EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr Qazi Islam	**v**	**Tesco Stores Ltd**

RECORD OF AN OPEN PRELIMINARY HEARING

Heard at: Watford **On:** 13 December 2022

Before: Employment Judge Alliott sitting alone

Appearances:
For the Claimant: In person (with an interpreter)
For the Respondent: Mr Sam Way (counsel)

JUDGMENT having been sent to the parties on 26 January 2023 and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013, the following reasons are provided:

REASONS

1. This OPH was originally directed by Employment Judge Lewis on 5 July 2022 "to consider whether to strike out the claim on the grounds that it has been settled by COT3". At that time the claimant had only presented claim number 3323445/2021.

2. By the time of the OPH scheduled for 2 September 2022 the claimant had presented a second claim number 3306398./2022. At that hearing Mr Way, for the respondent, sought to strike out the second claim as well. That hearing was adjourned by Employment Judge Dick both due to the claimant not having been given formal notification by the tribunal that the second application would be considered and due to communication problems.

3. Employment Judge Dick directed that this OPH would consider the applications to strike out both cases.

4. The claimant presented claim number 3323445/2021 on 7 December 2021 bringing claims of race discrimination, harassment and claims for arrears of pay for time worked, whilst on suspension and on sick leave. The respondent defends the claims.

5. On 24 February 2022 the respondent made an offer to settle the first claim through Acas for the sum of £2,803.13 "in full and final settlement, and subject to COT3 wording".

6. On 2 March 2022 Acas responded in an email as follows:-

> "We have received a response from the claimant that he agrees with the settlement proposal, subject to terms being agreed.
>
> Please send us the respondent's proposed terms and if the claimant agrees we will confirm a binding agreement."

7. On 3 March 2022 the respondent sent to the claimant, via Acas, the proposed COT3 document.

8. On 4 March 2022 Acas sent an email to the respondent stating:-

> "As the COT3 settlement wording has been agreed between the parties I have notified the tribunal office that the case has settled and processed the forms for signature and sent to the claimant via email."

9. The case file has an email from Acas timed at 08.42 on 4 March 2022 stating in the subject line:-

> "Full settlement at Acas-3323445/21 Islam v Tesco Stores Ltd".

10. On 9 March 2022 Acas sent an email to the respondent stating as follows:-

> "The claimant has now indicated that he has some issues with the COT3 wording and will not sign the COT3 form. I have asked him to provide details of what his issues are with the wording even though he had agreed with them.
>
> He is aware that a legally binding agreement was reached."

11. On 11 March 2022 the claimant emailed the tribunal to state:-

> "I do not wish to be bound by the COT3 terms of agreement and wish for my case to continue to be run/be heard."

12. On 21 March 2022 Acas responded to an enquiry from the respondent as follows:-

> "The tribunal were informed of legally binding settlement on 4 March. Mr Islam is wishing to back out of the settlement. He has been advised that once declared legally binding then even without signature, then it is not possible to change his mind."

13. On 19 April 2022 the claimant made a fresh reference to early conciliation and on 30 May 2022 he presented his second claim number 3306398/2022. In that claim he complains of being treated unfairly as regards three clauses in the COT3 settlement agreement.

14. In response to an order from the tribunal that he must set out his reasons for seeking to set aside the COT3, the claimant sent a document to the tribunal on 29 May 2022. This was not copied in to the respondent. This document states as follows:-

> "After a closer inspection of the conditions in the COT3 document, I do not agree or accept some of the conditions listed. For example, in point 16 I am thinking that the company may try to get me to leave and after this, I will not be able to apply for any jobs with the company or any group companies. Point 10 because

> the grievances are relevant to me as they protect me in the workplace against being treated unfairly. Point 9 because I do not want my pensions and other things mentioned to be affected, and other conditions also.
>
> Additionally, I thought that this was a draft COT3 agreement and therefore I was not expecting my signature on the draft document being counted as the final version of the agreement. In the email which I received the COT3 document, it mentioned "please find attached the draft settlement wording for your comments." Therefore, I was under the impression that the draft document I would be signing would not be a final version and that later on, they will update the document and ask me to make a final signature to complete the agreement. I submitted the draft COT3 document on 3 March. On 4 March I got given an email from Acas to sign the COT3 document and cover letter, and then to post them. I did not sign these documents and on 5 March, I emailed Acas to withdraw the draft COT3 document I submitted on 3 March."

15. On 1 June 2022 the claimant submitted a further document giving his reasons for withdrawing the COT3 signing. This states as follows:-

> "I am writing to inform you that I do not wish to accept the settlement agreement as set out in the schedule to the COT3, which I had previously signed on 3 March 2022.
>
> My reasons for not wishing to accept the settlement agreement are as follows:
>
> 1. I still work for you and I wish to continue to do so; and
>
> 2. I have an outstanding grievance against you that I wish to continue with; and
>
> 3. I informed Acas on 5 March 2022 that I no longer wished to accept the settlement agreement."

16. In response to an order form Employment Judge Dick, on 20 October 2022 the claimant emailed the tribunal to state:-

> "With regards to case management orders point 1. The document which I signed was the COT3 agreement document and I emailed this to Acas. A couple of days after I signed the document, I then emailed Acas notifying them that I was not happy with the document and I did not agree to the terms listed on the document. After this, I received a final COT3 document from Acas but I did not sign this due to the point mentioned earlier."

17. Today the claimant said to me that whilst he did sign and return the COT3 agreement to Acas he did not sign the final version sent to him and so wanted to litigate his claims for wages. He told me a cousin helped him translate both the first and final versions sent to him. In answer to the question did he agree to end his claim he replied, "I did and I didn't". In my judgment, this is not a case where the claimant is alleging he was misled or incapable of understanding the COT3 document.

The law

18. As per s.203 of the Employment Rights Act 2003 and s.144 of the Equality Act 2010 a contract which prevents a person from bringing proceedings in respect of proceedings under either Act is void or unenforceable unless, as the case may be, a conciliation officer has "taken action" or the contract " is made with the assistance of a conciliation officer".

19. As per the IDS Employment Law Handbook on Practice and Procedure at 3.83:-

> "If an agreement is reached by way of Acas conciliation, this will generally be recorded on a standard form known as COT3. However, it is not necessary that an Acas-conciliated agreement be in writing. This was established by the EAT in Gilbert v Kembridge Fibres Ltd [1984] ICR 188, EAT, where G was dismissed and an Acas conciliator was called in. The employer agreed to settle on terms put forward by G and the conciliator phoned the tribunal to tell it that the case had been settled, G received the COT3 form and signed it but then had second thoughts, crossed out his signature and returned the papers to the conciliator. He proceeded with his unfair dismissal claim but the tribunal found there was an enforceable agreement to settle the claim despite the fact that the COT3 had not been signed by both parties. The EAT upheld the tribunal's decision. There had been an offer by the employer and an acceptance by G. This amounted to a legally binding contract and there was no need for the agreement to be reduced to writing."

20. The IDS Handbook goes on to cite the case of Allma Construction Ltd v Bonner [2011] IRLR 204 where in the same conclusion was reached. This case was also cited to me by Mr Way in his skeleton argument.

21. Dealing with a "vexatious" claim the IDS Handbook states:-

> "The term is also used more widely to include anything that is an abuse of process. In Attorney General v Barker [2000] 1 FLR 759, QBD (Civ Div), Lord Chief Justice Bingham 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 discernable basis); that whatever the intention of the proceedings 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

22. I find that on 4 March 2022 the claimant, through Acas, reached a legally binding settlement of the first action with the respondent.

23. I have considered whether there are any grounds from which I can set aside that legally binding agreement. I find that the claimant was not misled and had every opportunity fully to understand the clauses of the agreement. I do not find that any language problem prevented him from assessing the terms of the COT3 prior to signing it and returning it through Acas indicating his agreement.

24. I find that the claimant is bound by the agreement and cannot reopen the issues settled in that agreement simply because he has changed his mind.

25. I find that the second claim does not present a claim that this tribunal has a jurisdiction to determine. Accordingly, I find that it has no reasonable prospect of success and is vexatious.

26. As the first claim has been settled by a legally binding agreement, so I find that its continued prosecution is vexatious.

27. Accordingly, both claims are struck out.

Costs

28. At the conclusion of this hearing the respondent made an application for costs in the sum of £850 which represents Mr Way's brief fee excluding VAT.

29. In the papers that I have, the respondent sent the claimant a without prejudice 'save as to costs' letter on 13 September 2022 making a costs warning.

30. I have a discretion as to whether or not to make a costs order which I must consider if I find that a party has acted vexatiously, abusively, disruptively, or otherwise unreasonably in either the bringing of the proceedings or the way that the proceedings have been conducted.

31. I have taken into account that, as recorded already, the claimant was repeatedly advised by Acas that a legally binding agreement had been entered into, that it did not need his signature and that it could not be undone. Nevertheless, the claimant has persisted in his application to set aside the COT3 agreement. In my judgment, in so acting, the claimant has acted vexatiously and unreasonably in the conduct of these proceedings since it was settled. That conduct has caused the respondent unnecessary legal expenses in terms of the attendance of Mr Way today. Further, I consider that the sum of £850 is an entirely reasonable brief fee for his attendance here today.

32. In the circumstances, I consider it fair and reasonable for the claimant to pay the sum of £850 by way of costs.

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Employment Judge Alliott

Date: 17/4/2023

Judgment sent to the parties on

18/4/2023

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For the Tribunal office