EMPLOYMENT TRIBUNALS

Claimant: Mr S Tanner

Respondent: Pgi Nonwovens Ltd Company Registration 03148437

HELD AT: Manchester **ON:** 15 January 2019

BEFORE: Employment Judge Porter

REPRESENTATION:

Claimant: Mr F Farhat, solicitor

Respondent: Ms H Gardiner of counsel

JUDGMENT

1. The tribunal has no jurisdiction to hear the claim as it has been validly settled pursuant to section 203 Employment Rights Act 1996. The claim is hereby dismissed.

2. The claimant is ordered to pay to the respondent within 28 days costs in the agreed sum of £4,500.00

REASONS

1. Written reasons are provided pursuant to the oral request of both representatives at the conclusion of the hearing.

Issues to be determined

2. This preliminary hearing had been called to consider the respondent's application that the claim of unfair dismissal be struck out on the grounds that:

   2.1. The tribunal has no jurisdiction to hear the claim, which has been validly settled pursuant to section 203 Employment Rights Act 1996 ("ERA"); and/or

   2.2. The tribunal has no jurisdiction to hear the claim because it was presented out of time and the claimant cannot show cause for time to be extended; and/or

   2.3. The claim has no reasonable prospect of success

3. In the alternative, the respondent sought a deposit order, on the grounds that the claim has little reasonable prospect of success.

4. If successful in its application, the respondent sought an order to recover its legal costs in defending the claim.

Submissions

5. Solicitor for the claimant relied upon written submissions, which the tribunal has considered with care but does not repeat here. In addition, solicitor for the claimant made a number of detailed oral submissions which the tribunal has considered with care but does not rehearse in full here. In essence it was asserted that:-

   5.1. the agreement of 9 June 2017 should be set aside by reason of duress because:

      5.1.1. the claimant was given a tight deadline to sign a settlement agreement by Friday 9 June 2017 which was barely one working week – this was referred to as the "consultation period";

      5.1.2. There was a threat to an economic interest if that deadline had not been met on 6 June 2017 – i.e. that Mr. Tanner would be paid the minimum statutory payment for redundancy instead of the slightly increased payment package proposed by the settlement agreement (increased by £5,507.55). This is manifested in the word *"Provided that this can be agreed";*

      5.1.3. Within that context, Mr. Tanner focused on avoiding the minimum statutory payment given his family circumstances – one of his children was set to enrol at university in his first year of study in September 2017 and Mr. Tanner was responsible for the fees following an earlier acrimonious divorce;

5.1.4. As a result of that imposed deadline and several changes and amendments made to the settlement agreement, the final draft of the settlement agreement was only forwarded to Mr. Tanner on Friday 9 June 2017 after business hours. It was only at that point on the day of the deadline after business hours that Mr. Tanner had the opportunity of full advice on the final text of the agreement and its full consequences;

5.1.5. The deadline was conceived with no consideration of the fact that Mr. Tanner had to follow-up with handover work from clients during the course of the week and this included emails, telephone calls, calls from those involved with the Berlin meeting which was cancelled as well as a handover meeting after 9 June 2017 which illustrates the volume of work needed;

5.1.6. Mr. Tanner first received a copy of the settlement agreement on 2nd June at 15.19pm which was late on a Friday. This meant that he could not begin to seek legal advice under Monday 5 June 2017;

5.1.7. Mr. Tanner first saw a lawyer on 6th June 2017 but could not receive advice as the period from 6 June up to June 2017 was spent on correcting multiple errors and omissions in relation to the settlement agreement. The final draft was only emailed, as stated, on the day of the imposed deadline. Receipt at such a late hour, coupled by the threat to lose the increased package, meant that Mr. Tanner signed the agreement;

5.1.8. The fact that the claimant had received legal advice does not mean that he was not subject to unreasonable duress;

5.1.9. When all the above factors are taken into consideration, such a situation was caused, in the first place, by the respondent's late production of a final draft and the imposition of a deadline with a threat to an economic interest. The combination of these factors, it is said, amounts to duress. This was not a "gun to the head" but the respondent's actions, when viewed overall, meant that the claimant was faced with a tight deadline and the respondent did not give the claimant enough time to take proper legal advice and to address his options;

5.1.10. The signing of the agreement by the claimant was not a voluntary act.

5.2. In the alternative, the agreement should be set aside on the grounds that the respondent made a misrepresentation, namely that the claimant's

post was redundant, when later events indicated that this was not the case;

5.3. It is accepted that the claimant's claims were presented out of time but, on the basis of the above background, it is said that it was not reasonably practicable for him to have presented them within time given the exceptional circumstances. In particular:

5.3.1. it was only in February 2018 that Mr. Tanner learnt through a rumour that the Respondent may have recruited another person to do his same role and he started to make enquiries in relation to the same;

5.3.2. Mr. Tanner chose to ignore this rumour but, in May 2018, the rumour was confirmed by a high profile employee at the Respondent's company. It was then that Mr. Tanner decided to write to the Respondent in June 2018 and he made a first attempt at making a claim in July 2018.

5.3.3. In that context, Mr. Tanner made his claim as soon as he could. The Tribunal is invited to extend time on that basis.

5.4. The application for costs was opposed. The claimant has pursued this claim reasonably. He tried to pursue his claim in June 2018 but the respondent's response to his initial enquiry fuelled the situation and the claimant was left with no choice but to pursue the claim. He did so in a reasonable manner. Each party should pay its own costs.

6. Counsel for the respondent relied upon written submissions which the tribunal has considered with care but does not repeat here. In addition, counsel for the respondent made a number of detailed submissions which the tribunal has considered with care but does not rehearse in full here. In essence it was asserted that:-

6.1. There are no grounds upon which the settlement agreement should be set aside.

6.2. No illegitimate pressure was applied, either in relation to the time available for accepting the offer, or in respect of the amount of money offered.

6.3. At all material times the claimant had 2 options:

6.3.1. Accept pay in lieu of notice and a statutory redundancy payment, but retain the right to pursue any and all claims against his employer; or

6.3.2. Accept the terms of the settlement agreement after taking advice, take the enhanced redundancy payment but sacrifice his right to pursue his employer in court or tribunal.

6.4. He chose the latter, and entered into effective negotiations which led to concessions by the respondent. There is nothing illegitimate about presenting an employee with such a choice. At no point was the claimant held to ransom, and at all material times he had access to an effective legal remedy for the claim now pursued.

6.5. Contrary to the claimant's assertion about time pressure inducing him to enter into the agreement without adequate legal advice:

6.5.1. Neither the claimant nor his legal advisor sought more time to consider the terms of the settlement agreement. On the contrary, they engaged in negotiations which resulted in the signed settlement agreement differing from the draft first offered;

6.5.2. The claimant had access to legal advice as early as 30 May 2017 and in relation to the settlement agreement from 1 June 2017; and

6.5.3. The advice was more than superficial, and included discussion surrounding the redundancy situation and financial terms.

6.6. There was no misrepresentation as to whether his role was redundant. As explained to the claimant the Respondent was "undertaking a headcount reduction due to an overall reduction in work… The proposal is that the existing team within the organisation can absorb the clients you work with to allow for a cost reduction in your role." This satisfies the definition of redundancy in s.139 ERA.

6.7. Whilst it is denied that the recruitment of Anna Wallis into the healthcare team is in any way relevant, on the claimant's own case that happened 9 months after he left the business. Subsequent recruitment after such a period does not render the assertion that a role is redundant in June 2017 false;

6.8. In any event, it is denied that the claimant was induced to sign the settlement agreement on the basis of any representation made by the respondent. He took advice on the redundancy situation Such advice breaks the chain of causation, and the claimant must look to his legal adviser for any claim arising therefrom.

6.9. Even if the claimant establishes that the agreement is voidable, he is in any event barred from bringing a claim for unfair dismissal: the claim is grossly out of time.

6.10. The claimant had until 8 September 2017 to issue his claim. He failed to do so. It was reasonably practicable for the claimant to issue his claim within time: the alleged time pressure had evaporated and he could have taken legal advice on whether there was a genuine redundancy situation. He did not.

6.11. Even if it is accepted that he did not have the relevant knowledge until he was aware of the recruitment of Ms. Wallis, it is clear that he was in possession of all the relevant facts by no later than 7 June 2018 and was in a position to assert what he believed to be his legal rights by that date, and explicitly again on 28 June and 16 July

6.12. The claimant has adduced no evidence whatsoever that it was not reasonably practicably for the claim to be presented in time, or that it was nevertheless presented within a reasonable time, so as to allow the tribunal to exercise its discretion to extend time.

6.13. The respondent sought to recover its legal costs in defending this claim under Rule 76(1) on the grounds that:

6.13.1. The claimant acted vexatiously and/or unreasonably in bringing these proceedings; and/or

6.13.2. The claim has no reasonable prospect of success.

6.14. There has been no genuine attempt by the claimant to support his assertions relating to duress and misrepresentation. These are bare assertions unsupported by satisfactory evidence;

6.15. The claimant has been legally represented throughout;

6.16. The respondent issued a costs warning. The claimant was fully aware that the respondent would pursue an order for costs if the claimant pursued this claim

Evidence

7. The claimant gave evidence. In giving his evidence the claimant described the advice given to him by his solicitor, who signed the settlement agreement. Mr Farhat confirmed that he had discussed the issue of legal professional

privilege with the claimant, who waived his right to privilege and was happy to give evidence, and answer questions, about that legal advice.

8. The respondent relied upon the evidence of Mrs M Roelofs, HR Director.

9. The witnesses provided their evidence from written witness statements. They were subject to cross-examination, questioning by the tribunal and, where appropriate, re-examination.

10. An agreed bundle of documents was presented. References to page numbers in these Reasons are references to the page numbers in the agreed Bundle.

Facts

11. Having considered all the evidence the tribunal has made the following findings of fact. Where a conflict of evidence arose the tribunal has resolved the same, on the balance of probabilities, in accordance with the following findings.

12. The claimant was employed by the respondent from 4 June 2012 until 9 June 2017 in a sales role in the Healthcare Department. In 2016/17 research undertaken by the respondent led it to believe that the current salesforce was not efficient and there was a decision to heavily reduce the number of employees employed in that capacity across the company.

13. On 30 May 2017 the claimant was invited to attend a meeting on 1 June 2017 with his line manager, Nathan James, and HR Director, Ms Margo Roelofs. The claimant indicated that he had "legal counsel" at that time (see his email dated 30 May 2017 at page 52)

14. At the meeting the claimant was notified that he was at risk of redundancy. It was explained that the organisation was undertaking a headcount reduction due to an overall reduction in work and this affected the claimant's role in Healthcare. The claimant was advised:

    14.1. of the proposal that the existing team could absorb the claimant's work, which would lead to the removal of his particular role;

    14.2. that the respondent regarded the claimant's role as unique, and therefore no selection exercise would be undertaken;

    14.3. that consultation was "envisaged" as ending on 9 June 2017;

    14.4. about his entitlement to notice pay and a statutory redundancy payment;

14.5. or, as an alternative, an enhanced redundancy payment on the condition that he provided a signed settlement agreement, a draft of which was provided.

15. The claimant was not told, at that meeting, that 9 June 2017 was the absolute deadline, that any agreement must be reached by that date at the absolute latest. On this the tribunal accepts the evidence of Mrs Roelofs. There is no satisfactory evidence to support the claimant's assertion that he was told that 9 June 2017 was the final deadline for any agreement at that stage.

16. Ms Roelofs confirmed what had been discussed at the meeting by letter dated 1 June 2017 (page 54) which confirmed that the claimant would need to seek legal advice on the settlement agreement and that the respondent would pay for the solicitor's costs. The claimant was placed on garden leave to enable him to seek legal advice during the consultation period.

17. The claimant did continue to do a small amount of work in the following week, on a voluntary basis, for example, responding to e-mails. He also agreed to attend a handover meeting after the termination of his employment. There is no satisfactory evidence to support an assertion that the claimant was so heavily engaged in work during the week commencing 1 June 2017 that he was unable to obtain legal advice and consider the proposed settlement agreement.

18. The claimant was provided with a copy of the proposed settlement agreement by email on 1 June 2017, but the claimant did not open the email until 2 June 2017.

19. During 2016, following a takeover of the respondent by Berry Global, the claimant started to encounter problems with the new management and he felt that there was, for some reason, a hostility and general dislike towards him. The meeting on 1 June 2017 was a shock to the claimant, who had not identified any notable diminution in his workload or the company's overall work to warrant a redundancy.

20. The claimant had a solicitor friend who gave him general advice and who was the "legal counsel" referred to in the claimant's email dated 30 May 2017.

21. Before getting legal advice on the terms of the proposed settlement agreement, the claimant read the letter dated 1 June 2017 and:

21.1. by email dated 1 June 2017 asked if there were any alternative roles. Mrs Roelofs replied the same day to indicate that there were no other roles (page 58);

21.2. By email dated 2 June 2017 (page 63) raised questions and proposals about the terms relating to payment of notice pay, holiday pay, additional payments, pension, company car, the tax treatment of payments on termination of employment

22. On 6 June 2017, the claimant obtained legal advice from a local solicitor about the proposed settlement agreement. The claimant also obtained advice from that solicitor about pursuing a claim of unfair dismissal. The claimant was aware that he could challenge the process relating to making him redundant. The claimant's solicitor told him that:

22.1. if he decided to fight he had grounds but he may not win;

22.2. signing the settlement agreement meant that he was giving up the right to claim.

23. Negotiations on the terms of the proposed settlement agreement took place by emails between the claimant and Mrs Roelofs. By email dated 6 June 2017 (page 66/7) the claimant advised Mrs Roelofs that "the situation could be construed as unfair dismissal and would be entitled to compensation award."

24. The claimant and Mrs Roelofs exchanged emails and amended versions of the proposed settlement agreement to reflect the agreed negotiated changes over the next few days.

25. By email dated 7 June 2017 (page 72) Mrs Roelofs advised the claimant "Provided this (revised version of the settlement agreement) can be agreed by 9 June the payments referred to in track changes are offered by the company".

26. At no time did the claimant say that he felt under pressure or duress by the imposition of a deadline, at no time did he or his solicitor ask for an extension of time in which to receive legal advice on the terms of the proposed settlement.

27. The claimant continued to obtain legal advice from the local solicitor until the settlement agreement was agreed and signed. At no time did the claimant tell the respondent that he was dissatisfied with the service provided by that local

solicitor, at no time did the claimant tell the respondent that he would have preferred to get legal advice from a more specialised employment solicitor.

28. The final draft of the settlement agreement was not agreed until 9 June 2017, and a copy forwarded to the claimant after close of business on that final day. The claimant obtained legal advice before signing the final agreed terms of settlement.

29. A final settlement agreement was entered into after close of business on 9 June 2017 [page 83]. The agreement contained the following terms:

5.1 The Employee considers that he has or may have statutory claims, and therefore could bring proceedings, against the Company, or any Associated Company, or its or their employees, officers or shareholders, for:

(i) any claim arising out of a contravention or an alleged contravention of section 94 (unfair dismissal (including unfair redundancy)) of the Employment Rights Act 1996…

(together the "Particular Claims and Proceedings").

5.2 The Employee agrees to accept the sums and benefits referred to in Clauses 3.1 of this Agreement in full and final settlement of:

(a) the Employee's prospective entitlement to bring the Particular Claims and Proceedings…

6. The Employee warrants as follows and acknowledges that the Company enters into this Agreement in reliance on these warranties:-

(a) having taken advice from his Advisor … that the Particular Claims and Proceedings are all of the claims and proceedings (whether statutory or otherwise) that the Employee considers he has, or may have, against the Company, any Associated Company, its or their employees, officers or shareholders arising out of or in connection with the Employee's employment with the Company, or any Associate Company or its termination;

(b) before entering into this Agreement, the Employee has raised with the Adviser… all facts and issues relevant to the Employee's employment and its termination which could give rise to a claim against the Company or any Associated Company and that the Employee has instructed his Adviser to advise him whether he has or may have any statutory or contractual claim against the Company or Associated Companies its or their employees, officers or shareholders arising out of or in connection with his employment and termination and or directorship. Further, the Employee understands and agrees that the nature, extent and result of the claims released pursuant to this Agreement may not now all be known

or anticipated and declares that he nevertheless desires and hereby agrees to settle, compromise and release in full all possible claims against the Company and/or any other Associated Company and/or any of its or their respective current or former directors, officers and/or employees and/or shareholders arising out of, or in any way connected with, his employment or its termination…

7.1 The Employee agrees to repay to the Company on demand and in full or in part the payment received pursuant to Clause 3.1 above in the event that … the Employee brings any claims or proceedings, (whether statutory or otherwise), relating to the Employee's employment with the Company or any Associated Company, or its termination, against the Company, any Associated Company, its or their employees officers or shareholders, whether in an Employment Tribunal, a County Court, a High Court or otherwise, (save for claims which fall within the exclusions set out in Clause 5.3 above). The Employee agrees that any demand for any sum under this Clause shall be recoverable as a debt, together with all costs, including legal costs, reasonably incurred by the Company in recovering the sum and/or in relation to any claims or proceedings so brought by the Employee.

30. The agreement contains a declaration by the claimant's adviser, Gareth Williams, that he has provided advice on the terms and effect of the agreement, and the claimant's ability to pursue his rights before an employment tribunal or court.

31. It is not in dispute that the respondent complied with the terms of the settlement agreement and made payment to the claimant in accordance with its terms.

32. The claimant did not, after signing the agreement and/or receiving payment, inform the respondent that it had been signed under duress and was an invalid agreement. He took no action to challenge the veracity of the agreement until June 2018.

33. In February 2018 the claimant received information which suggested to him that there had not been a genuine redundancy situation. On 7 June 2018, having received further information from a more senior source, the claimant emailed the respondent, querying whether his position had in fact been made redundant and making reference to his lawyer, and a case for misrepresentation [page 131].

34. By email dated 28 June 2018 the claimant told the respondent that in the absence of a reply from the respondent he would be "obliged to appeal to the courts via the employment tribunal" [page 134]. He continued:

> Whilst I recognise my appeal will be outside the permitted duration for a claim of unfair dismissal, I am confident the circumstance and evidence will be entirely supportive of my position; that is I was dismissed based on an unfounded claim my role as KAM EMEA was redundant."

35. That letter demonstrates that the claimant was aware of the time limit for presentation of the claim.

36. The claimant threatened proceedings in the employment tribunal again by email dated 16 July 2018 [page 138].

37. The claimant contacted ACAS on 23 August 2018. The following day he received his ACAS Early Conciliation certificate [page 13], and issued his claim for unfair dismissal at the Employment Tribunal on 24 August 2018 [page 1].

The Law

38. Section 203(1) Employment Rights Act 1996 (ERA 1996) renders void any provision in an agreement in so far as it purports to preclude a party from bringing proceedings under the ERA 1996 before an employment tribunal.

39. Exceptions to that general rule include agreements which satisfy the requirements set out in s.203(3). They are:

    39.1. the agreement must be in writing,

    39.2. the agreement must relate to the particular proceedings,

    39.3. the employee or worker must have received advice from a relevant independent adviser as to the terms and effect of the proposed agreement and, in particular, its effect on his ability to pursue his rights before an employment tribunal,

    39.4. there must be in force, when the adviser gives the advice, a contract of insurance, or an indemnity provided for members of a profession or professional body covering the risk of a claim by the employee or worker in respect of loss arising in consequence of the advice,

    39.5. the agreement must identify the adviser, and

39.6. the agreement must state that the conditions regulating settlement agreements under this Act are satisfied.

40. At common law an agreement is invalid if either party was induced to enter into it in reliance on a misrepresentation, owing to a mistake or because of undue influence or duress by the other side. These doctrines apply to all contracting-out agreements.

41. In **Hennessy v Craigmyle and Co Ltd and anor 1986 ICR 461** the Court of Appeal accepted the argument that the doctrine of economic duress could apply to avoid an Acas-conciliated agreement where the will of the employee was overborne to such an extent that his or her entering into a contract was not a voluntary act. However, the Court took the view that instances of economic pressure such as to render the actions of the employee involuntary would be very rare and held that, in the particular case, the choice between accepting a lump sum or drawing social security while pursuing an unfair dismissal claim did not amount to economic duress.

42. Economic duress was defined by the EAT in **Sphikas and Son v Porter EAT 927/96** as 'a combination of pressure and the absence of practical choice', in disputes between employer and employee the 'availability of a cheap and quick procedure to employees' — employment tribunals — 'is an important antidote to the inequality of bargaining power inherent in an employment relationship'. The Court of Appeal stated:

> Duress is a combination of pressure and the absence of practical choice. Not every form of pressure is regarded as illegitimate; indeed there may well be economic pressures which underlie every decision to enter into a contract. During the process of negotiation it is likely that one party will seek to exploit the other's apparent weakness. Duress may be established where the pressure upon which the party alleging unlawful coercion relies is purely economic: **Pao On v Lau Yiu Long [1980] AC 614**, a decision of the Privy Council. In his judgment, Lord Scarman said:
>
> "It is material to inquire whether the person alleged to have been coerced did or did not protest; whether, at the time he was allegedly coerced into making the contract, he did or did not have an alternative course open to him such as an adequate legal remedy; whether he was independently advised; and whether after entering the contract he took steps to avoid it."

43. An employment tribunal may also set aside a contracting-out agreement where it finds that an employer acted in bad faith, misrepresented the true position, or adopted unfair methods in concluding a contracting-out agreement.

44. Section 111 Employment Rights Act 1996 ("ERA 1996") provides that an Employment Tribunal shall not consider a complaint of unfair dismissal unless it is presented to the Tribunal –

    (a) before the end of the period of three months beginning with the effective date of termination, or

    (b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

45. Section 207B ERA 1996 provides:

    "(1) This section applies where this Act provides for it to apply for the purposes of a provision of this Act ('a relevant provision').

    But it does not apply to a dispute that is (or so much of a dispute as is) a relevant dispute for the purposes of section 207A (mediation in certain cross-border disputes).

    (2) In this section –

        (a) Day A is the day on which the complainant or applicant concerned complies with the requirement in subsection (1) of section 18A of the Employment Tribunals Act 1996 (requirement to contact ACAS before instituting proceedings) in relation to the matter in respect of which the proceedings are brought, and

        (b) Bay B is the day on which the complainant or applicant concerned receives or, if earlier, is treated as receiving (by virtue of regulations made under subsection (11) of that section) the certificate issued under subsection (4) of that section.

    (3) In working out when a time limit set by a relevant provision expires the period beginning with the day after Day A and ending with Day B is not to be counted.

    (4) If a time limit set by a relevant provision would (if not extended by this subsection) expire during the period beginning with Day A and ending one month after Day B, the time limit expires instead at the end of that period.

(5) Where an Employment Tribunal has power under this Act to extend a time limit set by a relevant provision, the power is exercisable in relation to the time limit as extended by this section."

46. Ignorance of a fact that is fundamental to the right to bring an unfair dismissal complaint may render it not reasonably practicable to present a claim in time. The discovery of new relevant facts can be grounds for an extension of time. **Machine Tool Industry Research Association v Simpson 1988 ICR 558**.

47. The claimant must show that his or her ignorance was reasonable and that he or she could not reasonably have been expected to find out what the true situation was during the limitation period.

48. Under rules 73 and 75 Employment Tribunals Rules of Procedure 2013 a tribunal may award a costs order where a party has in either bringing the proceedings or in the conduct of the proceedings, acted vexatiously, abusively, disruptively or otherwise unreasonably; or the claim or response had no reasonable prospect of success.

49. The Rules impose a two stage test. The tribunal must ask itself whether a party's conduct falls within rule 73. If so, it must then ask itself whether it is appropriate to exercise its discretion to make the award.

50. The tribunal, in deciding whether to exercise its discretionary power under rule 75 should consider all relevant factors including the following:-

- costs in the employment tribunal are still the exception rather than the rule;
- the extent to which a party acts under legal advice;
- the nature of the claim and the evidence;
- the conduct of the parties.

51. The tribunal has considered and where appropriate applied the authorities referred to in submissions.

Determination of the Issues
(including, where appropriate, any additional findings of fact not expressly contained within the findings above but made in the same manner after considering all the evidence)

52. The tribunal does not accept that the claimant's consent to the settlement agreement was induced by duress. The claimant was notified that he was at risk of redundancy on 1 June 2017 and was told that there would be a consultation period of just over 1 week, expiring on 9 June 2017. The reason

for the proposed redundancy was explained and confirmed by letter dated 1 June 2017, which set no rigid timescale but noted that it was envisaged that the period of consultation would end on 1 June 2017.

53. No illegitimate economic pressure was applied. The claimant was given two clear options:

- Accept pay in lieu of notice and a statutory redundancy payment but retain the right to pursue any claim against his employer; or
- Accept an enhanced redundancy payment, in addition to the pay in lieu of notice, but sacrifice his right to pursue his employer in court or tribunal.

54. The claimant was provided with a draft settlement agreement and was told that he needed to take legal advice on it, that the respondent would pay for the solicitor's costs.

55. The claimant did take legal advice on the settlement agreement from 6 June 2017 to 9 June 2017. It is his clear evidence that his solicitor advised him of his right to bring a claim of unfair dismissal and that the claimant on the basis of that advice decided to accept the enhanced redundancy payment, because that would provide him with more economic certainty. The fact that the final draft of the settlement agreement was not agreed until 9 June 2017, and a copy forwarded to the claimant after close of business on that final day, does not mean that the claimant was unable to take effective legal advice throughout the preceding few days. The claimant did take legal advice and, having done, so, signed the settlement agreement.

56. The claimant freely entered into the consultation process, enquiring about the availability of any alternative employment, and negotiated changes to the settlement agreement.

57. By email dated 7 June 2017 (72) the respondent said that provided the amendments to the settlement agreement could be agreed by 9 June 2017 the payment referred to in the track changes could be offered. That by itself does not amount to duress. The claimant was legally represented and at no time did either he or his solicitor ask for an extension of time to agree the wording of the settlement agreement, or to take stock and take further time to consider whether to pursue a claim, or to partake in further consultation relating to the proposed redundancy. Neither did they assert that unacceptable pressure was being placed on the claimant to agree terms, or that the claimant did not have the time to take legal advice because of his work commitments

58. No pressure was placed on the claimant to sign the settlement agreement. The tribunal is satisfied that the claimant entered in to that agreement freely and willingly, having received legal advice as to its meaning and effect.

59. The claimant has failed to establish that there was a misrepresentation by the respondent as to the reason for the termination of employment, for placing him at risk of redundancy. The fact that an employee took up a similar position in sales in February 2018 does not cast doubt on the respondent's evidence that in June 2017 there had been a reorganisation of the business and a headcount reduction following which there was a reduced requirement for employees to carry out work of the particular kind carried out by the claimant.

60. In all the circumstances the tribunal finds that the claimant has been validly settled pursuant to section 203 ERA 1996.

61. The tribunal does not have jurisdiction to hear the claim.

62. Further, and in any event, the claim was presented out of time. If the claimant genuinely believed that he had been subjected to duress in signing the agreement then he had plenty of time to reflect on that and to challenge the veracity of the settlement agreement shortly after it was signed. He failed to do so. It is clear from the claimant's witness statement that at the time of the consultation he had doubts as to the real reason for his dismissal, and did discuss the possibility of bringing a claim of unfair dismissal with his solicitor at that time. He chose not to do so. Further, he became aware of the involvement of Anna Wallis in February 2018. He took no action. By 7 June 2018 the claimant was in possession of further information and gave a clear indication by email dated 28 June 2018 that he had received legal advice and was contemplating a claim of unfair dismissal. The claimant has failed to establish why it was not reasonably practicable to present his claim as soon as he became aware of the involvement of Anna Wallis, or in June 2018 when he received further confirmation of her involvement. The claimant has failed to provide a satisfactory explanation for the delay in presenting the claim between June 2018 and 24 August 2018. The claimant did not present the claim within a reasonable time of being made fully aware of the involvement of Anna Wallis and his understanding that he had a valid claim before the tribunal, which he intended to pursue.

63. In the alternative, the claim was presented out of time. It was reasonably practicable to present the claim in time and it is not appropriate to extend time

to allow the claim to proceed. The tribunal has no jurisdiction to hear the claim.

64. In considering the application for costs, the tribunal notes that this is a two stage test. Considering the first stage, the tribunal finds that the claimant's conduct falls within rule 73 Employment Tribunals Rules of Procedure 2013 because the claim had no reasonable prospect of success because:

64.1. the claimant entered in to a binding settlement agreement, having received legal advice;

64.2. the claimant's assertion that he signed this agreement under duress is without merit;

64.3. it is clear that the claimant signed that agreement freely, making the decision to give up the right to claim unfair dismissal, having been given legal advice that this was the consequence of signing the agreement;

64.4. the claimant's assertion that there was a misrepresentation of the events in June 2017 is without merit. The claimant has adduced no satisfactory evidence to support his assertion that the respondent misled him about the redundancy situation, and has not challenged the respondent's evidence as to the reason for placing the claimant's position at risk of redundancy;

64.5. the claimant's claim was significantly out of time although he was aware of the right to claim and the applicable time limit for so doing.

65. The tribunal announced its finding on the first stage of the decision-making process and indicated that it would need to hear evidence from the claimant, as to his financial means and any other matters relevant to the second stage of the decision-making process, that is, whether it is appropriate to exercise its discretion to make the award.

66. The parties asked for a short break following which it was announced that the parties had agreed that the claimant pay to the respondent costs in the sum of £4,500.00 within 28 days and both representatives agreed to an Order in those terms.

67. The tribunal was therefore not required to exercise its discretion and made the Order for costs by way of consent between the parties.

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

Employment Judge Porter

Date:28 January 2019

JUDGMENT AND REASONS SENT TO THE PARTIES ON

1 February 2019

FOR THE TRIBUNAL OFFICE