



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr Clayton De Beauville

**Respondent:** Hertsmere Borough Council

## RECORD OF A PRELIMINARY HEARING

**Heard at:** Watford

**On:** 22 October 2019

**Before:** Employment Judge Alliott (sitting alone)

### Appearances

For the claimant: In person

For the respondent: Mrs R Sunter, Solicitor

## JUDGMENT

The judgment of the tribunal is that:

1. All of the claimants claims are struck out, pursuant to rule 37(1)(a) Employment Tribunal's (Constitution & Rules of Procedure) Regulations 2013 as they have no reasonable prospect of success.
2. The respondent's counter claim is dismissed.
3. The claimant is ordered to pay the respondent costs assessed in the sum of £2,000.

## REASONS

1. This open preliminary hearing was ordered by Employment Judge Smail, who converted the closed preliminary hearing due today into an open preliminary hearing to determine the respondent's application for a strike-out or deposit order. That was clarified by Employment Judge Bloch QC who directed on 7 July 2019 as follows:

"1. The open preliminary hearing to take place on 22 October 2019 ordered by Employment Judge Smail on 9 June 2019, should proceed, with a time estimate of three hours.

2. By way of clarification, the hearing is limited to:
  - a) identify the issues and making case management orders and;
  - b) hearing the respondent's application to strike-out the claims or for a deposit order"
  
3. By way of further clarification, the claimant will not be expected to present evidence in support of his claim at the preliminary hearing"

### **The claim**

2. The claimant was employed by the respondent in 2008 as a research monitoring officer (the claimant puts his start date as 30 August 2008, whereas the respondent puts his start date as 18 February 2008).
3. The claimant's employment ceased on 31 January 2019.
4. By a claim form dated 31 January 2019, the claimant presents claims of unfair dismissal, age discrimination and a claim for other payments, which, in conversation with the parties today, appears to be a claim for breach of contract claiming the sum of £64,000.

### **Jurisdiction**

5. As a preliminary matter, I discussed the issue of jurisdiction with the parties. This principally related to the claimant's contractual claim which appears to arise out of and/or is ancillary to a settlement agreement that was reached between the parties and is dated 20 December 2017. Firstly, I indicated to the claimant that if and insofar as his contractual claim was successful, the jurisdiction of this tribunal was limited to £25,000. Secondly, I indicated that the contractual jurisdiction of the tribunal was given to it by the Employment Tribunal's Extension of Jurisdiction (England & Wales) Order 1994. Pursuant to that Order, tribunals have jurisdiction in contractual matters only in respect of a claim that arises or is outstanding on the termination of the employee's employment. In this case the settlement agreement pre-dates the termination of claimant's employment and it appeared to me to be common ground between the parties that the claimant's claim was based upon a breach of the settlement agreement and/or some form of collateral agreement which would potentially have been outstanding at the date of the termination of the claimant's employment. Accordingly, in my judgment, I do have jurisdiction to hear that aspect of the claimant's claim.
6. Notwithstanding the direction of Employment Judge Bloch QC, that the claimant would not be expected to present evidence in support of his claim at the preliminary hearing, it was expedient for me to hear at some length from the claimant as to how he puts his claim. In my judgment it was necessary to do so in order to determine the application to strike-out the claimant's claim.
7. The starting point in this case is a settlement agreement that was signed by the claimant on or about 20 December 2017. Pursuant to that agreement, the claimant not only signed the agreement but also a letter in schedule 1 withdrawing grievances and requests for information. Also, annexed to this agreement was a schedule 2 letter which was a signed declaration by an

independent legal advisor that the claimant had received advice on the terms and effect of the agreement.

8. The settlement agreement has a number of relevant clauses which I summarise as follows:

“1.4 – the parties agree that the employee’s employment will terminate on 31 January 2019 by mutual agreement.

1.5 – the employee and the employer have agreed the terms of this agreement in full and final settlement of all claims that he may have arising out of his employment and the mutually agreed termination of his employment save as set out in clause 13.3 below and all matters arising therefrom including, but not limited to claims for unfair dismissal; a redundancy payment, wrongful dismissal, breach of contract and age and/or race discrimination and unlawful detriment”

9. The settlement agreement provided for the payment of three sums of money, namely £6,500 towards tuition fees, plus £1,100 being a contribution to travel and subsistence, £13,000 as compensation for loss of office and the sum of £200 (less tax and national insurance) in consideration for entering into warranties under the agreement.

10. The settlement agreement also had the following clause:

“18.1 This agreement sets out the entire agreement between the parties and supersedes all prior discussions between them and their advisers and all statements, representations, terms and conditions, warranties, guarantees, proposals, communications and understandings whenever given and whether oral or in writing”.

11. Following the signing of that settlement agreement, the tuition fees were duly paid by the respondent and the claimant undertook his MA course. This took a year and he concluded the course in January 2019. Throughout the period following the signing of the settlement agreement the claimant remained employed by the respondent but was not required to do any work. The claimant had little or no contact with the respondent whilst he was on the course.

12. The essence of the claimant’s complaints before are that prior to the signing of the settlement agreement there had been various negotiations between him and the respondent. As the settlement agreement makes clear in clauses 1.2 and 1.3, there was the suggestion that the claimant’s role would become redundant during 2018. Whilst the claimant may have been sceptical as to the reality of a redundancy situation, the fact of the matter is that he told me that he was informed that there was a redundancy situation due to a reorganisation and that it had been indicated to him that he would be offered an alternative role at a lesser status and salary that did not necessarily suit him. It may well be that sums of money were discussed between the parties prior to the making of the settlement agreement. The claimant told me that he had been offered £64,000 and that later it was indicated that the tuition fees would also be offered to him. The respondent disputes this and I make no finding in this respect. The claimant has endeavoured to advance today that his case is based on the fact

that he was promised either £64,000 or the ability to cancel the settlement agreement when he completed his MA study.

13. When I asked the claimant what had happened on the completion of his course in January 2019, he told me that he wrote to the respondent saying he had finished his course and that he was expecting to be reinstated or expecting to be paid £64,000. He also told me that he thought he would be able to extricate himself from the agreement by paying back the £7,600 that he had received for the tuition fees.
14. Everything that the claimant has said to me about his understanding as to what the settlement agreement actually encompassed, and/or whether or not it could be argued that there was some sort of collateral agreement to it, is based upon information that he says was given to him prior to the execution of the settlement agreement. I have considered whether it is open to me to allow this matter to go forward for the claimant to advance arguments along the lines of the creation of a collateral contract and/or his agreement to the settlement agreement somehow being induced by a misrepresentation and it to be determined under ordinary common law contractual principles. However, in my judgment, such arguments, even if elaborated, developed and supported by evidence stand no reasonable prospect of success. The reason I say this is that all the matters that appear to be relied upon by the claimant in support of these arguments occurred prior to the 20 December 2017 when the settlement agreement was concluded. The whole purpose of the Employment Rights Act and the Equality Act requiring independent legal advice before such settlement agreements become binding is to ensure that the sort of arguments that are being advanced by the claimant cannot reasonably be made. The settlement agreement is quite clear that it represents the whole agreement between the parties and specifically excludes any antecedent negotiations or representations that may have been made in the lead up to execution of the agreement. The claimant had independent legal advice that I am entitled to conclude advised him expressly on the meaning of each and every clause within that settlement agreement.
15. Nothing between the execution of the settlement agreement and the termination of the claimant's employment can be said to give rise to the claims that the claimant now advances in these proceedings.
16. Consequentially, in my judgment, the claimant's claims for unfair dismissal, age discrimination and a contractual claim for £64,000 have no reasonable prospect of success. Accordingly, I strike them out.
17. The respondent has a counter-claim under the terms of the settlement agreement for the return of the £7,600 tuition and subsistence fees paid pursuant to that agreement. The respondent claims that sum pursuant to clauses 16.1 and 16.2 as damages for breach of contract and/or as damages arising because the claimant has made this claim before the Employment Tribunal.

18. I have considered whether the clauses relied upon by the respondent constitute penalty clauses or whether they are liquidated damages clauses endeavouring to present a genuine pre-estimate of the loss likely to flow from any breach of that agreement by the respondent. In this context, the payment of the tuition fees was always going to be made and the claimant would have had to have been paid that money had the claimant complied with his contractual obligations. As such, the repayment of those tuition fees, in my judgment, does not constitute an estimate of loss and is a penalty. Consequently, I decline to enforce it and dismiss the counter-claim.
19. Consequent on my dismissal of the claimant's claims as having no reasonable prospect of success, the respondent has made an application for costs reliant upon a schedule totalling £3,680. Having dismissed the claimant's claims on the basis that they have no reasonable prospect of success, I have a duty to consider that application for costs and I have a discretion whether to award any costs. In this case I have taken into account that the claimant is a litigant in person and as such stands to be judged less harshly than a professionally represented individual. However, the claimant did have the advantage of independent legal advice when executing the settlement agreement and has referred to taking legal advice relatively recently. In addition, the claimant has told me that he is without employment and has exhausted his savings. As such, I have taken into account that he presents as a man of minimal or modest means. However, he told me that he was not currently in receipt of state benefits such as job-seekers allowance. On the other hand, I have to consider the rate-payers who have been put to some loss as a result of resisting this claim, which in my judgment, should never have been brought. Taking into account all these factors, in the overall circumstances of the case I consider it to be fair and just to order the claimant to pay the respondent costs in the sum of £2,000, and I make that order.

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**Employment Judge Alliott**

Date:.....23/10/19

Sent to the parties on:

.....8/11/19.

For the Tribunal:

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