



EMPLOYMENT TRIBUNALS

Claimant: Mrs L Baroudi Abdullah

Respondent: University of Manchester

Heard at: Manchester Employment Tribunal

On: 16 October 2020

Before: Employment Judge Dunlop (sitting alone)

Representation

Claimant: In person

Respondent: MS M Carnwath (solicitor)

JUDGMENT

The claim has no reasonable prospect of success and is therefore struck out.

REASONS

Introduction

1. The claimant, Mrs Bharoudi Abdullah, worked as a receptionist at the respondent university from August 2000 until her dismissal in February 2019. By a claim form presented on 14 December 2019 she sought to bring claims of unfair dismissal and discrimination on grounds of religion or belief, race and disability.

The Hearing

2. This was a preliminary hearing to determine whether the claim should be allowed to proceed, having regard to the respondent's contention that the tribunal the claimant's claims had been the subject of an earlier claim which was resolved through ACAS conciliation.
3. The hearing was held by video conference, via the HMCTS Cloud Video Platform (CVP). I confirmed with Mrs Baroudi Abdullah at the start of the

hearing that she felt comfortable that she could participate in the video conference (having regard to references in the documents to a hearing impairment) and that she was able to proceed without an interpreter (having regard to the fact that English is not her first language).

4. Except for one short adjournment caused when there was difficulty with Mrs Baroudi Abdullah's microphone, the hearing proceeded smoothly and I was satisfied that both parties were fully able to participate and articulate their evidence and arguments.
5. I heard evidence from Mrs Baroudi Abdullah about her employment and dismissal (in summary), about her mental health, and about the circumstances in which she entered into the COT3 agreement. I had regard to an agreed bundle of documents which included 25 pages of medical records/documentation. I also had regard to documents contained on the Tribunal files for both claims, in particular the judgment dismissing the first claim (which the respondent had been unable to locate in its own records) and a letter the claimant sent to the Tribunal on 11 September 2020, discussed further below.
6. I announced my judgment to the parties at the conclusion of the hearing without giving reasons. I decided it was appropriate to give written reasons in this case (without requiring the parties to request them) as it may be that Mrs Baroudi Abdullah wishes to seek advice in the future about her claims against the university, as this is evidently something which she continues to feel very strongly about. Having a judgment with written reasons will enable anyone who Mrs Baroudi Abdullah asks to advise her to understand the history of the case and why this claim has been dismissed.

Findings of Fact

7. I make the following findings of fact.
8. Mrs Baroudi Abdullah worked as a receptionist at the university's student accommodation from August 2000.
9. Mrs Baroudi Abdullah has various longstanding mental health conditions. These are set out in a letter from her GP dated 27 January 2020 as follows:
 1. Dependent personality
 2. Anxiety with depression
 3. Delusional disorder
 4. Dependent and emotional unstable personality disorderNo onset date for these conditions is given, but it is apparent that at least some of her difficulties pre-dated her dismissal. For example, there is a letter dated 10 July 2018 from a consultant psychiatrist from the Greater Manchester Mental Health NHS Foundation Trust which appears to have been written in the context of conduct concerns at work, and sets out why the claimant's mental health history might have been a factor in the alleged misconduct. Mrs Baroudi Abdullah also has some physical health impairments, which are not relevant to the issues I have to decide, but are referred to in the medical records.

10. On 14 February 2019, Mrs Baroudi Abdullah was dismissed following allegations of misconduct, including (as I understand it) that she had been watching television or listening to music when she should have been working, and that she was not giving her job the attention that it required. I should emphasise (as I did to Mrs Baroudi Abdullah during the hearing) that it is not my role at this hearing to decide whether that dismissal was fair or unfair, or whether it was discriminatory. I accept that she feels strongly that it was both unfair and discriminatory, for various different reasons.
11. On 17 May 2019 Mrs Baroudi Abdullah presented a claim of unfair dismissal to the Employment Tribunal. Text included in the claim form appeared to indicate that she also wished to bring discrimination claims (although the relevant boxes in the claim form were not ticked). She refers to having to use her phone at work to provide support to her disabled son, to being disabled herself, and to having been discriminated against due to her religion and background.
12. Settlement negotiations commenced through ACAS. Mrs Baroudi Abdullah had help in emailing ACAS from her partner. She spoke to ACAS on the phone herself.
13. On 18 July 2019 a settlement was reached. A COT3 document was produced, which was signed by Mrs Baroudi Abdullah on the 19 July 2019. That required Mrs Baroudi Abdullah to write to the Tribunal and withdraw her claim. She did so and a dismissal on withdrawal judgment was signed on 2 August 2019 and sent to the parties on 15 August 2019. The agreement provided for a payment to be made to the claimant, and Mrs Baroudi Abdullah confirms that the correct payment was received.
14. The terms of the COT3 agreement confirm that the settlement sum is being accepted in full and final settlement of all claims which the claimant has or may have in the future against the respondent. I need not set out the full wording. Express reference is made to claims under various statutes including the Employment Rights Act 1996 and the Equality Act 2010.
15. At the time of signing the agreement I accept that Mrs Baroudi Abdullah was, broadly, 'struggling' with her mental health. She was experiencing difficulties with her son (who has his own severe mental health challenges) and was unhappy about the dismissal. Unfortunately, the evidence Mrs Baroudi Abdullah gave to me was quite confused, particularly as regards when she has experienced the most severe effects of her mental health impairments. When she was able to link this with a specific time period, it appeared to me that it had been during a period in 2018 when her son was in crisis and then (to a lesser extent) around the time that she submitted the second claim. I do not find that there was any specific crisis or deterioration in her condition around the time of signing the COT3. I find it was her own decision to sign the COT3 and settle the claim. She wanted to do so, as she told me, in order to "get rid of" the claim and move on with her life.
16. Mrs Baroudi Abdullah generally leaves the management of her finances to her partner, at least in part because she finds it difficult to deal with such matters. The settlement money was spent on financial commitments such

as her mortgage and credit card repayments. He took the necessary practical steps to do that. However, there is no formal legal arrangement for her partner to conduct her affairs.

17. There is nothing in any of the medical records which refers to Mrs Baroudi Abdullah lacking capacity to conduct her affairs, to make decisions about her treatment or, indeed to make any type of decision, whether on a permanent or temporary basis. Broadly, the GP records leading up to the date of signing the COT3 indicate that Mrs Baroudi Abdullah had reported mental health concerns at the time of dismissal in February, but between that date and July 2019 they primarily concerned with physical ailments and repeat prescriptions. It appears that her mental health deteriorated somewhat after July 2019, with increasing references to more serious problems, up to the point of submitting the second claim. None of the letters from the various clinicians address themselves to the question of mental capacity in any context, far less to the specific question of whether Mrs Baroudi Abdullah lacked capacity to enter into this particular agreement at this particular time.
18. The second claim (2416565/2019) was presented on 14 December 2019. At box 8.1, Mrs Baroudi Abdullah indicated she was claiming unfair dismissal and discrimination on the grounds of religion or belief, race and disability. Again, the text accompanying the claim is very brief and somewhat confused, but it is apparent that the focus of the complaint is the dismissal. There is no suggestion of any new act giving rise to the complaint.
19. The respondent's response drew attention to the previous claim and settlement and argued that the second claim should therefore not be allowed to proceed. Subsequent correspondence included a letter from Mrs Baroudi Abdullah to the Tribunal dated 11 September 2019. This was not copied to the respondent but I read the relevant part to Ms Carnwath during the hearing. The letter was enclosing the medical reports (later disclosed separately to the respondent) and stated:

"I hope that from my medical reports you take into consideration all the facts that I was not having the mental capacity to deal with the matter when I signed the agreement."

The law, discussion and conclusions

20. There is a general prohibition on agreements which prevent claimants from pursuing claims in the employment tribunals under both s.203 of the Employment Rights Act 1996 (in respect of the unfair dismissal claim in this case) and s.144 of the Equality Act 2010 (in respect of the discrimination claims). However, in both cases valid agreements can be made where they are made with the assistance of an ACAS conciliation offices.
21. Mrs Baroudi Abdullah did not suggest that this COT3 was not a valid agreement within the legislation, and I am satisfied that it was. I am also satisfied that the matters complained about in the second claim were, for all material purposes, the same as the matters complained about in the first claim. The wording of the agreement was effective to 'catch' every complaint which can be discerned from the second claim and to prevent Mrs

Baroudi Abdullah from bringing those claims having regard to the statutory provisions mentioned above.

22. Mrs Baroudi Abdullah's argument, instead, is that I should set aside the COT3 agreement because, at the time it was made, she did not have capacity to enter into it. That was the argument made in the 11 September letter and it was her main argument today.
23. Legally, that is a complex proposition. Although the common law provides that contracts will be voidable (i.e. they can be set aside) in certain circumstances, including mental incapacity, there is some dispute in the higher court authorities (at least in England) as to whether that can be done in the tribunal or whether there would have to be a separate court action to set aside the COT3 agreement before again tribunal claim could be brought.
24. Ms Carnwath, for the respondent, referred to the Scottish EAT case of **Glasgow City Council v Dahhan [2015] UKEAT/15** and on the basis of that case she conceded (perhaps generously) that I would have the discretion to set aside the COT3 agreement if Mrs Baroudi Abdullah was able to show that she lacked mental capacity at the time she entered into it. Ms Carnwath therefore focused her submissions on demonstrating that Mrs Baroudi Abdullah did not lack capacity, having regard to the terms of the Mental Capacity Act 2005 and the associated Code of Practice. She asserted that the key considerations were whether Mrs Baroudi Abdullah had shown she was unable to understand information relevant to the decision to enter into the COT3 agreement, retain that information, use or weigh the information to reach a decision and communicate a decision. It was the respondent's submission that the evidence did not demonstrate that any of these considerations were present.
25. I agree with Ms Carnwath's submissions on this point. It is not enough for Mrs Baroudi Abdullah to show that she was experiencing difficulties with her mental health at the time, nor is it enough that she may regret her decision to settle the claim. Very many claimants in the Tribunal experience mental health difficulties and, sadly, the stress of bringing a claim and conducting litigation can often exacerbate those difficulties. That does not mean that those claimants lack capacity to enter into a conciliated settlement and agree to bring the claim to an end in exchange for payment from the respondent.
26. It is very important that parties to tribunal litigation are able to settle their disputes and have confidence that those settlements are final. It would therefore be a very serious matter for me to find that Mrs Baroudi Abdullah lacked mental capacity to enter into this agreement and therefore to set aside the COT3 agreement. Having regard to the findings of fact set out above, and particularly to the lack of specific medical evidence addressing the question of mental capacity, I am simply unable to make such a finding.
27. For this reason I am satisfied that the COT3 is valid and precludes the claimant from bringing the second claim. On that basis the claim has no reasonable prospect of success and must be struck out.

Employment Judge Dunlop

Date: 16 October 2020

JUDGMENT & REASONS SENT TO THE PARTIES

3 November 2020

FOR EMPLOYMENT TRIBUNALS