



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr D Betteridge

**Respondent:** LTE Group

**Heard at:** Leeds by Cloud Video Platform

**On:** 24 May 2022

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

## Representation

**Claimant:** in person

**Respondent:** Mrs Fernandez-Mahoney

# REASONS

1. On 24 May 2022 the Employment Tribunal struck out the claim pursuant to Rule 37(1) of the Employment Tribunal's Rules of Procedure on the grounds that it/the manner in which it had been conducted was scandalous or vexatious or it had no reasonable prospect of success.
2. On 30 May 2022 the claimant requested written reasons for the Tribunal's judgment of 24 May 2022, which had been given orally at the hearing on 24 May 2022. These are those written reasons.

## Preamble

3. On 7 January 2022 the respondent made an application to strike out the claimant's claim. That application came before me on 24 May 2022. Prior to the hearing a bundle running to 106 pages had been prepared by the respondent. It was agreed at the beginning of the hearing that it contained all relevant documents including documents sent to the respondent by the claimant on 10 May 2022.
4. This is the judgment on the strike-out application which I gave ex tempore at the conclusion of the hearing on 24 May.
5. At the beginning of the hearing I had a lengthy discussion with the claimant in relation to the chronology of when he presented the claim and when he signed the COT3 settlement agreement (as described below) to ensure that he understood the underlying legal issues. Once that discussion had concluded I gave each side an opportunity to make brief submissions which they did.

## Discussion today and factual background

6. On 19 November 2021 the claimant presented a claim form beginning this

claim. He ticked the boxes at 8.1 which indicated he was bringing claims for sexual orientation discrimination and “other payments”. He also ticked the box marked “I am making another type of claim”. He included a small amount of text in the box under that section and in box 8.2

7. At the beginning of the hearing today we had a discussion of the claims which the claimant had intended to pursue. It was agreed that the claims were (1) a claim under the Equality Act 2010 (for sexual orientation discrimination) and (2) a claim relating to failure to pay him the correct wages as a result of a delayed transfer of job roles (i.e. a claim for unauthorised deductions under the Employment Rights Act 1996).
8. In addition (and this is significant as a result of the submissions the claimant made today), the claimant set out in box 9 of the claim form the remedy which he sought. At numbered paragraph 2 in box 9.2 he wrote:

*Acknowledgement from those responsible for writing letters to me in the manner written and why when asking for clarity and insight this has been shut down instead of relevant apologies and remedies. [sic]*

9. On the same date that the claim form was presented the claimant agreed via Acas the terms of a COT3 settlement agreement (“the COT3 agreement”) with the respondent. The claimant signed the agreement on 22 November 2021. Its material provisions are as follows:

- a. **Clause 1:** the respondent agreed to make certain payments to the claimant without any admission of liability;
- b. **Clause 2:** the claimant agreed that the payments in clause 1 were accepted in

*...full and final settlement of all or any costs, claims, expenses or rights of action of any kind whatsoever, wheresoever and howsoever arising, under common law, statute or otherwise (whether or not within the jurisdiction of the employment tribunal) which the Claimant has or may have against the Respondent, or against any employee, agent or officer of the Respondent or against any members of its governing body, arising directly or indirectly out of or in connection with the Claimant’s employment with the Respondent as at the date of signing this Agreement.*

- c. **Clause 3:** the COT3 agreement went on to say at clause 3:

*3. For the avoidance of doubt the settlement in paragraph 2 includes but is not limited to:*

*3.1 the Claimant’s ACAS conciliation case number R174285/21;*

*3.2 any other statutory claims that the Claimant may have at the date of signing this Agreement whether under the Employment Rights Act 1996, the Working Time Regulations 1998, the Equality Act 2010, the Trade Union and Labour Relations (Consolidation) Act 1992, the Employment Relations Act 1999, the Part-time Workers (prevention of Less Favourable Treatment) Regulations 2000, the Fixed-Term Employees (Prevention of less Favourable Treatment) [sic] or otherwise;*

I note the conciliation case number referred to in clause 3.1 is the same (or more or less the same) conciliation number as that noted in the claim form (the number given in the claim form has two additional digits after a slash at the end).

10. The claimant was subsequently paid the relevant amount (page 30 of the bundle). Indeed, at the hearing before me he accepted that he had been paid. The claimant however subsequently declined to withdraw his claim when requested to do so which is why the respondent has pursued its strike out application.
11. The claimant's explanation for not withdrawing the claim as given at the hearing today has been that under the COT3 agreement he had not received the full remedy which he had sought in box 9.2 of the claim form. That is to say he had not received under the COT3 agreement the acknowledgement which I have set out above which was contained in the second sub-paragraph of box 9.2.

### **The Law**

12. Rule 37(1) of the Tribunal's rules of procedure states:

*At any state of the proceedings, either on its own initiative or on the application of a party, a Tribunal may strike out all or part of a claim or response on any of the following grounds –*

- (a) that it is scandalous or vexatious or has not reasonable prospect of success;*
- (b) that the manner in which proceedings have been conducted by or on behalf of the claimant or the respondent (as the case may be) has been scandalous, unreasonable or vexatious.*

13. In Attorney General v Barker 2000 1 FLR 759, QBD (DivCt), Lord Chief Justice Bingham (as he then was) described 'vexatious' as a 'familiar term in legal parlance'. He said that the hallmark of a vexatious proceeding is that it has 'little or no basis in law (or at least no discernible basis); that whatever the intention of the proceeding may be, its effect is to subject the defendant to inconvenience, harassment and expense out of all proportion to any gain likely to accrue to the claimant; and that it involves an abuse of the process of the court, meaning by that a use of the court process for a purpose or in a way which is significantly different from the ordinary and proper use of the court process'.

### **Conclusions**

14. The claims included in the claim form are quite clearly settled by the full and final settlement provision in clause 2 of the COT3 agreement. This is put beyond doubt by clauses 3.1 and 3.2 which (1) refer to the relevant Early Conciliation number; and (2) make clear that claims under the Equality Act 2010 and Employment Rights Act 1996 are covered by the settlement agreement.
15. Further, to the extent that the claimant argues that there is some significance in the fact that the COT3 agreement was agreed on 19

November 2021, the date that the claim form was presented, the COT3 agreement makes clear that it settles all claims the claimant had on the date of signing the COT3 agreement. That was 22 November 2021 (page 24 of the bundle). The claims he had on that date quite obviously included claims included in the claim form presented just three days earlier.

16. I have understood clearly today that the claimant was dissatisfied that he did not in the COT3 agreement receive the remedy he had sought in numbered paragraph 2 in box 9.2 of the claim form. However, and unfortunately for the claimant, that is simply not relevant to the question of whether signing the COT3 agreement precludes him from pursuing the claim. By entering into the COT3 agreement he settled his claims (including the claims contained in the claim form presented on 19 November 2021) on the terms set out in the COT3 agreement. If he had wished to insist upon an acknowledgement in the form described in box 9.2 of the claim form then he would have needed to do that prior to the signing of COT3 agreement (with a relevant term being included in it). He did not do that.
17. I therefore strike out the claim because it/its conduct by the claimant following the signing of the COT3 agreement is vexatious in the terms described above. This is because it involves an abuse of process because the claimant seeks to pursue a claim which was settled when he signed the COT3 agreement. Alternatively, and for the same reasons, it/its conduct by the claimant following the signing of the COT3 agreement is scandalous. Alternatively, because following the signing of the COT3 agreement it cannot have any reasonable prospect of success.

Employment Judge Evans

Date: 7 June 2022