



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr P Coulson

**Respondent:** Liverpool City Council

## JUDGMENT

The claimant's application for reconsideration of the judgment sent to the parties on 17 September 2018 is refused.

## REASONS

### **The judgment**

1. The claimant is one of a large number of men and women who brought equal pay claims against the respondent. By a judgment sent to the parties on 17 September 2018 I struck out several claimants' claims, including this claimant's claim, on the ground that they had not been actively pursued. The tribunal had written to the claimant on 25 July 2018, giving him an opportunity to make representations. None were received.

### **The reconsideration application**

2. By e-mail dated 26 September 2018 the claimant informed the tribunal that he had moved address and that he would like to proceed with his claim. The e-mail was treated as an application to reconsider the strike-out judgment.

### **The settlement**

3. The tribunal informed the respondent that the claimant wished to proceed with his claim. In response, the respondent observed that the claimant had reached two "COT3" agreements with the respondent. The agreements were dated 9 March 2011 and 4 March 2012. The respondent provided a copy of the agreements.
4. The second COT3 agreement identified the claimant's job title as "SEN Transport Passenger Assistant".
5. At paragraph 2, the agreement stated that the settlement had been reached following conciliation in respect of a dispute concerning (amongst other things) potential claims raised by the claimant with ACAS, and that the settlement had been achieved with the assistance of an ACAS Conciliation Officer.

6. Paragraph 4(4) of the same agreement was headed, "Subject Matter" and contained a list of categories of claims and potential claims. The list read, relevantly:

"

(a) Equal pay claims and/or sex discrimination claims in respect of [various categories of pay] which were payable to any Comparator as at the date of signing this Agreement or at any time within the 6 years prior to and ending with the date of this Agreement... and/or which were continuing to be payable to the Comparator as at the Agreement Date, where the Employee claims to be, or to have been employed, on [the different categories of equal work].

(b) [Like claims] in respect of protection arrangements in return for loss of [various categories of pay] which may have applied to the Comparator at any time within the 6 years ending with the signing of this Agreement ...and/or which were continuing at the Agreement Date and/or in respect of such protection arrangements as may be introduced after the Agreement Date in connection with bringing to an end any pay inequality... which existed at the Agreement Date..."

7. At paragraph 5, the second agreement provided,

"The job title of the Employee as stated in paragraph 1 of this Agreement is intended to refer to the current job title of the Employee's role. For the avoidance of doubt, this agreement is intended to cover any claim or potential claim in respect of the Subject Matter ...arising out of the employment of the Employee under any other job in the period of 6 years ending with the date of the signing of this Agreement ...and in the period of any claim which was continuing as at the which was continuing as at the Agreement Date".

8. The second agreement appears to bear the claimant's signature.
9. When the COT3 agreements were drawn to the claimant's attention by the tribunal, the claimant replied that he had been employed both as a Passenger Assistant and as a Teaching Assistant. This claim, he said, related to the Teaching Assistant role. He added that he had not received any settlement in connection with his role as Teaching Assistant. By letter dated 8 March 2019, the tribunal drew the claimant's attention to paragraph 5 of the second COT3 agreement. The claimant's reply restated that he had received payment for his Passenger Assistant role, but not for his Teaching Assistant role. He added that he "should receive an equal pay claim for it".

### Relevant law

10. Rule 70 of the Employment Tribunal Rules of Procedure 2013 provides the tribunal with a general power to reconsider any judgment "where it is necessary in the interests of justice to do so".
11. Rule 71 sets out the procedure for reconsideration applications.
12. By rule 72(1), "An Employment Judge shall consider any application made under rule 71. If the Judge considers that there is no reasonable prospect of the original decision being varied or revoked... the application shall be refused..."
13. The overriding objective of the 2013 Rules is to enable the tribunal to deal with cases fairly and justly. By rule 2, dealing with cases fairly and justly includes putting the parties on an equal footing, avoiding delay, saving expense, and

dealing with cases in ways that are proportionate to the complexity and importance of the issues.

14. Parties may settle complaints that there has been a breach of an equality clause. The agreement is enforceable if it has been made with the assistance of a conciliation officer: see section 144(4) and (5) of the Equality Act 2010.

### **Conclusion**

15. At this preliminary stage I must consider whether or not the claimant has any reasonable prospect of persuading a tribunal that the interests of justice necessitate revocation of the strike-out judgment.
16. In my view, if the tribunal were to reconsider the strike-out judgment, it is inevitable that the judgment would be confirmed. The interests of justice would point strongly against allowing the claim to proceed. For this purpose I assume, in the claimant's favour, that he had a good reason for not replying to the tribunal's letters and for not letting the tribunal know of his change of address. Even working on that assumption, however, the claimant cannot get around the fact that he has settled his claim. Clause 5 of the second COT3 agreement made clear that the claimant was not just settling potential equal pay claims arising out of his role as SEN Transport Passenger Assistant, but also any such claims arising out of "any other job". The phrase "any other job" is clearly wide enough to encompass his role as a Teaching Assistant.
17. The COT3 agreement is enforceable because it was made with the assistance of a conciliation officer.
18. It would not be in the interests of justice to reinstate a claim that has been settled and the claimant has no reasonable prospect of arguing that it would. The reconsideration application is therefore dismissed.

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Employment Judge Horne

Date: 16 April 2019

SENT TO THE PARTIES ON

16 April 2019

FOR THE TRIBUNAL OFFICE

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