EMPLOYMENT TRIBUNALS

Claimant: **Ms Filoteea Maria Bob**

Respondent: **Abbey Pynford Ltd**

RECORD OF A PRELIMINARY HEARING

Heard at: Watford (in public by video-link – "CVP") On**:** **05 July 2022**

Before: Employment Judge R S Drake (sitting alone)

Appearances
For the Claimant: In person
For the Respondent: Mr G Lee (Solicitor)

JUDGMENT

1. The Claimant's claims of Sex Discrimination and breach of the right to Equal Pay are struck out in accordance with Rule 37(1) paragraph (a) of Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 ("the Rules"), on the grounds that the claims have no reasonable prospect of success there being a Settlement Agreement dated 28 April 2022 in place compromising such claims before they were issued.

Reasons

2. I went through with the Claimant every single part of the particulars of her claim as set out in her ET1 and also the complaints she raised by grievance procedure by letter on 14 June 2022 (the "Grievance Letter") which post-dated execution of a Settlement Agreement between the parties dated 28 April 2022 (the "Settlement Agreement").

3. I noted that the Claimant accepted the accuracy of the documents incorporated within a Bundle prepared by the Respondents for today's hearing. In particular she accepted the accuracy of Minutes taken at

grievance hearing on 25 June 2022. However, she sought to argue that she was free to resile from the Settlement Agreement because of post agreement treatment of her to which she took exception, but which the Respondents say she did not particularise in her ET1 to any sufficient degree to show that the Settlement Agreement could be circumvented.

4. The Respondent's argument was that the terms of the Settlement Agreement were drawn sufficiently widely to cover all existing or envisaged claims already intimated or known of, and that the Claimant had the benefit of independent legal advice before entering into the Agreement. Further they argued that the terms complied with the very strict and limiting requirements of Section 203 of the Employment Rights Act 1996 ("ERA") and its counterpart in Section 147 of the Equality Act 2010 ("EqA").

5. Section 203 ERA is relevant to claims under that Act but S147 EqA is more relevant in this case, which is limited to claims under EqA. Each provision requires that a Settlement Agreement to be binding must :-

    a. Be a contract in writing;
    b. Relates to the particular complaint;
    c. The complainant has before entering into the contract received advice from an independent advisor about its terms and effects including on the ability to pursue claims before a Tribunal;
    d. On the date of the giving of advice there is in force a contract of insurance or an indemnity provided for members of a profession or body covering the risk of a claim by the complainant in respect of loss arising from the advice;
    e. The contract identifies the advisor and
    f. The contract states that the terms of (c) and (d) have been complied with;

6. I found on examination of the Settlement Agreement that these requirements were fully met. The Claimant says she seeks to withdraw from the Settlement but I note that parties to such an Agreement cannot in law, being a Common Law contract be resiled from unilaterally, but requires consent of both parties. Such consent is not evident form the Respondents today.

7. I found on the basis of the evidence before me and Mr Lee's submissions that the claims set out in the ET1, and before that the Grievance Letter, were all foreshadowed by complaints detailed on dates preceding execution of the Settlement Agreement. Mr Lee argued that such claims were therefore fully envisaged to a sufficient degree to be caught and compromised by the Settlement Agreement and that thus the Claimant could not now seek to resile therefrom and raise these claims afresh before the Tribunal.

8. I found Mr Lee's arguments persuasive to a sufficient degree to find that the Settlement Agreement covered all the areas of complaint now being raised by the Claimant in her ET1, and that there is insufficient particularity in her ET1 as to the post-Settlement causes of complaint (she argues detrimental treatment but doesn't sufficiently set them out in the ET1) to enable her to say

that they give her independent cause of action to pursue in the current proceedings. To allow her to do so would necessitate amendment of her case by addition of such claims which are all now out of time given the strict 3 month time limit imposed by Section 123 EqA, and there being no evidence form the Claimant that it would be just and equitable to extend time to permit raising of what amount to new claims. The matters referred to in the ET1 as post-dating the Settlement Agreement are a recital of events but do not constitute assertions of breaches of the EqA. They are merely a statement of post Settlement history.

9. In **Chandhok v Tirkey [2015] ICR 527**, Langstaff J in the EAT said:

"The claim, as set out in the ET1, is not something just to set the ball rolling, as an initial document necessary to comply with time limits but which is otherwise free to be augmented by whatever the parties choose to add or subtract merely upon their say so. Instead, it serves not only a useful but a necessary function. It sets out the essential case. It is that to which a Respondent is required to respond. A Respondent is not required to answer a witness statement, nor a document, but the claims made – meaning, under the Rules of Procedure 2013, the claim as set out in the ET1."

10. In the case of **Selkent Bus Company Ltd v Moore [1996] IRLR 661,** which the EAT held that, when faced with an application to amend, a tribunal must carry out a careful balancing exercise of all the relevant circumstances and exercise its discretion in a way that is consistent with the requirements of *"relevance, reason, justice and fairness inherent in all judicial discretions."* The EAT considered that the relevant circumstances would include the nature of the amendment, the applicability of time limits and the timing and manner of the application.

11. Therefore, I conclude that the Settlement is binding in respect of all heads of complaint now raised in the ET1 and that as its validity is unchallenged as such because it complies with Section 147 EqA, the Tribunal cannot have jurisdiction to justiciate these claims.

12. This engages and brings into consideration the terms of paragraph (a) of Rule 37(1). Claims for which the Tribunal has no jurisdiction because they are waived/compromised are claims which have no reasonable prospect of success.

13. For the sake of completeness, I set out below the basis upon which I had to consider the position so far as set out in Rule 37: -

(1) At any stage 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 … has no reasonable prospect of success (my emphasis)"

14. I note that the Claimant sought to argue that it could not be said that her claim had no reasonable prospect of success, but that she did not go further to argue alternatively that at worst it should be regarded as having a limited prospect. She offered no evidence of ability to meet any Deposit Order which may be required in exercise of Rule 39.

15. I took account of the Court of Appeal's finding in **Swain v Hillman [2001] 1 All ER 91** in which it was held that a Court (or Tribunal in this case) must consider whether a party " … has a realistic as opposed to fanciful prospect of success …" in the context of assertions as in this case that the Claimant's case has no, as opposed to little, prospect of success. In this case there is clearly on my examination no conflict of evidence on the key points such as would necessitate ventilation at a full hearing. I considered the balance of prejudice facing the Claimant if I struck out her case leaving her with no further way of arguing her views as to the post Settlement causes of complaint, or to the Respondent if the case were not struck out causing them to have to devote considerable time and energy to meeting a claim which on what I have seen and heard today and based on the Claimant's admissions has no prospect of success. On this analysis I conclude that the balance of prejudice favours the Respondent leading me to conclude it is right I should strike out the claim.

16. For all the reasons set out above, I conclude paragraph (a) of rule 37(1) is engaged and empowers me to strike out the claim in accordance with rule 37. Therefore, I have no alternative but to dismiss the claim.

Employment Judge R S Drake

Signed 05 July 2022

Sent to the parties on:

…20 July 2022…….

For the Tribunal:

…GDJ…..……..