Case Number: 6005124/2024

EMPLOYMENT TRIBUNALS

Claimant: **Mr M Pettitt**

Respondent: **Elmdene International Limited**

Heard at: **Bristol Employment Tribunal (by video)** **On: 9 May 2025**

Before: **Employment Judge Ferguson**

Representation
Claimant: In person
Respondent: Miss G Rezaie, counsel

JUDGMENT

It is the judgment of the Tribunal that:

1. The claim is struck out on the basis that the complaints the Claimant seeks to bring were compromised in a COT3 agreement concluded on 2 July 2024.

2. The Claimant is ordered pay the Respondent's costs in the sum of **£5,550.74**, but this order is made on the basis that it may only be enforced by the Respondent setting it off against any amount payable to the Claimant pursuant to the COT3 agreement concluded on 2 July 2024.

REASONS

INTRODUCTION

1. This hearing was listed to determine whether the claim should be struck out because it is the subject of a binding compromise agreement.

2. The hearing took place by video in accordance with the Presidential Guidance (England & Wales) – Remote and In-person Hearings. I heard evidence from the Claimant and from Deborah Banting on behalf of the Respondent.

FACTS

3. The Claimant was employed by the Respondent as an assembly worker until 21 May 2024.

4. On 3 July 2024 he presented a claim for unfair dismissal, holiday pay and arrears of pay. In his witness statement for today's hearing he said he was also seeking to bring complaints of "unlawful harassment" and breach of health and safety obligations. The Respondent defended the claim, saying that it should be struck out due to a legally binding agreement via Acas, confirmed on 2 July 2024.

5. The Claimant accepts that an agreement was reached with Acas. The agreement states, so far as relevant:

> "1. Subject to and conditional upon the Claimant complying with the terms of this agreement, and without admission of liability, the Respondent shall pay to the Claimant the sum of £5,550.74 (FIVE THOUSAND FIVE HUNDRED AND FIFTY POUNDS AND SEVENTY FOUR PENCE ONLY) (the Settlement Monies).
>
> 2. The Settlement Monies will be paid to the Claimant within 14 days of the Respondent/Respondent's representative receiving this agreement signed by the Claimant.
> …
> 5. The Claimant accepts the Settlement Monies in full and final settlement of his alleged unfair dismissal claim, which has been the subject of Acas Early Conciliation under reference number R182822/24 (the Claim), and of all and any other claims, whether statutory or contractual which the Claimant has or may have against the Respondent and/or any associated or subsidiary company, business, partnership or undertaking; their directors, officers or employees, whether arising directly or indirectly out of or in connection with the Claimant's employment with the Respondent, its termination or otherwise, excluding claims of personal injury of which the Claimant is unaware of at the date of this agreement, accrued pension rights, and claims to enforce the terms of this agreement (the Excluded Claims). These claims include but are not limited to claims under contract law, the Equality Act 2010, the Trade Union and Labour Relations (Consolidation) Act 1992, the Employment Rights Act 1996, the Working Time Regulations 1998, the National Minimum Wage Act 1998, the Transnational Information and Consultation of Employees Regulations 1999, the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000, the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002, , the Information and Consultation of Employees Regulations 2004, the Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006, the Transfer of Undertakings (Protection of Employment) Regulations 2006, the Employment Relations Act 1999, the Agency Workers Regulations 2010, the Agency Workers (Amendment) Regulations 2019 or European Communities law.
> …
> 12. The Respondent shall not authorise the making of any adverse or derogatory statements to any third party about the Claimant whether orally or in writing and, if in writing, in any form whatsoever, including but not limited to on social media or the internet.

> 13. If the Claimant brings or commences or continues to pursue any legal proceedings or claims intended to be settled under this agreement, other than the Excluded Claims, the Claimant will immediately on demand pay to the Respondent such sum as is necessary to meet any awards made or legal or other professional costs and expenses incurred (on an indemnity basis) by the Respondent in respect of defending or, at its absolute discretion, settling or otherwise compromising any such claims or proceedings.
> …
>
> 15. The Respondent shall provide to the Claimant, signed, dated and on its company letterhead paper, the statement set out in Schedule 1 of this agreement."

6. Schedule 1 set out a letter of apology to the Claimant from David Adkins, General Manager. Every page of the agreement, including Schedule 1, has the Acas logo at the top of the page.

7. The agreement followed a period of negotiations between the Claimant and the Respondent, via an Acas conciliator, Ali Haydor. The Claimant had contacted Acas on 22 May 2024 to notify them of the potential claim. Acas contacted Deborah Banting, Head of HR for the Respondent, on or around 13 June 2024.

8. By 1 July 2024 there was agreement in principle to settle the potential claim for the sum of £5,550.74 and the Respondent had agreed to the terms of the COT3 agreement. The draft agreement was sent to the Claimant on 1 July 2024. In the covering email Mr Haydor wrote:

> "Please read the terms carefully and then call me to confirm, that you either want to:
> - agree to the terms and to enter into a legally binding agreement
> - reject the terms and offer a revised version which I would send to the Respondent for their consideration
> - talk about any queries that you have. I can explain the terms but cannot advise you if you should accept them.
>
> **Important**
>
> If I am advised that offered terms are accepted, either by phone or email, they become legally binding, and the matter is resolved. I would then create and send the COT3 agreement and covering letter.
>
> There is no 'cooling off period'."

9. The Claimant responded to Mr Haydor on 1 July 2024 saying:

> "I'm OK with most of the agreement but could you clarify part 5 as to pensions it read as both included and excluded.
> I need this to be clear as I have already started processes to recover my lost pension and I will not give up on £38700.00 old of

my pension for £5500."

10. Mr Haydor responded on 2 July, saying that any future claims regarding accrued pension rights and personal injury claims were excluded from the agreement. At 16:13 on 2 July 2024 the Claimant wrote:

> "Hi Ali
> how are you
> Yes, I agree.
> send the document.
> Thanks for all your hard work"

11. Mr Haydor wrote to both parties later that day confirming that a legally binding agreement had been reached. The Claimant was asked to send the Respondent a signed copy of the COT3.

12. The Claimant was sent a further copy of the agreement, signed by David Adkins on behalf of the Respondent both at the foot of the agreement and in the Schedule 1 letter of apology.

13. On 3 July 2024 the Claimant wrote to Mr Haydor saying:

> "sorry to say the deals off if you want to right me up for being unreasaonble that is fine
>
> my reason is that the pension ombudsman could not get a response from Elmdene,
>
> As elmdene hasn't responded to my complaint about the missing Pension they can't move forward until permission is given or legal proceedings have ordered permission."

14. The Claimant presented his claim to the Employment Tribunal on the same day.

15. The Claimant has not sent a signed copy of the COT3 agreement to the Respondent, so in accordance with clause 2 the deadline for making the payment has not expired. No payment has yet been made.

THE LAW

16. Claims in the Employment Tribunal may be compromised in the same way as any other legal claims, subject to section 203 of the Employment Rights Act 1996 which imposes requirements in order for agreements contracting out of certain employment rights to be enforceable. There is no issue in this case about compliance with section 203.

17. Once a cause of action has been validly compromised in a COT3 agreement, it cannot be pursued in the Employment Tribunal.

SUBMISSIONS AND CONCLUSIONS

18. The Claimant argues that the COT3 agreement is not binding because:

18.1. He did not sign it.

18.2. The Respondent did not enter into the agreement in good faith, because Deborah Banting was one of his "alleged harassers" and was involved in the negotiations.

18.3. There was potential fraudulent misrepresentation because the apology letter was on Acas-headed paper, not company letterhead.

18.4. There had been material breach of the agreement by the Respondent because the Respondent refused to assist the Pension Ombudsman's investigation.

18.5. There had been a breach of clause 12 by managers and supervisors at the Respondent discussing the Claimant with staff between September and November 2024.

19. I am satisfied there was a concluded COT3 agreement on 2 July 2024 in which the Claimant compromised all of the claims he seeks to bring in this case. It is not necessary for the agreement to be signed. That was confirmed by the EAT in Gilbert v Kembridge Fibres Ltd [1984] I.C.R. 188.

20. There are mechanisms for enforcement of a COT3 agreement, in the event of an alleged breach by either party, which are outside the jurisdiction of this Tribunal.

21. The question for this Tribunal is whether the Claimant has established that the agreement has been rendered void by breach by the Respondent or is unenforceable for any other reason.

22. There is no basis for any finding of misrepresentation or bad faith. The Claimant's suggestion that Ms Banting's involvement in the negotiations was somehow improper or that it affected the validity of the agreement has no basis in law.

23. Similarly, the Claimant's arguments that the agreement is void because of breaches by the Respondent are entirely misconceived. First, no breach has been established. The agreement imposes no obligations on the Respondent in respect of the Claimant's pension, so any allegation of failure to cooperate with a process related to his pension has no relevance to the agreement.

24. The argument about the letter of apology has no factual or legal basis. The Claimant has repeatedly alleged that the Respondent has breached the agreement because it has provided the apology on "Acas headed paper". As is obvious to anyone reading the agreement, the Acas logo appears because it is on every page of the agreement, including Schedule 1. It is clearly not intended to be a letter from Acas. Clause 15 gives no deadline for the Respondent to provide the letter. The Claimant alleged in his oral evidence and in cross-examination that it had been agreed the Respondent would provide the letter before he signed the agreement. That is not reflected in the agreement and there is no evidence of that having been separately agreed with Mr Haydor or with the Respondent. There has been no breach.

25. In any event, even if the Claimant had established the breaches alleged, none of the matters he relies on are capable of rendering the agreement void.

26. The Claimant did not pursue the point about clause 12 in the hearing, but for completeness there is no evidence of any breach of clause 12, and even if there had been, again, it would not render the agreement void.

27. I am therefore satisfied that the agreement precludes the Claimant from bringing this claim and it is dismissed.

COSTS

28. After delivering my judgment the Respondent made an application for its costs. It had not produced a costs schedule, but sought a decision on whether a costs order would be made in principle. The Respondent limited its application to the amount of the settlement figure in the COT3 agreement (£5,550.74) on the basis that it would set off the amount of the costs order against that figure.

29. The Claimant had disconnected from the video hearing in the middle of discussion after judgment had been delivered. I directed him (by email from the clerk) to rejoin so that he could hear the costs application and respond to it. The effect of Rule 74 of the Employment Tribunal Procedure Rules was explained to the Claimant and he was given an opportunity to respond to the application. He chose not to do so, saying that he would "leave it for the appeal".

30. Rule 74 provides:

> 74.—(1) The Tribunal may make a costs order or a preparation time order (as appropriate) on its own initiative or on the application of a party or, in respect of a costs order under rule 73(1)(b), a witness who has attended or has been ordered to attend to give oral evidence at a hearing.
>
> (2) The Tribunal must consider making a costs order or a preparation time order where it considers that—
>
> (a) a party (or that party's representative) has acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the proceedings, or part of it, or the way that the proceedings, or part of it, have been conducted,
>
> (b) any claim, response or reply had no reasonable prospect of success,
>
> …

31. The application was made on the basis that the claim had no reasonable prospect of success and the Claimant's conduct of the proceedings had been "unreasonable, bordering on vexatious".

32. I am satisfied the claim had no reasonable prospect of success, for the reasons I have already given. The Claimant has never disputed that there was a concluded agreement on 2 July 2024. His attempts to resile from that agreement had no lawful basis. I take into account the fact that the Claimant is a litigant in person, but the Respondent's position on the COT3 agreement was clearly set out in its ET3 and the Claimant has had ample opportunity to

consider his position and seek advice if necessary. He maintained arguments at the preliminary hearing that were wholly misconceived, even after the legal principles, and the meaning of the COT3 agreement, had been explained to him. He also relied on purported authorities which, when checked by me and the Respondent's counsel, either did not exist or were not authority for the proposition claimed. His pursuit of this matter to a preliminary hearing, including making numerous unmeritorious applications prior to the hearing, was unreasonable and put the Respondent to significant cost in defending the claim. Both gateways (a) and (b) in Rule 74(2) are therefore made out.

33. I am further satisfied that it is appropriate to make a costs order. I take into account the fact that the agreement itself at clause 13 requires the Claimant to pay to the Respondent its costs of defending any claims intended to be settled under the agreement. Making the limited costs order sought has the substantial benefit of saving both parties the expense of the Respondent seeking to enforce that clause through separate proceedings. In all the circumstances I consider a costs order appropriate in this case.

34. The Respondent submitted a costs schedule, in accordance with directions given at the end of the hearing, on 12 May 2025. The Claimant was directed to send any comments on the amount of the costs order by 16 May 2025, but he did not do so.

35. According to the schedule, the total costs incurred by the Respondent, including counsel's fees for the preliminary hearing, amount to £12,706 plus VAT. Although there are arguments that could be made as to whether all of the costs incurred are reasonable and proportionate, I am satisfied that the Respondent's reasonable costs easily exceed the amount claimed. Because the Respondent has limited its application to the amount in the COT3 on the basis that any order would only be enforced by setting it off against any amount that may be payable to the Claimant under the COT3, there is no need to consider the Claimant's ability to pay.

Approved by:

Employment Judge Ferguson
Date: 21 May 2025

Judgment & Reasons sent to parties on
16 June 2025

Jade Lobb
For the Tribunal Office

Notes

All judgments (apart from judgments under Rule 51) and any written reasons for the judgments are published, in full, online at *https://www.gov.uk/employment-tribunal-decisions* shortly after a copy has been sent to the claimants and respondents.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings and accompanying Guidance, which can be found here:

www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/