer, the claim ends and it cannot be revived (see *Khan v Heywood & Middleton Primary Care Trust* [2007] ICR 24 at §§70, 75 & 79, *per* Wall LJ). The Tribunal lacks jurisdiction to set aside a *Segor*-compliant withdrawal. If the purported withdrawal isn't *Segor*-compliant, rules 50-51 won't bite and a Tribunal judgment based on it would be vulnerable on appeal to the EAT.

There is a mild caveat: rule 7(2) provides that where a dismissal judgment is issued by an authorised legal officer, any party may apply within 14 days for the decision to be considered afresh by an Employment Judge. Note, however, this review process does not enable the Judge to set aside a withdrawal but merely to set aside the dismissal of a withdrawn claim. The same limits apply to an application for the Tribunal to reconsider its judgment under rules 68-71: the Tribunal cannot use reconsideration to set aside a valid withdrawal.

Matters can get complicated if the Tribunal's interpretation of a claimant's position on withdrawal differs from the claimant's and is disputed after judgment. While some judges might list a short preliminary hearing, if necessary, to give the claimant an opportunity to clarify their position before issuing a judgment, that is far from guaranteed and may not be possible depending on the sequence of events.

Where an unrepresented party seeks to withdraw a claim orally at a hearing, the Tribunal may seek to verify that the intended withdrawal meets the requirements in *Segor* and that the

claimant fully understands the consequences mentioned above. This happened in a case where I represented an employer several years ago, when a claimant withdrew multiple claims at the end of a 10-day trial, just before their closing submissions. The Tribunal was initially taken aback but ultimately withdrawal took effect and the claim was dismissed.

III. The timing of a valid withdrawal

Back to our main question: the exact moment that withdrawal occurs remains somewhat fuzzy under the rules. It will usually be clear at some point in either the written correspondence or verbal dialogue that the withdrawer has informed the Tribunal that their claim is withdrawn. That is the moment the claim ends. Such was the express position in the 2004 Rules and, *in substance*, that doesn't appear to have been changed subsequently in their 2013 or 2024 iterations. The Tribunal's judgment recording that a claim has been withdrawn is simply confirmation of a non-judicial act that has already happened as soon as the Tribunal is unequivocally informed of the withdrawal.

Strictly speaking, the 2024 Rules (like their predecessor) do not require a Tribunal to conduct any enquiries at all once a party informs it of a withdrawal. The case law in this area has sought to streamline matters, with Judges generally reluctant to interfere with withdrawer autonomy except where the circumstances require a greater degree of care.

In *Drysdale v Department of Transport* [2014] IRLR 892, the claimant's lay representative withdrew the claim in frustration at the prospect of a lengthy adjournment. The Court of Appeal found no evidence that the withdrawal was involuntary or due to a loss of composure. It held that the Tribunal enjoys a wide margin of discretion in this highly fact-sensitive area and is under no obligations to seek confirmation from a litigant that they intend to withdraw the claim, except:

(i) where there is a clear dispute or failure of communication between a litigant and their representative; or

(ii) where the representative's decision to withdraw is inexplicable or irrational (§58).

Other than in exceptional cases, there is no obligation on the Tribunal to enquire into the *reasons* for the withdrawal (*Drysdale* §61).

To similar effect, in *Campbell v OCS Group* UKEAT/0188/16, Simler P, as she was, emphasised that Tribunals are under no obligation to make enquiries as to the reasons or circumstances for a clear notice of withdrawal. Where a party is not professionally

represented, the Tribunal *may* make enquiries to check that a party intends to withdraw, including if it has reasonable concerns in the circumstances (§§19-20).

A Tribunal whose case management enquiries go too far and have the effect of unreasonably boxing a claimant into withdrawal may fall into error (see, for example, *Anwar v Boots Management Services Ltd* [2025] EAT 9 at §§41-42, *per* Keith J). In *Anwar*, in rather unique circumstances, the Tribunal had wrongly required an unrepresented claimant to choose one of her two dismissal claims and then, without prior notice, dismissed the claim that she purportedly withdrew. In such cases, it would appear that there has not in fact been a valid withdrawal.

IV. Tough luck for hard cases

A light-touch policy discouraging detailed enquiries is likely to be here to stay, given the overriding objective in rule 3 to keep issues proportionate and the unprecedented demands on the Tribunal system with listings delayed into the years ahead. While such a policy suits employers, it isn't hard to imagine scenarios where rules 50-51, coupled with current Tribunal time limits, could result in unjust outcomes.

What happens to the claimant who, unbeknown to the Tribunal at the time, is under improper duress from the respondent's representative and withdraws their unfair dismissal claim? Or the mentally disabled claimant who withdraws their whistleblowing claim at a time when, unbeknown to the Tribunal, their decision-making was impaired by powerful pain-relief medication? Much as you'd hope the Tribunal would be alerted to these concerns, let's suppose that the Tribunal's reasonable enquiries did not discover what was really going on.

Assuming that the exceptions in rule 51 don't apply, these claimants' claims would be dismissed upon withdrawal and cannot be revived. The best that the 2024 Rules can offer is reconsideration of judgment dismissing the withdrawn claims, under rules 68-70. Even if reconsideration succeeds, the Tribunal cannot undo withdrawal. These claimants *could* file fresh ET1s seeking an extension of time but that is unlikely to be granted. They could issue claims in the County Court, a costs bearing jurisdiction heavier with formalities and not renowned for its expedition. They could attack the judgment in the EAT on the basis that the Tribunal should have made further or different enquiries, but *Drysdale* and *Campbell* suggest such appeals would be uphill.

V. Conclusion

While you wouldn't know it from reading the 2024 Rules, in certain circumstances particularly with parties who are not professionally represented, a careful balance may need to be struck that respects withdrawer autonomy while making appropriate and fair enquiries based on the available information in order to avoid the risk of rules 50-51 resulting in unjust outcomes and to limit costly appeals to the EAT.

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