



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss Saida Shah

**Respondents:** (1) A&A Enterprises London Limited  
(2) Budgens Head Office  
(3) Shell UK Retail  
(4) Mr Nigel Fletcher t/a FW Retail

**Heard at:** Watford **On:** 10 November 2023  
**Before:** Employment Judge McNeill KC

## Appearances

For the Claimant: In person, assisted by a friend, Mr David Gardner

For the Respondents: (1) No attendance  
(2) Ms Howells, Counsel  
(3) Ms Breslin, Counsel  
(4) Ms Platt, Counsel

## REASONS FOR JUDGMENT SENT TO THE PARTIES ON 5 JANUARY 2024

1. At a preliminary hearing on 10 November 2023, I dismissed the Claimant's claims against the Second and Third Respondents on withdrawal by the Claimant and struck out the Claimant's claims against the First and Fourth Respondents as an abuse of process and, pursuant to rule 37 of the Employment Tribunals Rules of Procedure, as having no reasonable prospect of success. I gave reasons for my decision orally at that hearing.
2. My judgment, dated 10 November 2023, was sent to the parties on 5 January 2024 and, on the same day, the Claimant asked for written reasons for the judgment. That request was sent to me on 12 April 2024 and the documents that would enable me to provide written reasons (and to deal separately with an application by the Fourth Respondent for costs) were sent to me on 3 May 2024.
3. Since 5 January 2024, the Claimant has sent many documents to the Tribunal which post-date the Judgment given on 10 November 2023. They include complaints to and about Acas, various medical assessments, documents

concerning the Claimant's application to the Criminal Injuries Compensation Authority and documents relating to Victim Support dating from 2022.

4. Although I have read these documents, they were not before me when I gave judgment given on 10 November 2023 and are largely irrelevant to the matters that I had to decide on that date. These reasons take into account only material that was before me on 10 November 2023, save where otherwise stated.

### **Relevant background**

5. The Claimant brought a first set of claims for unfair dismissal and race discrimination against the First, Second and Third Respondents on 1 February 2022 (the 2022 claims). These claims were given case number 3300791/2022. The claims arose out of the Claimant's employment by the First and Fourth Respondents, which terminated on 28 September 2021.
6. The Fourth Respondent was not included in the first claim, having apparently resolved its dispute with the Claimant following Acas conciliation, as recorded in a COT3 dated 25 January 2022. The COT3 settled unfair dismissal and race discrimination claims and went on to state that: *"both parties also agree not to pursue any other claims against each other arising out of [the Claimant's] contract of employment with [the Fourth Respondent]"*.
7. The 2022 claims against the Second and Third Respondents were dismissed on withdrawal by a judgment of Employment Judge Tobin sent to the parties on 8 April 2023.
8. The Claimant brought further claims against all four Respondents in this second claim, presented to the Tribunal on 12 January 2023 (the 2023 claims).
9. All claims against the First Respondent (the 2022 and 2023 claims) were settled by a payment of compensation to the Claimant on 17 February 2023.
10. The Claimant's 2023 claims were in part the same as the 2022 claims: that is claims for race discrimination and unfair dismissal. The Claimant also added claims for sex discrimination. In her claim form, she ticked a box for discrimination on grounds of sexual orientation, but she made clear at the start of the hearing that this was not a claim that she pursued.

### **Clarification of the Issues**

11. At the start of the hearing, I sought to clarify her claims with the Claimant, who was ably assisted by a friend, Mr Gardner.
12. The Claimant said at the start of the hearing that she only wished to proceed with her claims against the First and Fourth Respondents. Her claims against the Second and Third Respondents could be dismissed on withdrawal. At that point, the Second and Third Respondents, who had attended the hearing by Counsel, left the hearing and I dismissed the claims against those two respondents on withdrawal.

13. The First Respondent, in its ET3 response to the Claimant's claim, stated that it had already paid the Claimant £2,500 to settle her claims. It referred to the fact that the Claimant, in an email to the Tribunal dated 14 March 2023, confirmed that the First Respondent had paid her compensation in the sum of £2,500 on 17 February 2023, which was after she had brought the 2023 claims. She said in that email: *"I do not feel I have a case against [the First Respondent] any more"*. The Claimant confirmed to me that this was correct. The First Respondent did not attend the hearing.
14. In relation to the Fourth Respondent, the Claimant's contention, as set out in her ET1, was that when she signed the COT3 she *"was not of sound mind and did not get correct advice from Acas"*.

### **Facts**

15. The Claimant was first employed by predecessors to the Fourth Respondent from 4 August 2016. Her employment transferred to the Fourth Respondent following a TUPE transfer on 20 February 2018 and then from the Fourth Respondent to the First Respondent following a TUPE transfer on 7 September 2021. Her employment, I repeat, terminated on 28 September 2021.
16. In the light of the dismissal on withdrawal of her claims against the Second and Third Respondents and her acknowledgment that she had settled her claims against the First Respondent, my primary focus was on the claims against the Fourth Respondent in the 2023 claim and whether those claims were settled by the COT3.
17. The sole basis on which the Claimant said that the COT3 was not binding on her was that she said that she was *"not of sound mind"* when she signed it. I treated that contention as meaning that she lacked the mental capacity to understand and agree to the matters set out in the COT3.
18. There was ample evidence (and I accepted) that the Claimant suffers from poor mental health and that her health was poor at the time that she signed the COT3. There was, however, no evidence adduced before me that could lead me to the conclusion that she did not have the necessary mental capacity to understand the agreement that she was entering into and it was for the Claimant to prove this. The Claimant was able to explain and articulate her case and to commence and pursue proceedings without legal assistance. I noted that, although such evidence was not before me when I made my decision, on 24 November 2023 the Claimant wrote to the Tribunal stating: *"I know I do not have supporting evidence to say I was not of sound mind but I really was"*.
19. There was no evidence adduced before me that could properly lead me to the conclusion that the Claimant did not have the necessary mental capacity to understand and agree to the terms of the COT3. I therefore found that she did have mental capacity and that the COT3 was valid and enforceable.

### **Principles to apply**

20. Pursuant to rule 37(1)(a) of the Employment Tribunals Rules of Procedure, a Tribunal may strike out a claim if it has no reasonable prospect of success.

21. A claim may also be struck out as an abuse of process. There may be an abuse of process where a litigant has already agreed not to litigate a particular issue by a settlement agreement or COT3 and then seeks to bring proceedings contrary to that agreement. There may also be an abuse of process where a litigant seeks to advance a claim that could have been, and was not, advanced in earlier proceedings (what is known as the principle in **Henderson v Henderson**).
22. The time limits for bringing claims in section 123 of the Equality Act 2010 are clear. A claim should normally be brought within three months (as extended by the Acas conciliation period) of the act of discrimination relied on or, if there was conduct extending over a period, within three months (as extended by the Acas conciliation period) of the end of that period. Time may be extended where the Tribunal considers it just and equitable to do so and for such period as is reasonable.

### **Argument and conclusions**

23. As far as the First Respondent was concerned, the Claimant did not seek to advance any argument as to why she should be permitted to advance her claim against it. It was clear that the claim against the First Respondent had been settled and it would be an abuse of process to pursue that claim further.
24. In relation to the Fourth Respondent, having found as a fact that the Claimant had the mental capacity to enter into a COT3 in which she specifically settled her unfair dismissal and race discrimination claims and also agreed not to pursue any claims arising out of the termination of her employment or out of her contract of employment, I concluded that this current claim was an abuse of process.
25. Even if it could be said, as the Claimant contended, that the COT3 did not settle her separate sex discrimination claims, in the light of the TUPE transfer to the First Respondent on 7 September 2021, it was not clear how the Fourth Respondent could be liable for acts of sex discrimination by Mr Prassanna, even if such allegations were relied on against the Fourth Respondent, as liabilities had transferred to the First Respondent.
26. Further, the bringing of the sex discrimination claims could have been brought in the 2022 claims and before the COT3 settlement.
27. The Claimant stated in information provided to the Respondents and the Tribunal during the course of these proceedings that she took a positive decision not to include a sex discrimination claim (a sexual harassment claim involving a manager, Mr Prassanna who she claimed had been harassing her from around 2020) in her 2021 claim because she felt that sexual harassment was “*a shameful thing*”. She later decided to bring a claim after having some therapy (EMDR), when she realised the trauma that such harassment had caused her.

28. In the information which the Claimant provided to the Tribunal explaining this, she set out the allegations she was relying on against the Fourth Respondent, none of which involved allegations concerning Mr Prassanna.
29. The allegations concerning Mr Prassanna were made more than a year out of time. Any extension on just and equitable grounds could not assist the Claimant given the other matters that were fatal to her claim.
30. For all the above reasons, I concluded that the claims against the First and Fourth Respondents should be struck out as an abuse of process and as having no reasonable prospect of success.

Employment Judge McNeill KC

20 May 2024

Sent to the parties on:  
21 May 2024

For the Tribunal Office:

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