



EMPLOYMENT TRIBUNALS

Claimants

Respondents

Mr D Burns and others

v Balfour Beatty Group Employment Limited

Heard at: Watford

On: 23 February 2017

Before: Employment Judge Southam

PRELIMINARY HEARING

Appearances

For the Claimants: Mr Simon Cheetham, Counsel

For the Respondents: Mr Daniel Dyal, Counsel

JUDGMENT

1. BY CONSENT, the claimants' applications of 30 January 2017 and 6 February 2017 for permission in principle to amend the claims so as to include complaints about holiday pay struck out in other proceedings having been withdrawn, the applications are dismissed.
2. The Tribunal declares that the claimants whose complaints about holiday pay were struck out for breach of the Unless Orders, in multiple 2205 made on 18 July 2013 and sent to the parties on 25 July 2013, and in multiple 2600 made on 18 July 2013 and sent to the parties on 6 August 2013, are estopped from making, in these proceedings or otherwise, any claim for unlawful deductions from holiday pay which was the subject of a claim made to the Employment Tribunal on or before 1 November 2013.

REASONS

1. On 30 January 2017, the claimants made an application in principle for them to be permitted to amend their claims so as to bring back before the tribunal in these proceedings, claims for unpaid holiday pay the subject of earlier claims (in another multiple group, either multiple 2205 or 2600) which have been struck out.
2. I agreed, at very short notice it must be said, to consider the application at a hearing in different proceedings I considered today. The parties were so informed and all came prepared to argue the point.

3. What transpired was that, after some discussion of the application, Mr Cheetham, on instructions, withdrew it and I was asked to dismiss the application. I did so. The parties consented to the terms of an order dismissing the application, and they had attempted to agree a rider to the dismissal judgment but they could not agree. I was nevertheless asked to make a declaration about the matter, and I did so. All of that is in the Judgment above.
4. The withdrawal of the application is relevant to these proceedings because it was expressly made in relation to these proceedings as well as others. After the withdrawal of the application, Mr Dyal requested that I issue a judgment in terms identical to those in other proceedings, dismissing the application. I agreed to that course of action.
5. My reasons for part 2 of the judgment above are that there is clearly no claim currently before the tribunal in respect of the periods of claim covered by the now-dismissed multiple claims 2205 and 2600, all submitted before 2 November 2013. Insofar as the schedules in these proceedings purport to include claims in respect of those periods, they are erroneous, because there is no application before the tribunal to amend the claims. More significantly, the tribunal has no jurisdiction to entertain such claims because to do so breaches the res judicata principle.

Employment Judge Southam

Date: 28 February 2017

Sent to the parties on:

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For the Tribunal Office