



## EMPLOYMENT TRIBUNALS (SCOTLAND)

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**Case No: 4103317/20**

**Preliminary Hearing Heard on the 28<sup>th</sup> June 2021 and the 6<sup>th</sup> of August 2021**

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**Employment Judge Porter**

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**Mr A J Turnbull**

**Claimant  
In Person**

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**The Richmond Fellowship Scotland**

**Respondents  
Represented by:  
Mr Edward, Advocate**

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### JUDGMENT OF THE EMPLOYMENT TRIBUNAL

**It is the judgment of the Employment Tribunal that the Tribunal does not have jurisdiction to hear the claimant's claims of unfair dismissal and disability discrimination.**

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#### **Introduction**

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1. In these proceedings the claimant claims unfair dismissal and disability discrimination.
2. The case was set down for a Preliminary Hearing on Jurisdiction- Settlement Agreement/ Strike-Out/no reasonable prospects of success on the 28<sup>th</sup> June 2021, and was continued to the 6<sup>th</sup> August 2021. In the course of proceedings

it was clarified that the sole issue for the Tribunal in the Preliminary Hearing is the issue of Jurisdiction-Settlement Agreement.

3. At the Preliminary Hearing the claimant represented himself and the respondents were represented by Colin Edward, advocate. The Tribunal heard evidence from the claimant himself, from Lindsay Stokes HR Business Partner with the respondents and from Jim Heron, formerly an Area Manager with the respondents. The parties referred to productions numbered **1-164**.

### **FINDINGS IN FACT**

4. The claimant was employed by the respondents between the 16<sup>th</sup> of April 2012 and the 13<sup>th</sup> of January 2020 as a Senior Support Worker. The respondents are a mental health care organisation.
5. In November 2019 Jim Heron had concerns regarding emails sent by the claimant to an individual in the local authority **(105-106)**. As a result he consulted with Lindsay Stokes to get advice on best practice from an HR point of view in relation to the sending of such emails. The Tribunal accepted the uncontradicted evidence of Lindsay Stokes that the concerns were that in the emails the claimant appeared to suggest that a supported individual be punished for certain behaviours and that this did not align with the respondents' ethos as a mental health care organisation.
6. After discussion with Lindsay Stokes it was agreed that the claimant would work from an office environment outwith the respondents' service meantime, and that a protected conversation should take place with the claimant about the possibility of a Settlement Agreement.
7. There was a meeting with the claimant, Jim Heron and Lindsay Stokes on the 10<sup>th</sup> December 2019. The Tribunal heard differing accounts of this meeting from the claimant, Lindsay Stokes and Jim Heron. The claimant's evidence was that he was presented with a 'stark choice' of accepting a compromise agreement and if he refused a reason would be found 'get rid of him' without compensation. The claimant said that he was told that there were people within the respondents who did not like him.

8. The Tribunal accepted the evidence of the claimant that on the 10<sup>th</sup> December 2019 he was at the lowest period of his life due to serious health problems.
9. The evidence of Jim Heron and Lindsay Stokes was that the meeting on the 10<sup>th</sup> December 2019 was conducted in a calm and professional manner and that no intimidatory statements or threats were made to the claimant. At the meeting Jim Heron explained the concerns regarding the email communications sent by the claimant. Lindsay Stokes explained to the claimant that the purpose of the meeting was to explore with the claimant the possibility of leaving the organisation by entering into a Settlement Agreement and that as part of that agreement the respondents would pay a sum of money to the claimant. At the meeting Lindsay Stokes suggested that the claimant should take some time to think about this offer and suggested that she meet him again on the 16<sup>th</sup> December 2019. She indicated that if the claimant did not go down the route of a Settlement Agreement she would have an investigation meeting with him in relation to the concerns about the emails and advised that a fair and proper process would then be followed.
10. There were no notes taken of the meeting of 10<sup>th</sup> December 2019. The Tribunal accepted the evidence of Lindsay Stokes that the reason there were no notes taken was because a protected conversation took place and it was therefore a confidential meeting, and that this was explained to the claimant.
11. A letter was sent to the claimant on the 11<sup>th</sup> December 2019 **(74-75)** advising him that his duties and location were going to change to administrative tasks to be carried out at the Tweed Horizons Office. The letter stated: *“These temporary changes are not a form of disciplinary action nor determine a decision having been made as to the outcome of the matter being investigated. It is a temporary measure being put in place taking account of the least impact on the operation business requirements, is in the interests of both parties concerned and will allow a full and fair investigation into the matter by an independent manager.”*
12. The claimant then met with Lindsay Stokes on the 16<sup>th</sup> December 2019. There was no dispute between the parties on the content of this meeting. The claimant was asked whether he had had opportunity to consider the

respondents' proposal. He indicated that he had given it some thought and had decided that he would be open to agreeing a settlement with the respondents.

13. At the meeting on the 16<sup>th</sup> December 2019 the claimant's ongoing and serious health issues were discussed. The Tribunal accepted the evidence of Lindsay Stokes to the effect that the claimant stated that he felt that leaving the respondents would allow him to concentrate on his health conditions as these were of great concern to him.
14. The Tribunal accepted a cogent and telling passage of evidence by Lindsay Stokes that at the end of the meeting on the 16<sup>th</sup> of December she advised the claimant that he did not need to accept the Settlement Agreement and that an option would be to go on sick leave, given his health difficulties. This evidence was not challenged by the claimant. Further, the claimant accepted in evidence that his manager Claire Taylor had repeated this advice, telling him that he did not need to accept the Settlement Agreement but instead could go off on sick leave.
15. In order to comply with the requirements of s203 of the Employment Rights Act 1996 the claimant sought legal advice from John Oliver, WS. An affidavit was produced to the Tribunal by John Oliver which stated that he met with the claimant on the 6<sup>th</sup> of January 2020 and went over the Settlement Agreement with him and that, after explaining in full its implications to him, the claimant agreed to sign it together with the relative Appendices. John Oliver then offered independent specialist advice to the claimant who did not take up that offer. The claimant did not deny the narration in the Affidavit of John Oliver.
16. The Settlement Agreement was signed by the claimant on the 6<sup>th</sup> January 2020. **(112-117)**
17. In his submissions, the claimant stated that he had accepted the Settlement Agreement as he was concerned he would be dismissed following an investigation and that if he were dismissed he would not be able to claim benefits. He stated that signing the Settlement Agreement allowed him to claim

benefits. In his submissions the claimant stated that he wished this statement to be accepted as evidence.

## THE LAW

- 5 18. Settlement Agreements provide an exception to the general principle that individuals cannot contract out of the statutory employment rights. **(s203(1) of the Employment Rights Act 1996)**. In order to be legally binding, Settlement Agreements must be in writing, relate to the particular proceedings, only be made where the employee or worker has received advice from a relevant independent adviser and identify that adviser; and must state that the conditions regulating Settlement Agreements have been satisfied.
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19. The claimant's sole challenge to the Settlement Agreement is that the settlement agreement was void through force and fear. The Tribunal has jurisdiction to consider such matters (see for instance **Glasgow City Council v Dahhan UKEATS/0024/15/JW**). The Tribunal considered the respondents were correct in their summation of this law when in their skeleton argument they quoted from Lord MacFadyen in the case of **Euan Wallace & Partners v Westscot Home plc 2000 SLT 327(OH)** *"In my opinion the essence of a case of force and fear as a ground for setting aside a transaction lies in one party bringing to bear threats or pressure which are either in themselves illegitimate or are deployed to achieve an illegitimate result, and in the other agreeing to the transaction because of those threats or that pressure."*
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20. The case of **Hennessy v Craigmyle & Co Ltd and Another 1986 ICR 461 (CA)** is authority for the proposition that economic duress is a ground for avoidance of a contract if a claimant's will was overborne so that it could be said that his consent to the contract was vitiated because he had no real alternative; and that whether such duress exists is a question of fact for the Tribunal.
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## OBSERVATIONS ON THE EVIDENCE

21. The Tribunal had considerable sympathy for the claimant in the health difficulties he faces and accepted his evidence that at the time of signing the Settlement Agreement he was at a particularly low period of his life.

22. On the issue of the meeting of the 10<sup>th</sup> December 2019, however, the Tribunal preferred the evidence of Jim Heron and Lindsay Stokes to that of the claimant. To this end the Tribunal observed that the evidence of Jim Heron and Lindsay Stokes was given in clear and measured terms. Further, the Tribunal found credence in their account of the meeting on the 10<sup>th</sup> December 2019 by the uncontradicted narrative by Lindsay Stokes of the meeting on the 16<sup>th</sup> December 2019 when the claimant agreed to enter into the Settlement Agreement, despite being advised of the possibility of going off on sick leave.

23. The Tribunal noted that no explanation was provided by the claimant as to why he had not raised his issues around the meeting on the 10<sup>th</sup> December 2019 with John Oliver when he met with him on the 6<sup>th</sup> January 2020.

## SUBMISSIONS

**Both parties provided written submissions which were supplement by oral submissions. The undernoted is a brief summary of these submissions, which were considered by the Tribunal in full in reaching its judgment.**

### **The claimant's submissions**

24. In his submissions the claimant emphasised that the meeting on the 10<sup>th</sup> December 2020 had an oppressive atmosphere; that he was told several times he had no choice but to sign the Settlement Agreement; and that he was picked on at the most vulnerable time of his life.

25. In all the circumstances he asked that the Tribunal find that he signed the Settlement Agreement through force and fear, and to set aside that Agreement and find that the Tribunal has jurisdiction to hear his case.

### **The respondents' submissions**

26. In their submissions the respondents outlined the applicable law with reference to s203 of the Employment Rights Act 1996, the case of Euan Wallace & Partners v Westscot Homes Plc 2000 SLT 327(OH) and the case of Hennessy v Craigmyle & Co Ltd and Another 1986 ICR 461 (CA)
- 5 27. The respondents submitted that the facts of the case do not support the claimant's position that he signed the Settlement Agreement through force and fear. In particular, the respondents founded upon the fact that no issue was taken by the claimant on the content of the meeting on the 16<sup>th</sup> December 2019 when he agreed to sign the Settlement Agreement. He then visited a solicitor,  
10 namely John Oliver on the 6<sup>th</sup> January 2020 and did not raise the issue of force and fear with him.
28. In summary the respondents stated that the claimant signed the Settlement Agreement of his own will, having had time to consider his position, having received legal advice and having accepted payment as part of the agreement.

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### **Discussion and Decision**

29. In determining this matter, the Tribunal had regard to the fact that the only challenge the claimant has to his Settlement Agreement is the issue of force and fear.
- 20 30. In their deliberations, the tribunal turned firstly to the meeting on the 10<sup>th</sup> December 2019 which is central to the claimant's claim. To this end, the Tribunal finds that the meeting took place as narrated by the respondents' witnesses Lindsay Stokes and Jim Heron; that it was explained to the claimant that it was a protected conversation; that there were discussions at the meeting  
25 on the possibility of a Settlement Agreement; and that there would be an investigation process if the claimant chose not to enter into the Settlement Agreement. The evidence was accepted that it was made clear to the claimant that whether or not he entered into a Settlement Agreement would have no impact on the respondents' investigation into his emails and that a full, fair and  
30 proper process would be followed. The Tribunal accepted the evidence of Lindsay Stokes and Jim Heron that at all times the tone of the meeting was

civil and professional and that there were no threats or intimidation at the meeting.

31. The conclusions drawn by the Tribunal on the meeting of the 10<sup>th</sup> December 2019 are reinforced by the fact that the claimant attended the meeting with Lindsay Stokes on the 16<sup>th</sup> December 2019 and took no issue with that meeting, at which he agreed to enter into a Settlement Agreement. In reaching their conclusion that there was no force and fear the Tribunal also noted that both Lindsay Stokes and Claire Taylor suggested to the claimant that instead of entering into a Settlement Agreement he should consider going off on sick leave. Further, the claimant did not mention anything remiss to his solicitor John Oliver when receiving advice and signing the Settlement Agreement on the 6<sup>th</sup> January 2020.
32. After considering all the evidence , it is the conclusion of the Tribunal that the reason the claimant signed the Settlement Agreement was that he was concerned that the investigation would lead to a disciplinary process and dismissal, which would in turn result in him being unable to claim benefits.
33. It is for all these reasons that it is the decision of this Tribunal that they have no jurisdiction to hear the claimant's claims on the basis that there is a valid Settlement Agreement in place.
34. As the Tribunal found for the respondents in fact, it is unnecessary to consider whether the case of **Hennessey** is in point in all the circumstances of this case. For the sake of completeness the Tribunal finds that additionally, the ratio of **Hennessey** is applicable and that the claimant's case also fails on this ground. The reason that the Tribunal finds that **Hennessey** is in point is that the claimant had a clear alternative, namely either to allow any investigatory/ disciplinary process to proceed to its ultimate conclusion and to take the matter to an Employment Tribunal, or not to sign the settlement agreement and go off on sick leave as suggested to him by both Lindsay Stokes and Claire Taylor.



Employment Judge: Jane Porter  
Date of Judgment: 08 August 2021  
Entered in register: 12 August 2021  
and copied to parties