



EMPLOYMENT TRIBUNALS

Claimant: Mr S Glover

Respondent: Nestle UK Limited

Heard at: Nottingham **On:** Tuesday 20 August 2019

Before: Employment Judge Hutchinson (sitting alone)

Representatives

Claimant: In Person

Respondent: Miss J Shepherd of Counsel

JUDGMENT

The Employment Judge gave judgment as follows: -

1. The default judgment sent to the parties on 26 June 2019 is hereby revoked.
2. Terms of settlement had been agreed between the parties and the claim has been resolved.
3. The claim of unfair dismissal is dismissed.
4. The Respondent's shall pay the sum of £8,500 to the Claimant forthwith.

REASONS

Introduction and Background

1. The Claimant presented his claim to the Tribunal on 29 January 2019. He had been employed by the Respondents as a Technical Operator and dismissed by them on 1 October 2018. He claimed unfair dismissal only.
2. The claim was accepted and served on the Respondents on 23 March 2019. An ET3 should have been filed by the Respondents on 20 April 2019. The documents had been sent to the Respondent's factory at Tutbury.

3. On 24 May 2019 the ET1 was reserved on the Respondents at their head office. This time the Respondents were required to file their ET3 by 21 June 2019. An ET3 was not received and a default judgment was signed by myself on 26 June 2019 and this was sent to the parties on 27 June 2019.

4. the Respondent's solicitors wrote to the Tribunal on 10 July 2019 making an application for reconsideration of the default judgment.

5. That application is made under Rule 71 of the Employment Tribunal (Constitution and Rules of Procedure) Regulations ("the rules") 1993.

6. The Respondents contended that a settlement had been concluded between the parties and under Rule 70 of the rules it would be in the interests of justice to revoke the judgment. This is contested by the Claimant who contends that no final agreement had been reached between the parties and that it would not be just and equitable to revoke the judgment issued in his favour.

The Hearing Today

7. I heard from the Respondent's representative Miss Shepherd of Counsel and then from the Claimant who read out to me his statement. The Respondent's had provided a bundle of documents and a chronology. Where I refer to page numbers it is from the bundle.

Relevant Facts

8. I am satisfied that the parties have been in negotiations to resolve the case from the time that the Claimant had been dismissed and several offers were made through ACAS to the Claimant to settle his claim.

9. On 22 May 2019 Toni Fisher, ACAS conciliator wrote to Jess Bray of Human Resources at the Respondent company to say:

"Just to pick up on this, my understanding is the Claimant would still accept £8,500 at this point, if that is of interest. I understand that this is the bottom line.

Please let me have your response to that."

10. On 23 May 2019 Ms Bray replied to Ms Fisher as follows:

"I can confirm we will settle for £8,500.

Please could you confirm the next steps for COP3 (meaning COT3)."

11. These e-mails are at page 27 of the bundle. Also on that page is an e mail from Ms Bray, chasing Ms Fisher about the settlement agreement on 30 May 2019.

12. On 11 June 2019 ACAS conciliation officer John Carty wrote on behalf of Ms Fisher to Ms Bray with a suggested wording for the COT3. It provided for the payment of the sum of £8,500 and there followed terms which were entirely normal in these cases about such matters as the date of payment, no admission of liability, confidentiality and lack of derogatory remarks made by the parties. Then, on 26 June 2019 Ms Bray wrote to ACAS to say they were happy with the terms but they would not be providing a reference. Following this the Claimant was written to by Toni Fisher to confirm the wording of the settlement agreement (page 31). This was agreed on that date by Mr Glover who then wanted confirmation that the payment would be without deductions and that he would get his pension paperwork.

13. This was passed on to Ms Bray by Toni Fisher immediately before the Claimant received the default judgment in the sum of £37,309.59.

14. The Claimant now sought to deny that any agreement had been reached and he was entitled to the default judgment payment.

The Law

15. The application for a reconsideration is made under Rule 70 of the rules. That says: -

“A Tribunal may, either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) or on an application of a party, reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration, the decision (“the original decision”) may be confirmed, varied or revoked. If it is revoked it may be taken again.”

16. Section 18 of the Employment Tribunals Act 1996, so far as is material, provides:

“(2) Where an application has been presented to an Employment Tribunal, and a copy of it has been sent to a conciliation officer, it is the duty of the conciliation officer... to endeavour to promote a settlement of the proceedings without there being determined by an Employment Tribunal.”

17. Section 203 of the Employment Rights Act 1996, so far as material, provides:

“(1) Any provision in an agreement (whether a contract of employment or not) is void insofar as it purports...

(b) To preclude a person from bringing any proceedings under this section before an Employment Tribunal.

(2) Subsection (i)...

(e) does not apply to any agreement to refrain from instituting or continuing proceedings where a conciliation officer has taken action under Section 18 of the Employment Tribunals Act 1996...”

18. Ms Shepherd referred me to the case of **Allma Construction Limited v Bonner** [2011] IRLR 204. That case held that under Section 203 of the ERA the jurisdiction of the Employment Tribunal over unfair dismissal claims is ousted if the parties agree to settle a claim in circumstances where an ACAS officer has “taken action”. The case goes on to say:

“Whilst there is a practice of ACAS being involved in the recording of settlements in standard paperwork (form COT3), that practice does not need to have been followed for the Tribunal’s jurisdiction to be ousted in a case which falls under Section 18(2) of the Employment Tribunals Act 1996.”

19. It then went on to say:

“All that was required was that an ACAS officer had “taken action”, namely that he had, in some way, endeavoured to promote settlement. The officer’s communication of the Claimant’s acceptance of the offer was enough to satisfy that requirement. It did not matter that a COT3 agreement might also have been entered into with assistance of ACAS.”

My Conclusions

20. I am satisfied that in this case the ACAS officer had “taken action”. She had endeavoured to promote a settlement between the parties.

21. An offer of settlement in the case had been made via the ACAS officer on 22 May 2019 on behalf of the Claimant.

22. That offer was accepted unconditionally on behalf of the Respondent on 23 May 2019.

23. This was all with the assistance of the conciliation officer acting under her function correctly under Section 203 of the Employment Rights Act 1996 and Section 18 of the Employment Tribunals Act 1996.

24. I am satisfied therefore that there was a binding agreement made between the parties as at 23 May 2019 when the Respondents accepted the Claimant’s offer.

25. Thereafter, the only discussions related to the terminology in the COT3 agreement dealing with matters such as reference and pension and how the payment would be made.

26. Those discussions did not materially affect the agreement that had already been reached. The jurisdiction of the Tribunal was therefore ousted by that agreement which was made before the default judgment was signed by me on 26 June 2019.

27. When I issued the judgment, I was not aware of these circumstances. I am therefore satisfied that it is in the interests of justice to revoke the judgment and to issue a dismissal judgment on the basis that the parties have reached terms of settlement and the claim is dismissed.

28. That agreement was reached on 23 May and there is no reason why the Respondent should not pay that sum forthwith.

Employment Judge Hutchinson

Date 4 September 2019

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE