EMPLOYMENT TRIBUNALS

Claimant: Mr K Chima

Respondent: Gold Medal Travel Group Limited

Heard at: Manchester **On:** 20 July 2023 and 6 October 2023 (in chambers)

Before: Employment Judge Cookson (sitting alone)

REPRESENTATION:

Claimant: in person
Respondent: Mr J Boyd (counsel)

RESERVED JUDGMENT ON A PRELIMINARY ISSUE

The judgment of the Tribunal is as follows:

1. The claim is struck out under Employment Tribunal Rule 37(1)(a) because it has no reasonable prospect of success.

REASONS

Introduction

1. This was a public preliminary hearing to determine the respondent's application for the claim to be struck out.

2. I had a bundle of documents, a case management agenda and a case management agenda and skeleton argument from the respondent and an additional document from Mr Chima but I also received various additional emails relating to settlement discussions and the delivery of documents in the course of the hearing from the respondent.

3. Significantly it transpired that the claimant's barrister had prepared grounds of claim, but these had failed to upload when the claim form was submitted electronically in March 2023. I observed to the parties that it was known that there had been a national technical issue affecting some claims at around that time. This may be the explanation. Unfortunately, the tribunal staff had no way of identifying precisely which claim forms had been affected by this. The claim form had not referred expressly to there being an attachment and so there had been nothing to alert the tribunal or the respondent to the missing document.

4. The strike out application had referred to the claim as being unparticularised and a request for further and better particulars of the claims had been made by the respondent. It is perhaps unfortunate that the claimant did not respond to that by sending his grounds of claim document, but he says, in essence, that he thought when the respondent said that it was just litigation tactics.

5. In the course of the hearing the grounds of claim document was sent to the tribunal and a copy provided to the respondent.

6. The grounds on which the respondent sought to strike out the claim were as follows

> "*Application pursuant to rule 37 (1) (a):*
>
> *In view of the above [that is the procedural background], the respondent respectfully requests that the employment tribunal make an order under rule 37 (1) of the Employment Tribunal Rules of Procedure 2013 that the New Proceedings are struck out in full.*
>
> *The grounds for that application are under Rule 37 (1)(a) that the claim is scandalous, vexatious and has no reasonable prospect of success. Pursuant to the terms of the COT3, the respondent respectfully contends that the claimant is precluded from bringing the New Proceedings as a matter of law and that the Tribunal does not have jurisdiction to consider the same".*

7. As the respondent now had the grounds of claim, Mr Boyd was able to make some additional arguments to those in his skeleton argument relating specifically to the claimant's grounds of claim document in support of the application.

8. The claimant argued that the fact that the respondent and the tribunal had not previously known what his claim was, meant this hearing should be converted to private case management preliminary hearing or adjourned and that I should decline to hear the application today. He also told me that if he had known about the issue relating to his grounds of claim form, he would have instructed a barrister to attend the hearing and make arguments for him. I found that argument difficult to follow. Mr Chima knew what application the respondent was making. If there is any potential prejudice to a party, it is to the respondent who had been previously unaware of the contents of the claim, but it did not explain a lack of preparation by Mr Chima. However, I also recognised that issues at the heart of this application, relating to the wording of a COT3 agreement and an argument from the claimant that the COT3 agreement is not valid because it was entered into under duress, are complex legal matters, and that Mr Chima is a litigant in person.

9. Whilst I did not accept that Mr Chima could not been expected to have to answer the respondent's application at this hearing, I wished to ensure that he was given the full opportunity to make any relevant submissions before I determined the strike out application. For that reason, I reserved my decision in this case to allow the claimant time to make written submissions and to give the respondent time to reply. The claimant asked for some significant time to allow him to seek advice which I granted. He was required to provide written submissions by 17 August 2023.

10. Regrettably Mr Chima did not provide his submissions by that date. I directed that he be asked to provide them urgently after the date for submission had passed. Somewhat curiously Mr Chima replied to say I had not made the order referred to above and he was not required to provide submissions because he would make them at the next hearing. I had to remind him of the orders made at the previous hearing and that there would not be a further hearing to consider this application. I then allowed a reasonable time for reply. Written submissions were then provided by Mr Chima on 28 August 2023. The respondent provided a written reply promptly but by that time I was on annual leave. This has caused a longer delay to my decision than I had initially anticipated to the parties.

The issue to be determined at this hearing

11. At the outset of the hearing I raised with the parties the issue of exactly what this tribunal was being asked to determine. The respondent's application was made under rule 37 (1)(a) rather than an application for the tribunal to determine a preliminary issue of jurisdiction. The terms of some of the submissions I have received from the respondent suggests that it may in fact have been seeking that preliminary determination, but I took the view that this case had been listed to consider the respondent's application and as the claimant was a litigant in person I should limit my consideration to the application which is clear from the face of the respondent's letter. I explained that my view was that I should consider only whether I should strike out the claim under rule 37 (1)(a) because it had no reasonable prospect of success claim was vexatious or scandalous. Mr Boyd agreed with that approach.

12. In any event I had little choice given that it is clear that there are material factual disputes between the parties and neither had attended the hearing ready to give evidence to enable me to resolve those disputes.

13. I explained to the parties that if I found that the claimant's case to be an arguable one, I would consider whether a hearing to determine the question of jurisdiction would be required at which evidence would be considered. In considering the application I have therefore taken the claimant's factual case at its highest bearing in mind key documents and facts which are not in dispute. My conclusions below are based on an assumption that Mr Chima will be able to show in due course that at the time he signed the COT3 agreement he had not read the witness statement and was unaware of what Mr Nelson had said which formed the basis of the complaint in the claim before me.

The complaints in this claim

14. This claim makes allegations of direct race and religion and belief discrimination under section 13 (1) of the Equality Act 2010. The particulars of claim explain that the claims arise out the contents of the statement made by Mr James Nelson during Mr Chima's employment and in the course of an investigation meeting. Mr Chima alleges that he only became aware of that statement after he had accepted an offer of settlement in relation to tribunal claim 2417617/2020. He told me he had not had an opportunity to discuss settlement with his barrister because of the timing. Settlement was agreed through the auspices of ACAS with the involvement of an ACAS officer.

15. The particulars of claim state (at paragraph 4) that Mr Chima had received an offer of settlement from the respondent only a few hours before the trial and Mr Chima was not provided with a copy of the trial bundle until the same day. He had been concerned about the fairness of his trial and felt coerced into accepting the offer [of settlement]. As Mr Chima referred to the bundle of document for the final hearing in the previous claim as the "trial bundle" I have adopted that term throughout.

16. In the course of discussions at this hearing Mr Chima told me that the offer of settlement had been made on the last working day before the start of the final hearing in that case. He maintained that he had not received the trial bundle, although this is significantly disputed by the respondent which points to evidence that a registered delivery had been collected and that, in any event, the documents in question had been provided at any earlier stage although perhaps in a redacted form. As explained above, I was concerned that I was not in a position to make a factual finding about those matters. Neither party appeared to have attended the hearing ready to give evidence about this. I proceeded on the basis that Mr Chima will be able to satisfy a tribunal in due course that he had not read Mr Nelson's statement and that he had received the final form of the trial bundle until a very late stage.

17. The particulars of claim go on to say this

> Paragraph 7 *"the claimant has suffered further discrimination since the conclusion of case number 2417617/2020 and upon which this action is based. Further the claimant would not have settled 2417617/2020 should he have received this information at the time and further if he were not coerced into accepting the offer for the same.*
>
> Paragraph 8 states *"it is averred that the respondent's making of the offer while simultaneously withholding the trial bundle for the claimant's perusal in breach of the rules, and in the knowledge that the claimant was not legally represented, was an attempt to coerce the claimant into accepting the offer contained therein through duress. It is averred that as such the claimant, owing to the duress placed upon him by the respondent's actions, is entitled to rescind the whole or any part of the COT3 agreement entered into for claim 2417617/2020*.
>
> Paragraph 9 states *"Further, it is averred that the respondent, in failing to provide bundle to the claimant, misrepresented the current procedural position of the case and therefore the claimant's likelihood obtaining an award at the*

subsequent hearing. It was an effect of this misrepresentation that caused the claimant to accept the offer made by the respondent."

The respondent's arguments

18. Mr Boyd provided a written skeleton argument supplemented by oral submissions and supported by some emails between the parties relevant to the times when particular things had happened.

19. His submissions helpfully explain the procedural background to this claim. Briefly Mr Chima had brought a previous claim against this respondent in 2020 following his dismissal which the respondent had said was by reason of redundancy. He brought claims of unfair dismissal, race discrimination (direct, indirect, harassment and victimisation) and a claim for other payments.

20. The case was listed for a 15-day hearing and Mr Chima instructed counsel though the Direct Access scheme. As noted previously, the claim was settled very shortly before the case had been due to start under the terms of a COT3 agreement agreed through the auspices of ACAS. On 24 November 2022 the claimant informed the tribunal that "[the proceedings] now stand withdrawn by consent". A judgment dismissing the proceedings was subsequently issued.

21. In January 2023 Mr Chima sought to reinstate the dismissed proceedings. Employment Judge Allan refused to reconsider the dismissal judgment. Mr Chima did not suggest to me that he raised this issue of duress in that application and Mr Boyd told me that this was not referred to.

22. The pertinent provisions in the COT3 agreement are these

"5. Subject to paragraph 6, all and any claims which the Claimant has or may have in the future against the Respondent or any associated employer or their officers or employees anywhere in the world whether arising from the Claimant's employment with the Respondent or its termination on 10 November 2020 or from events occurring after this agreement has been entered into including, but not limited to claims under:

….

5.2.3 the Equality Act 2010

…

6. This agreement does not affect or exclude the claimant's rights to bring a claim

6.1 in relation to the claimant accrued pension entitlements;

6.2 for any personal injury which has not arisen as at the date of this agreement;

6.3 to enforce the terms of this agreement".

23. Mr Boyd argued that the wording above clearly covers the scope of the particulars of claim.

24. Mr Boyd produced various correspondence to the claimant which refers documents which Mr Boyd argued shows that Mr Chima cannot credibly claim that he had not received the trial bundle in good time for the hearing. I was shown emails demonstrating that Mr Chima had received draft bundles some time earlier and that a recorded delivery had been signed for. However, for the reasons explained above, I have therefore this application on the basis that even if Mr Chima had received the tribunal bundles he had not read them, felt under pressure as a result and was unaware of the Nelson statement.

25. In terms of the issue of duress, Mr Boyd argued that if Mr Chima had felt under any duress it is implausible that he would not have raised that in January when he made the application to reinstate his previous claim. In terms of what must be shown to establish duress, Mr Boyd pointed out that Mr Chima had voluntarily settled his claim. He drew my attention to the case of *Sphikas & Son v Mr G Porter* [1997] UKEAT 927_96_0303. I have referred to this case further in the section relating to the law below.

26. Mr Boyd submitted that any sensible view the circumstances in which the claimant had settled his claim via ACAS even immediately before a tribunal hearing cannot be regarded as economic duress. Mr Chima had access to independent legal advice from his barrister and if he was dissatisfied with the position in relation to the bundle that could have raised that with the Tribunal at the outset of the hearing. He pointed to the fact that there is no suggestion in any document which Mr Chima can point to in which he expresses any dissatisfaction with the offer of settlement and indeed he had written to say that he was happy to accept it and had subsequently withdrawn his claim from the Tribunal without expressing any concerns about duress. That is consistent with his failed attempt to have the claim reinstated. Mr Boyd submitted that made the case about duress hopeless.

27. In its additional submissions replying to the claimant's written submissions the respondent's solicitors "acknowledged the decision of the EAT in *Bathgate v Technip UK Ltd and others* [2022] EAT 155" and said this "… the Respondent respectfully contends that the New Claims do not constitute unknown future claims such that they would be excluded from the scope of the waiver of claims."

The claimant's response

28. Mr Chima made some oral submissions at the hearing and his written submissions were received on 28 August.

29. In both sets of submissions he points to been subject to economic pressure to accept the settlement because the offer had been made at a late stage and he had been told that for the COT3 to be binding it needed to be approved by ACAS the same day so he had little time to consider matters and that this was economic pressure.

30. Mr Chima stated that he had sent an email after the terms of the COT3 have been agreed, rejecting the agreement and saying that he needed more time but have

been told at that stage that the agreement was legally binding. It was because of that that he had withdrawn his claim.

31. Mr Chima emphasised that striking out a discrimination claim is an extreme step and the tribunal should exercise caution in making such an order he suggested that the proper way forward was to give the respondent time to properly consider the particulars of claim. At the hearing Mr Chima suggested that if he known that the respondent not outside the claim before this hearing, he would have appointed barrister to attend the hearing.

32. In the later written submissions Mr Chima suggested that I cannot make a decision about the strike out application unless I have had sight of the trial bundle for the previous case and the COT3 agreement. I will comment at this stage that the COT3 agreement was included in the bundle for the preliminary hearing on 20 July provided by the respondent so it is before the tribunal in any event. I do not consider that I did need to have sight of the bundle. I accept that it is substantial.

33. Mr Chima goes on to expand on the procedural history of the case and sets out allegations about the provision of the trial bundle already set out.

34. Mr Chima says that the respondent had sent him various new documents in the weeks leading up to the final hearing which he had not read. He also says that the late delivery of the bundle for the final hearing caused him to panic and he signed the COT3 under duress "without the benefit of the whole picture and the benefit of legal counsel". After the COT3 was signed and the tribunal case was withdrawn, he read the trial bundle and discovered that it included statements which he says he had not seen before, and which included the comments about him which he considered to be discriminatory.

35. In seems to me the main thrust of Mr Chima's submissions can be found in paragraphs 25 and following as follows

> *"25. I am not precluded from bringing new claims against the Respondent for matters that I was not aware of at the time of signing the COT3 agreement and even if the Respondent argues that I received the bundle letter containing the new statements by James Nelson before the 18/11/22, there is no way that the Respondent can argue that I was aware of the new allegations or had read the bundle before signing the COT3 agreement….*
>
> *[paragraphs 26 and 27 are about the new claim and why it has been brought]*
>
> *28. I am not requesting the Tribunal to nullify the COT3 agreement of 18/11/23 by these new claims and I bring this new claim as an entirely new claim even if related to the former but bring it on the basis that I never knew of these damaging allegations by the Respondents and had I known about the new allegations by James Nelson, I would not have entered into the COT3 agreement*
>
> *29. I only became aware of the new allegations by James Neslon after the trial date of the former case had passed*

30. This new claim is brought under Paragraph 6(6.2) of (the COT3) agreement, therefore I am not seeking an annulment of the COT3 agreement, and I contend that the Tribunal does have the jurisdiction to hear any new claims brought against the Respondent if the Tribunal determines considering the circumstances described as a whole above that it is reasonable to assume or conclude that I did not know of the new and damaging allegations by James Nelson at the time of entering into the COT3 agreement of 18/11/2022

31. The Respondent who was not previously made aware of the extent of the new case against them at the time of making their application of last resort has now been made aware of the case before them by the service of the detailed grounds of claim on the Parties at first hearing in this case between the parties

32. The Tribunal will not make an Order of last resort where another reasonable option is available to the Tribunal in this instance and there is no need for the Tribunal to dismiss the Claimants claims without due and detailed consideration as that would be a draconian action

I respectfully request the Tribunal to exercise discretion in my favour and allow these new claims to proceed against the Respondent in the interests of Justice and on the basis of the detailed grounds elaborated above and in my Grounds of Claims and under the Powers available to me and to the Tribunal under Paragraph 6(6.2) of the COT3 agreement signed on 18/11/2022."

The law

Rule 37 Striking out

"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 is scandalous or vexatious or has no reasonable prospect of success;…"

36. Tribunals should be slow to strike out a claim brought by a litigant in person on the basis that it has no reasonable prospect of success. In *Mbuisa v Cygnet Healthcare Ltd* EAT 0119/18 the EAT highlighted that strike-out is a draconian step that should be taken only in exceptional cases. The case suggested that particular caution should be exercised if a case is badly pleaded – for example, by a litigant in person, especially one whose first language is not English or who does not come from a background such that he or she is familiar with articulating complex arguments in written form.

COT3 settlements and future proceedings

37. By virtue of section 144 of the Equality Act 2010 (EqA), a term of a contract is unenforceable by a person in whose favour it would operate in so far as it purports to exclude or limit a provision of or made under the EqA, but this is subject to the exception under section 144(4) of the EqA. That sub-section provides that the prohibition against contracting out of the EqA under section 144 of the EqA does

not apply to a contract which settles a complaint within section 120 of the EqA if the contract,

"(a) is made with the assistance of a conciliation officer, or

(b) is a qualifying settlement agreement."

38. What is meant by a "qualifying settlement agreement is explained in s147. One of the relevant conditions is that the contract relates to "a particular complaint" (s147(3)(b) but s147 does not apply to COT3 agreements.

39. In this case, the COT3 Agreement was made with the assistance of an ACAS conciliation officer and therefore it is the exception under section 144(4)(a) which is relevant.

40. The respondent's solicitors have referred me to the decision in *Bathgate v Technip UK Ltd and others.* Mr Bathgate was an employee who took voluntary redundancy from his employer and entered into a settlement agreement, under which his employer agreed to make various enhanced redundancy and other payments in return for Mr Bathgate settling all claims. Over a month after Mr Bathgate's redundancy, the employer decided that it was not going to make any payment under a collective agreement which Mr Bathgate had expected to receive. Mr Bathgate claimed that the decision not to make the payment amounted to age discrimination. The Employment Tribunal who heard his claim determined that he had waived any age discrimination claims under the settlement agreement. Mr Bathgate appealed against that decision and was successful. The Employment Appeal Tribunal held that Mr Bathgate waived his right to sue for age discrimination before he knew whether he had a claim or not and it was found that settlement agreements could not settle such future claims that had not arisen at the date of the agreement. Such claims could not be "particular complaints".

41. Settlement reached through ACAS conciliation may in principle cover any disputes between the parties, including disputes that have not arisen at the time of the settlement, but the question is whether, objectively looking at the terms of the agreement, that was the intention of the parties, or whether in order to correspond with their intentions some restriction has to be placed on the scope of the claims covered by settlement. An agreement which will cover claims whether or not they have already come into existence, must do so in language which is absolutely clear and leaves no room for doubt.

42. It is a general principle of interpretation that the meaning which the document would convey to a reasonable person having all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract.

Duress

43. Mr Chima both in his grounds of claim and in submissions argues that the COT3 agreement would not prevent this new claim because the agreement was entered into under duress.

44. Neither Mr Chima nor his barrister in the grounds of claim have referred to any authority. As noted Mr Boyd drew my attention to the case of *Sphikas & Son V Mr G Porter* [1997] UKEAT 927_96_0303.

45. In that case Mr Justice Morison that then-President provided helpful guidance on the question of duress as follows *(note: the Bailii copy of the decision does not contain paragraph numbers)*

> *"The juridical basis of the law of duress is summarised in Chitty on Contracts, General Principles, 27th edition paragraphs 7-001 to 7-018. As the jurisdiction of the Industrial Tribunals to deal with contractual issues is relatively new it might be helpful if we emphasised certain features of the law on duress.*
>
> *Duress is a combination of pressure and the absence of practical choice. Not every form of pressure is regarded as illegitimate; indeed there may well be economic pressures which underlie every decision to enter into a contract. During the process of negotiation it is likely that one party will seek to exploit the other's apparent weakness. Duress may be established where the pressure upon which the party alleging unlawful coercion relies is purely economic: Pao On v Lau Yiu Long [1980] AC 614, a decision of the Privy Council. In his judgment, Lord Scarman said: "It is material to inquire whether the person alleged to have been coerced did or did not protest; whether, at the time he was allegedly coerced into making the contract, he did or did not have an alternative course open to him such as an adequate legal remedy; whether he was independently advised; and whether after entering the contract he took steps to avoid it."*
>
> *The learned Editors then continue: "Lord Scarman did, however, draw attention to American case law which stressed the effectiveness of alternative remedies available to the party allegedly coerced; and it seem clear that it would no longer be regarded as an adequate answer to a plea of duress that the party coerced had a legal remedy which he could in due course have pursued in the Courts. The all-important question is whether, having regard to all the circumstances, that remedy is a practical and effective one."*
>
> *Not every threat to break a contract by one party would be regarded as illegitimate pressure on the other party. The Court of Appeal has said that it is not "on every occasion when one party unwillingly agrees to a variation of a contract that the law would consider that he had acted by reason of duress." Because duress is a combination of pressure and absence of practical choice, all the circumstances must be taken into account. For example, to threaten not to pay money due under a contract because of an alleged misrepresentation giving rise to liability in law, will not ordinarily be regarded as illegitimate, provided it is made in good faith.*
>
> *The essential features in the D & C Builders Limited v Rees case were that the building owner knew that the builder was in financial difficulties and needed an immediate payment; she did not suggest that she had any defence or cross-claim against the builder. The builder was explicitly told: 'if you do not accept the smaller sum, you will get nothing'. In short, the building owner held the builder to ransom."*

Discussion and my conclusions

46. I first considered Mr Chima's submissions that I should not consider striking out his discrimination claims at all at this stage. I have taken into account the guidance in *Mbuisa v Cygnet Healthcare Ltd* above. However, I am satisfied that considering the respondent's application is appropriate. The question is whether as a matter of jurisdiction the claim has no reasonable prospect of succeeding. As a starting point the tribunals do not have jurisdiction to consider any claim settled by ACAS exception in unusual and limited circumstances. I am not deciding whether the claimant has a reasonable prospect of success on the basis of the allegations themselves, but whether he has any reasonable prospect of establishing that the tribunal has jurisdiction to consider this claim. Mr Chima is a litigant in person, but his particulars of claim were settled by counsel and at his request he has been allowed time to make further submissions so that he could seek further legal advice.

47. Mr Chima told me that his claims do not fall within the scope of the COT3 agreement. I considered whether he has a more than fanciful prospect of establishing that his new claim did not within the valid scope of the waiver of claims in the COT3 agreement or whether his claim falls within the exception at clause 6 of the COT3.

48. The first issue I considered was whether Mr Chima has a reasonable prospect of establishing that the wording at clause 5 could not be considered to be sufficiently clear to cover a claim which Mr Chima was not aware of at the time he signed the COT3.

49. I have concluded that Mr Chima has no reasonable prospect of succeeding in an argument that clause 5 does not cover the new claim because he was not aware of it when he signed the COT3 agreement. The terms of clause 5 are not ambiguous. To paraphrase slightly, the parties agreed that the sum paid will cover all claims that Mr Chima has or <u>may have in the future</u> … whether arising from his employment or its termination on 10 November 2020 or <u>from events occurring after this agreement has been entered into</u> (my emphasis).

50. Pausing there is no dispute between the parties that Mr Nelson had made the statement at the time the COT3 was signed, he plainly had, the only issue can be whether knowledge of the claim was required.

51. The wording of agreement is clear that it to cover claims arising from things that have not happened yet. Mr Chima cannot have reasonably believed that he was only settling claims he knew about. He does not suggest that he objected to the wording or did not understand the words and they seem plain and clear to me. I am satisfied that the wording is sufficiently clear that Mr Chima will have no prospect of persuading a tribunal that his claim falls outside the waiver in clause 5.

52. In terms of relevance of the *Bathgate* decision above referred to me by the respondent (although it is decision which may assist Mr Chima), I do not consider that the decision assists me in my deliberations. Mr Bathgate had agreed to a

settlement agreement which falls within the exception in s144(4)(b) of the EqA and the key issue was whether a future claim can be a "particular complaint" within the meaning of s147(3)(b). Those requirements do not apply to COT3 agreements which are entered into with the assistance of a conciliation officer. Mr Chima entered into an agreement with the assistance of a conciliation officer and not a settlement agreement. The "particular complaint" issue therefore does not arise.

53. Mr Chima also argued that the COT3 agreement did not apply to his new claim because it falls within clause 6.2.

54. The relevant provision in the COT3 agreement is this..

" 6. This agreement does not affect or exclude the claimant's rights to bring a claim…

6.2 for any personal injury which has not arisen as at the date of this agreement.."

55. Mr Chima has brought a claim for discrimination which is a statutory tort. Damages for personal injury can be claimed as a remedy in a successful discrimination claim, but there is no suggestion that Mr Chima has suffered a personal injury in the particulars of claim which I understand from him were settled by his barrister. I can see no reasonable prospect of Mr Chima persuading a tribunal that the new claim falls within clause 6.2 of the COT3.

56. Finally, I considered whether Mr Chima has any reasonable prospect of establishing that the COT3 agreement does not exclude the jurisdiction of the tribunal because the agreement was entered into under duress.

57. As explained, I have accepted for these purposes that Mr Chima felt under pressure due to the late delivery of the trial bundles, and that he will be able to show that he had not received the bundles on time or had not had time to read and prepare for the hearing because when the bundles were received. However, if the respondent was in breach of tribunal orders and had not furnished Mr Chima with bundles for the start of the hearing the tribunal panel hearing the case would have had to consider the appropriate course of action, in light with the overriding objective including ensuring the parties are on an equal footing. Mr Chima was to be professionally represented at the hearing and his barrister would know that the tribunal would not allow a respondent to take such an advantage of such a situation, even if Mr Chima did not. I do not consider this can reasonably be categorised as duress or coercion.

58. Looking at the guidance in the *Sphikas* case above, Mr Chima does not have a more than fanciful prospect of establishing that he had no realistic choice but to accept settlement such that he was being coerced or subject to duress. This is not a case where his only options were to accept settlement or in theory pursue his claim through the courts. If he did not want to settle, he could go to tribunal the next working day. That remedy was a practical and effective choice. I am mindful of the involvement in ACAS and there is no suggestion of coercion in the email to the tribunal withdrawing the claim. I agree with Mr Boyd's submission that if there had been duress it is improbable that this would not have been raised when Mr Chima sought to have the claim reinstated.

59. I have no doubt that many claimants (and some respondents) feel under immense pressure to settle when they receive a settlement offer immediately before hearing, that is a fact of litigation. Deciding whether or not to settle is a difficult choice and I have no doubt that after settling their claims, some parties, perhaps especially claimants, doubt that they did the right thing and may regret their decision which may have been taken when they were feeling under considerable personal pressure. That does not mean that they were coerced into settlement or subject to economic duress.

60. I recognise that striking out a discrimination claim is a draconian step which cannot be taken lightly but I am satisfied that Mr Chima has no reasonable prospect of establishing that the claim he now seeks to bring falls outside the scope of the COT3 agreement he entered into or that the COT3 agreement is not legally binding.

61. In the circumstances I find that the respondent has shown that this is a claim which must be struck out because it has no reasonable prospect of success.

Employment Judge Cookson
Date: 12 October 2023

RESERVED JUDGMENT AND REASONS
SENT TO THE PARTIES ON 19 OCTOBER 2023

FOR THE TRIBUNAL OFFICE