EMPLOYMENT TRIBUNALS

Claimant: Mr S Green

Respondent: Governing Body of Newbridge Primary School (1)
Bath & North East Somerset Council (2)

Heard at: **Bristol** **On:** **20 & 21 September 2021**

Before: **Employment Judge Christensen**

Representation
Claimant: In person
Respondent: Ms Winstone of Counsel

JUDGMENT having been sent to the parties on 11 October 2021 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

The issue

1. Whether the claimant is estopped from pursuing any claim prior to 20 March 2019 as a consequence of the COT 3 agreement made with the respondent, if any such claim is still pursued?

2. It is clarified and agreed that this now relates only to the S15 claims set out in para 4 of the Order of Judge Midgely.

3. There are 4 complaints of unfavourable treatment set out at para 4.1 in the order of Judge Midgely dated 29-4-21.

The parties respective positions

Respondent

4. The position of the respondent is that the COT 3 is fully effective and should not be set aside**.** The respondent's position is that 4.1.1 is distinguishable from the other 3 S15 complaints in that it relates to a decision made prior to the COT 3 agreement being entered into on 20 March 2019. That decision was to allocate the claimant the art room for

the use of his music lessons. In that sense, says the respondent, the claimant is estopped from pursuing that claim in its entirety. 4.1.1 refers to the allocation of the art room from 21 February 2019 to 6 March 2020.

5. In relation to 4.1.2, 4.1.3 the respondent's position is that the COT 3 agreement is effective to mean that the claimant may not pursue those claims in relation to events prior to 20 March 2019, but that he may otherwise pursue his claims in relation to each of them.

6. 4.1.2 relates to events relating to the dissemination of school telephone numbers from 21 February 2019 to 6 March 2020. The respondent's position is that the COT3 is effective to mean that the claimant may not pursue that claim in relation to events prior to 20 March 2019 but may otherwise pursue that claim.

7. 4.1.3 relates to a failure to ensure the access ramp was maintained properly in the period 21 Feb 2019 to 6 March 2020. The respondent's position is that the COT3 is effective to mean that the claimant may not pursue that claim in relation to events prior 20 March 2019 but may otherwise pursue that claim.

8. 4.1.4 refers to a failure from January 2020 to March 2020 to ensure the disabled car parking space was properly maintained. The estoppel point is not engaged there.

Claimant

9. The position of the claimant is that the COT 3 is ineffective on the basis of two counts of misrepresentation, that it was unfair and confusing and contrary to government policy regarding employment rights.

Evidence

10. To determine the issue I took evidence from Ms Phillis an ACAS conciliation officer. Ms Phillis attended under a witness order requested by the respondent but attended as a reluctant witness and without a witness statement. I also took evidence from Ms Matson an HR Consultant appointed by the respondent and the claimant. I took evidence from the claimant. I considered a number of documents in the bundle.

11. I was assisted by written submissions from both parties which were augmented orally by each of them.

Reasonable Adjustments

12. Before the hearing started I reviewed the reasonable adjustments requested by the claimant to ensure that these were adhered to during the hearing.

Findings of Fact

13. The claimant was a music teacher at R1, he had worked in that capacity since 2013. Towards the end of 2018 the R1 proposed that the claimant should pay a room charge for his lessons. This caused the claimant to contact his musicians' union to take advice. He also contacted ACAS. He

was concerned that this may be a breach of his worker rights and may be disability discrimination.

14. The contact with ACAS caused a period of conciliation between the respondents and the claimant as a way of avoiding the claimant needing to start proceedings in the ET.

15. A COT 3 was entered into on 20 March 2019. That COT had appended to it an agreement which is referred to in the COT 3 as a Facilities Agreement. It included terms on which the claimant would hire a room from R1, the terms of the agreement, termination provisions, the conditions of use of the room and set out that the claimant's status was that of someone providing services on his own account as an independent contractor.

16. The claimant had contact with ACAS by email, by phone and went to a meeting attended by Ms Phillis on 21 February 2019. He went to that meeting with his union representative but his representative was denied permission to attend the meeting. The evidence of Ms Matson is that her understanding was that this was because his attendance had not been pre arranged. Ms Matson also attended that meeting as the R1s representative.

17. There is a disagreement between the claimant and respondent regarding what was discussed at that meeting. I am satisfied that the notes at B93 set out the gist of what was discussed at the meeting. Those are notes prepared by Ms Matson.

18. The claimant has explained that as a result of his disabilities and in particular his dyslexia his processing abilities are impacted such that he finds it difficult to remember things that are said. He has poor memory. I am satisfied that he is a witness who was often inconsistent in his evidence and unreliable in his memory, his evidence was confused and confusing. His recollection of events appeared to vary on a number of occasions. That is not a criticism of the claimant as I recognise this is likely to be a manifestation of the disabilities from which he suffers and I also recognise that as a litigant in person the process of the ET can be stressful and this in turn can cause people to become confused.

19. An example is B24 which is an email from Ms Phillis at ACAS to Ms Matson, before the finalisation of the COT3 and in which she puts forward a number of points argued for by the claimant. She uses language which makes it clear she is putting forward points argues for by the claimant. "*He is happy to pay £20 a week….which he feels reflects the current state of the school's facilities – alternatively instead of paying a set fee for room hire he would be happy to pay a suggested donation toward the general upkeep of the school – the claimant has informed me that he would be happy to pay £30 per week however he would want the settlement sum increased to £7,500".*

20. The claimant's position is that he never had discussions with ACAS on that basis and did not agree with what is set out in that letter. I consider it wholly implausible that Ms Phillis, as an experienced ACAS conciliator,

would have put forward such proposals on behalf of the claimant unless those proposals came from him.

21. Instead I am satisfied that the claimant has become confused and has forgotten what he said to ACAS at the time. I find that he did represent that as his position to ACAS.

22. Following receipt of the draft COT 3 and appended agreement the claimant chose not to take any advice from his union or the union's solicitors – I am satisfied that it was genuinely a choice by him. He told me in evidence that he had solicitors available to him after filling in forms but that he did not contact them or his union rep to seek their advice on the terms of the COT 3 and appended agreement because sometimes they did not respond very quickly.

23. I do however consider it relevant that his union rep had travelled to Bath to attend the meeting with him and that tends to indicate that he was engaged with supporting the claimant. It was of course was the claimant's choice at the time but I am satisfied that that his decision not to follow up these forms of support and advice is likely to have contributed to the sense of confusion that he felt regarding the terms of settlement.

24. The claimant told me in evidence that when he signed the COT 3 and appended Hire Agreement he thought that they had force together with everything that had been agreed at the ACAS meeting on 21 February. He argues that he never agreed to an agreement in which any hire charge would be paid. I regard that as simply unbelievable and reject his evidence in that regard. I prefer the evidence of Ms Phillis that she was at all times putting forward his case to the respondent. The claimant is an intelligent man and well placed, notwithstanding what he has told me about his disabilities, to understand that the terms of the agreement were all placed in the COT 3 and Hire Agreement. They are very clear on this point even taking into account that they are couched in legal language. He signed the document knowing that that term was included. Had the claimant struggled to understand any terms he was well placed to have either told Ms Phillis this at the time (which he did not do) or to refer it to his union rep or the solicitor at the union that he told me was available to him. Neither did he do this.

Submissions

25. The claimant has submitted that he was subject to misrepresentation on two counts. I reject such a notion.

26. On the first count he argues that it is relevant that BANES Logo for R2 was absent from the legal documents. I see no relevance in this point. He argues that the BANES legal team were not involved in the preparation of the COT 3. I see no relevance in this point. Neither do I see any relevance in points 5,6, or 7 under the first heading of misrepresentation. I am not satisfied on any of those bases that it would be proper to conclude that there has been any misrepresentation.

27. The second head of misrepresentation refers to the references in the COT3 to the fact that the claimant was not in an employment relationship. He argues that was against government policy and mispresents the nature of the appended Hire Agreement. I see no validity in these arguments. The documents say what they say: they make it clear that the intention is that the claimant will not have employment status.

28. The third head is that the COT 3 was unfair confusing and caused problems for both sides. There are 7 points made. In my judgment, the only potential point of validity is that the claimant's union representative was made to wait outside the meeting that took place on 21 February. I have not been satisfied that there was any proper basis for that. The fact that the claimant had not pre arranged the attendance of his union rep does not seem a good reason to deny him his presence in that important meeting. However I am also satisfied that of itself this does not undermine the COT3. It is relevant that the claimant had every opportunity of following up with his union representative and/or his union solicitor after the meeting had he chosen to do so. He has not satisfied me that he has any proper reason not to do so. I do not therefore consider that the denial of the attendance of his union rep at the ACAS meeting undermines the validity of the COT 3 when signed by the claimant.

29. I note at 3.5 that the claimant wishes to argue that his previous contract was still valid. To the extent that the terms of his previous contract are relevant to whether or not he held employment status under the Equality Act at the relevant time, is a matter for fact finding and consideration at the Preliminary Hearing on 13 & 14 January 2022.

30. I accept and adopt the approach argued for by the respondent in their submission on this issue. They start at p4 of Ms Winstone's submissions and are called issue 4. Those set out what I accept is a the proper approach to the issue of estoppel on the facts.

Employment Judge Christensen
Date: 29 October 2021

Reasons sent to parties: 1 November 2021

FOR THE TRIBUNAL OFFICE