



**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

Appeal No. GIA/1980/2012

THE TRIBUNAL PROCEDURE (UPPER TRIBUNAL) RULES 2008

Name: Mr Orde Levinson
Tribunal: First-tier Tribunal (General Regulatory Chamber) (Information Rights)
Tribunal Case No: EA/2011/0198
Tribunal Venue: N/A
Decision Date: 1 December 2011

**NOTICE OF DETERMINATION OF
APPLICATION FOR PERMISSION TO APPEAL**

I refuse permission to appeal.

This determination is made under section 11 of the Tribunals, Courts and Enforcement Act 2007 and rules 21 and 22 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

REASONS

Introduction

1. This matter concerns Mr Levinson's renewed application for permission to appeal, permission having been refused by the First-tier Tribunal ("FTT").
2. As this is a renewal of the application for permission to appeal, I must consider the application afresh. I am accordingly not concerned with the question of whether there was an error of law in the FTT's decision to refuse permission to appeal.

The background to this case

3. Mr Levinson appealed to the FTT in respect of the Information Commissioner's Decision Notice FS50373036 dated 22 August 2011.
4. On 18 November 2011 he withdrew his appeal by e mail, in the following terms: "*There has been no leeway from the tribunal as to dates set for end of January which is difficult for me and given the approach of the Tribunal Judge I see no point in pursuing [sic] this appeal. So I withdraw it but reserve my rights in full...*". Subsequent e mails referred to the withdrawal having been conditional. On 27 November Mr Levinson wrote: "*...this is withdrawn only subject to a ruling on who was the appellant*". The withdrawal was formally accepted by the FTT on 28 November 2011 and on 30 November the Information Rights office informed Mr Levinson that there would be no further ruling in respect of the name of the Appellant.
5. Mr Levinson then applied on 1 December to have his appeal reinstated. The application for reinstatement was refused by the FTT Judge on the same day. Mr Levinson now seeks permission to appeal against the refusal of reinstatement.

6. I note that the application for permission to appeal to the FTT was made out of time (dated 7 January 2012) but that the FTT Judge proceeded to deal with the application on its merits and refused permission to appeal on 14 May 2012. He referred in his reasons to the fact that the application was made out of time. I have therefore proceeded on the basis that the Judge implicitly gave Mr Levinson permission to apply for permission to appeal out of time because he appears to have accepted jurisdiction to consider the merits of the application. In the circumstances I take the view that the application for permission to appeal out of time has already been determined in Mr Levinson's favour and is not now a live issue before me.

The Grounds of Appeal

7. The grounds submitted for seeking permission to appeal on the form UT1, and the authorities referred to, are overwhelmingly concerned with whether the FTT Judge erred in law in refusing permission to appeal on 14 May 2012. As I have explained above, that is not the issue I am required to decide at this point in the proceedings. I have considered the question of whether it is arguable that the FTT Judge erred in law in refusing the application for reinstatement of the withdrawn appeal.
8. The grounds for seeking reinstatement as put to the FTT Judge on 1 December 2011 were in summary that (i) the appellant was in fact the company J Bol Ltd and not Mr Levinson; (ii) that accordingly Mr Levinson had no formal authority to withdraw the appeal; (iii) that the withdrawal of the appeal had been given on condition that there would be clarification of who was the Appellant; (iv) that a further ruling had not been given; and so (v) the purported withdrawal was a nullity and should be regarded as ineffective.
9. As mentioned above, Mr Levinson has advanced further grounds in support of his application for permission to appeal and, in particular, his argument that the decision to refuse permission to appeal contained an error of law. I have not considered all these arguments for the reasons given above. I do now consider the following additional arguments in respect of the decision to refuse reinstatement: (vi) that Judge Farrer is biased and refuses every application Mr Levinson makes; (vii) that the decision breached the overriding objective in rule 2 of the FTT rules; (viii) that the decision contained inadequate reasons and in particular failed to deal with all the grounds for reinstatement put forward; (ix) that the withdrawal was coerced under pressure from Judge Farrer by his refusal to change the hearing dates and under threat of costs orders if the appeal were not withdrawn or a determination on the papers agreed to and so the withdrawal was not freely made; (x) that as the refusal of reinstatement was given on the same day that it was applied for, which is statistically unusual in the FTT, this indicates that insufficient consideration was given to it by the Judge.

The FTT Decision to Refuse Reinstatement

10. Judge David Farrer QC gave written reasons for refusing to reinstate the FTT appeal dated 1 December 2011. He concluded that Mr Levinson had been correctly treated as the Appellant in the FTT and that there was accordingly no question of the withdrawal having been made invalidly by Mr Levinson on behalf of J Bol Ltd. Judge Farrer then concluded that he was rejecting the application for reinstatement because it "served no purpose". This was on the basis that he understood the sole reason for seeking reinstatement was the wish to obtain a ruling that J Bol Ltd should have been treated as the Appellant in the FTT and that such a ruling would not be made.

Conclusion

11. Section 57 (1) of the Freedom of Information Act 2000 provides that a “complainant” or the public authority concerned may appeal against the Information Commissioner’s Decision Notice. The term “complainant” is derived from section 50 (1) of the Act which provides that:

(1) Any person (in this section referred to as “the complainant”) may apply to the Commissioner for a decision whether, in any specified respect, a request for information made by the complainant to a public authority has been dealt with in accordance with the requirements of Part I.

12. Thus it can be seen that the original requester of information to the public authority is the complainant, and that person has a right to complain to the Information Commissioner and that same person has the right of appeal to the FTT. The FTT Rules allow the Tribunal to direct the substitution of one Appellant for another under rule 9, but there had been no such ruling in this case.

13. It is clear from the Information Commissioner’s Decision Notice included in the papers now before me [pages 101 to 116 of the Upper Tribunal bundle] that Mr Levinson was the original requester of information from the public authority on 19 December 2010 and that he was also the complainant to the Information Commissioner on 4 February 2011. It follows that, pursuant to the statutory provisions, he was appropriately treated as the Appellant before the FTT. Accordingly, I find that Mr Levinson alone had the authority to withdraw his own appeal and I find that the withdrawal was not invalidly made and/or a nullity by reason of having been made by the wrong person or without authority. There is no arguable error of law on this point.

14. The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 provide a framework for withdrawal and reinstatement at rule 17, as follows:

Withdrawal

17.—(1) Subject to paragraph (2), and, in the case of a withdrawal of a reference from an ethical standards officer, to the provisions of regulation 5 of the Case Tribunals (England) Regulations 2008(b), a party may give notice of the withdrawal of its case, or any part of it—

(a) at any time before a hearing to consider the disposal of the proceedings (or, if the Tribunal disposes of the proceedings without a hearing, before that disposal), by sending or delivering to the Tribunal a written notice of withdrawal; or

(b) orally at a hearing.

(2) Notice of withdrawal will not take effect unless the Tribunal consents to the withdrawal.

(3) A party who has withdrawn their case may apply to the Tribunal for the case to be reinstated.

(4) An application under paragraph (3) must be made in writing and be received by the Tribunal within 28 days after—

(a) the date on which the Tribunal received the notice under paragraph (1)(a); or

(b) the date of the hearing at which the case was withdrawn orally under paragraph (1)(b).

(5) The Tribunal must notify each party in writing of a withdrawal under this rule.

15. There is no provision in the rule which would allow a party to withdraw its case conditionally or to require the Tribunal to undertake further steps before a withdrawal could be deemed effective. I therefore find that Mr Levinson’s attempt to impose a condition on the Tribunal with respect to the withdrawal of his case (after the

withdrawal had been notified under rule 17 (1) (a) but before it had been formally accepted under rule 17 (2)) was ineffective. I conclude that the withdrawal was validly made and that there is no arguable error of law on this point.

16. There are no express criteria for ordering reinstatement of a withdrawn appeal under rule 17 (3). I conclude that it is a matter for the Judge's discretion, subject to the requirement to give effect to the overriding objective of dealing with cases fairly and justly, contained in rule 2. I can see no error of law in the reasons given by Judge Farrer for refusing the reinstatement. His ruling deals adequately with the grounds advanced for reinstatement and discloses no arguable error of law. No criticism can be made of his alacrity, especially in circumstances where the decision dealt with all the relevant points. There is no evidence of the alleged bias before me, and this ground relies upon Mr Levinson's unsupported assertion. I do not therefore consider this to be arguable.
17. There remains the question of whether the withdrawal was coerced from Mr Levinson in some way. I note that Mr Levinson has represented himself in these proceedings but I also that he is a relatively frequent litigant and that he has experience of the Tribunal and Court system. I consider him to be a robust individual and not easily intimidated. I note that he did not raise the question of coercion in his initial grounds for seeking reinstatement [page 74 of the Upper Tribunal papers] but referred only to the necessity of a ruling on the identity of the Appellant. It seems likely that he would have mentioned coercion at an early rather than a later stage if it had been a live issue. In all the circumstances I do not consider that there is an arguable case that he was coerced into withdrawing the appeal and I refuse permission on this ground also.
18. The application for permission to appeal is refused for all the above reasons.

(Signed on the original)

**Alison McKenna
Judge of the Upper Tribunal**

(Dated)

29 August 2012