



THE EMPLOYMENT TRIBUNAL

BETWEEN

Claimant

and

Respondent

Mrs M A Sesay

The Whitepost Healthcare Group

Held at LONDON SOUTH

On 1 May 2019.

BEFORE: Employment Judge Siddall

Representation

For the Claimant: In person

For the Respondent: Mr J Green, Counsel

JUDGMENT

The decision of the tribunal is:-

1. An ACAS conciliation officer having taken action, the claim is dismissed upon withdrawal.
2. The claimant is ordered to pay the respondent the sum of £1000 in respect of costs, such sum to be deducted to the agreed settlement amount that is now due to the claimant.

REASONS

1. The claimant brought a claim for constructive unfair dismissal in December 2018 and named Justin King Law as her solicitors.
2. On 5 February the tribunal were notified that a settlement had been concluded through ACAS.

3. On 14 March the claimant wrote to the tribunal to say that her solicitor did not have authority to settle the proceedings on her behalf, and asking for the matter to be reconsidered. A preliminary hearing was listed to consider whether the tribunal had any jurisdiction to consider the claim further.
4. At the hearing today I heard evidence from the claimant. Mr Alexander Kleanthous provided a written witness statement which he adopted.
5. At the start of the hearing I asked the claimant if she was prepared to waive privilege if she wanted to give evidence about communications she had with her solicitor around the time that the COT3 had been concluded and she confirmed that she was. Mr Green pointed out to me that there were certain documents which the respondent had included in the bundle, which were in fact inadmissible under section 18(7) of the Employment Tribunals Act 1996 because they were communications between a party and ACAS and we agreed that I should not consider these documents.
6. The evidence of the claimant is that she instructed Justin King Law to represent her and that she had signed a form of authority, consenting to them acting on her behalf and representing her in the tribunal proceedings. She had been in the USA when she received contact from her solicitor about her claim. At one point her solicitor had telephoned her and had woken her up. The solicitor had read a document out to her and asked for her agreement. The claimant said yes, but later when she came around properly she decided that she did not agree to the terms proposed. She had understood that she could go into the solicitor's office when she returned to sign the agreement. She arrived back in the UK on 9 February and on 13 February she emailed them to say that she had decided not to sign the documentation and did not want the case withdrawn. In fact, the agreement had been concluded on 5 February 2019 and the solicitor signed the COT3 on behalf of the claimant.
7. Based on the evidence provided by the claimant, it appears that she initially agreed to the settlement terms read out by her solicitor and then changed her mind. I accept that it was difficult for the claimant to communicate with her solicitor while she was in the USA, in particular because of the time difference. It seems that the claimant did not understand that the agreement would be concluded in her absence and believed that she could make up her

- mind about the sum offered as the agreement would be signed after she returned.
8. In light of this evidence it seems more likely than not that Justin King Law had actual authority to enter into the COT3 agreement on 5 February 2019. The evidence in front of me about the communications that took place between them and the claimant is not complete, and as I say it seems that it was difficult to communicate.
 9. In any event, the solicitors clearly had ostensible authority to enter into the agreement. The claimant had signed a form of authority. They were named on the ET1 as her representatives. Mr Kleanthous' witness statement makes it clear that negotiations between his firm and the claimant's solicitors had been going on for some time. The respondent was entitled to assume that Justin King Law had authority to act for the claimant and to conclude terms with them. Mr Green refers me to the case of *Freeman v Sovereign Chicken Limited [1991] ICR 853* which is authority for the submission that in these circumstances the COT3 reached is binding.
 10. I conclude that the tribunal has no jurisdiction to hear the claimant's claim for unfair dismissal because the conciliation officer has 'taken action' under section 18A to 18C of the Employment Tribunals Act 1996, and the claim has therefore been validly compromised under section 203(1)(e) of the Employment Rights Act 1996; and because her solicitors had actual or ostensible authority to enter into the COT3 agreement.
 11. The respondent applies for costs and argues that the claimant's conduct in pursuing her claim before the tribunal despite the existence of the COT3 agreement amounts to vexatious, abusive or unreasonable conduct under rule 76(1)(a). They claim the costs of preparing for and attending the preliminary hearing amounting to £2748.
 12. I am sympathetic towards the claimant. She obviously feels that the way in which her solicitor communicated with her over the settlement was very poor. She did not understand that the agreement could be concluded without her signing the document. From the point at which she entered a dispute with her solicitors, she has been an unrepresented party.

13. Nevertheless I see from the correspondence that both Justin King Law and the respondent's solicitors advised her as to the legal position following the completion of the COT3 and told her that her application had no reasonable prospect of success. She was in addition given several costs warnings by the respondent.
14. I agree that the claimant acted unreasonably in pursuing her claim before the tribunal despite the fact that the COT3 had been finalised. If she is unhappy with the circumstances in which that agreement had been reached, her remedy is to make a complaint against her former solicitors.
15. The claimant is currently employed on a casual basis earning £240-600 per week. I take note of the fact that she is due to receive a sum of £9500 under the ACAS agreement. As the respondent has been put to further cost, I think it right that some discount should be applied to that. I award the respondents costs of £1000 and they have agreed that this will be deducted from the settlement sum, and the balance paid to her.

Employment Judge Siddall
Date: 1 May 2019.