Case Number: 2600203/2025

EMPLOYMENT TRIBUNALS

Claimant: **Mrs S Johanson**

Respondent: **Howserv Limited**

Heard at: **Leicester** **On:** **25 July 2025**

Before: **Employment Judge Omambala**

Representation
Claimant: Mr N Clarke, counsel
Respondent: Mr R Kohanzad, counsel

JUDGMENT

The employment tribunal does not have jurisdiction to hear the Claimant's claim under case number 2600203/2025. Accordingly, that claim is dismissed.

REASONS

1. This is the judgment of the employment tribunal on a preliminary issue, namely whether there is a binding agreement achieved through ACAS in place between the Claimant and the Respondent so as to prevent the Claimant from maintaining her complaint of unlawful discrimination and unfair dismissal in the employment tribunal.

Preliminary Matters

2. The Tribunal made a witness order in respect of the Conciliation Officer involved in this case on 1 July 2024. ACAS applied to have the witness order set aside and on 14 July 2024 the Tribunal acceded to that request but did so on erroneous grounds. The Claimant wrote to the Tribunal on 17 July 2025 and the Respondent wrote to the Tribunal on 18 July 2025 to object to the setting aside of the witness order. The witness order was not reinstated and the Conciliation Officer did not file a witness statement or attend the public preliminary hearing.

3. Both parties took the view that whilst the attendance of the Conciliation Officer would have been desirable, an adjournment to facilitate his attendance at a subsequent hearing was not proportionate or in accordance with the overriding objective. Accordingly, the hearing proceeded on the

basis of the witness and documentary evidence available.

4. The Tribunal had the benefit of an agreed bundle of documents and skeleton arguments from both parties. The Tribunal heard oral evidence from the Claimant and read a witness statement from her.

5. At the start of the case counsel for the Claimant helpfully clarified that the Claimant put her case in one of two ways. Firstly, that there was no conversation between the Claimant and the Conciliation Officer on 10 January 2025 and therefore no binding agreement could have been reached. In the alternative, that if there was a conversation between the Claimant and the Conciliation Officer on 10 January 2025, the Claimant did not consent to the settlement terms during that conversation. Other arguments raised in the papers in relation to undue influence; lack of capacity and misrepresentation were not pursued at the hearing.

Background

6. The Claimant had been employed by the Respondent as a retention agent from 2 February 2015 until her dismissal on 11 October 2024. The reason for dismissal relied on by the Respondent was capability. The Claimant had been dismissed following the operation of its performance management policy.

7. The Claimant initiated the Early Conciliation process on 15 November 2024. She intimated claims of age and disability discrimination and of unfair dismissal. An ACAS early conciliation certificate was issued on 27 December 2024.

8. On 21 February 2025 the Claimant filed an ET1 claim form using the Early Conciliation certificate issued on 27 December 2024.

9. On 4 April 2025 the Respondent filed its ET3 and grounds of resistance in which it raised an objection to the Claimant's claim proceeding because it contended, a legally binding agreement precluded her from pursuing the claims set out in her ET1.

The Facts

10. On 6 December 2024 the Claimant spoke to a Conciliation Officer, Mr Mullen who explained the role of ACAS in the conciliation of employment disputes. In that call the Claimant outlined the circumstances of her dismissal to Mr Mullen and told him that she would like her job back and if that were not possible, she was seeking financial compensation.

11. Mr Mullen told the Claimant inter alia that ACAS did not represent either party and was impartial. It was able to produce legally binding agreements between the parties free of charge.

12. On 18 December 2024 Mr Mullen communicated to the Claimant the Respondent's offer of a month's salary as "a gesture of goodwill." The Claimant rejected this offer by email on 26 December 2024. She made a counter offer of six months' salary and a reference from the Respondent.

13. On 30 December 2024 the Respondent made a settlement offer of three months' salary. The Claimant spoke to Mr Mullen on 3 January 2025. She rejected the Respondent's new offer and asked him to put forward a counter offer of five months' salary. She told him that this would be her final offer.

14. On 6 January Mr Mullen emailed the Claimant to inform her that the Respondent had accepted her counter offer of five months' salary and would provide their email address for a reference. The Claimant spoke to Mr Mullen on 7 January 2025. In that call the Claimant told Mr Mullen that she was waiting to receive legal advice. Mr Mullen explained the next steps in the process to the Claimant. In essence he told the Claimant that he would send out a draft COT3 document setting out the proposed terms of the agreement for her to consider.

15. On 9 January 2025, Mr Mullen sent the Claimant an email marked "Without Prejudice" with the draft COT3 as an attachment. The email stated in bold:

> **"This is a draft, not the final agreement. Please do not sign this draft or take any action listed in any clause until the agreement is confirmed by ACAS as binding."**
>
> It continued:
> "The wording is the responsibility of both the Claimant and Respondent.
>
> You can take legal advice if you would like to.
>
> **What you need to do**
> 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.'"

16. The instructions in the email were clear and unambiguous.

17. The Claimant said in evidence that she had read the attached COT3 but did not read the covering email. The Tribunal considers it more likely than not that the Claimant had read the email even if she had not read it closely or in detail.

18. On 10 January 2025, at 14:28 the Claimant sent an email to Mr Mullen in

which she alerted him to the need for her to provide new bank details to the Respondent. She asked him if she would have to pay tax on the settlement sum and said, if so, she would need to receive payment in instalments if possible.

19. Later that day there was a phone call between Mr Mullen and the Claimant. The Claimant's evidence was that whilst she had a recollection of a call with Mr Mullen in which various matters including the provision of her bank details and the tax treatment of the settlement sum were discussed, she could not recall the date of that call. The Tribunal is satisfied that the call took place on 10 January 2025. That is consistent with the request in Mr Mullen's 9 January 2025 email, with ACAS notes of an internal conversation between Mr Mullen and an HR advisor dated 16 January 2025 and with the ACAS task and call record included in the agreed bundle of documents [p.77].

20. The Claimant's evidence to the Tribunal was that she did not agree to the settlement terms in the call with Mr Mullen on 10 January 2025. Her evidence was that she never indicated her agreement to those terms at any time and that any suggestion that she had done so by Mr Mullen in ACAS records or elsewhere is wrong and mistaken. The Tribunal did not accept the Claimant's evidence on this matter. The subsequent actions of the parties and of the Conciliation Officer were consistent with an agreement having been reached. Contemporaneous documents suggest that an agreement was reached, albeit that the fact of an agreement being concluded is not explicitly recorded in the task and call log entry by Mr Mullen on 10 January 2025. As Claimant's counsel observed, those records were not intended to be a verbatim record of the Conciliation Officer's conversations with the prospective Claimant.

21. At 16:50 on 10 January 2025 Mr Mullen sent an email to the Claimant and to the Respondent confirming the existence of a legally binding between the parties and attaching the final COT3 agreement.

22. Clause 5 of the agreement stated that:

> "The Claimant agrees not to institute proceedings in the Employment Tribunal in relation to those matters currently the subject of ACAS Early Conciliation reference number R291769/24."

23. Clause 6 provided that the Claimant accepted payment of the settlement sum "in full and final settlement of the Proceedings and all and any claims arising from her employment or its termination."

24. The Claimant did not respond to Mr Mullen's email until 14 January 2024. On 14 January 2025 the Claimant wrote to Mr Mullen saying that she had had "*a bit of time to think about everything. I've also had some feedback from a solicitor that was assessing my claim."* The Claimant also said that if she agreed to the settlement it would feel like [the Respondent] was *"basically just trying to give me money for me to go away and that is very unsettling."*

25. The Claimant subsequently made a formal complaint to ACAS about its handling of the conciliation process. In her Claimant did not allege that no

agreement had been reached, she complained that she was misled by Mr Mullen who repeatedly told her that there would be no legally binding agreement until both parties had signed the COT3.

26. Following an investigation which included speaking to Mr Mullen, the Claimant's complaint was dismissed by ACAS by letter dated 30 January 2025. The complaint response letter noted that Mr Mullen recalled that the Claimant accepted the terms of settlement in their conversation on 10 January 2025 and explained that he would send an email to her confirming that an agreement had been reached and attach the final COT3.

27. The Claimant challenged the complaint outcome and received a written decision letter from ACAS dated 6 March 2025. In investigating the Claimant's grounds of appeal ACAS extracted records of the telephone calls between the Claimant and Mr Mullen. These confirmed that Mr Mullen made two calls to the Claimant on 10 January 2025, the first lasting 5 seconds and the second lasting 3minutes and 18 seconds. The Claimant's appeal that she had not consented to the COT3 terms was rejected.

The Law

28. Section 203(1) of the Employment Rights Act 1996 places restrictions on a party's ability to contract out of statutory employment rights and protection. Section 203(2)(e) disapplies the general prohibition in sub-section (1) for any agreement to refrain from instituting or continuing proceedings where a Conciliation Officer has taken action under any of sections 18A-18C of the Employment Tribunals Act 1996.

29. It is common ground that this case is a case where a Conciliation Officer has taken action pursuant to section 18A of the Employment Tribunals Act 1996.

30. Section 144(1) Equality Act 2010 renders a term of a contract unenforceable by a person in whose favour it would operate in so far as it purports to exclude or limit a provision of the Act. Section 144(4) (a) contains the saving provision so that section 144(1) does not apply to a contract to settle a complaint to the employment tribunal if it is made with the assistance of a conciliation officer.

31. The parties agree that in determining whether the Claimant has entered into a binding agreement with the Respondent through an ACAS conciliated settlement agreement, ordinary contractual principles apply: Gilbert v Kembridge Fibres Ltd [1984] ICR 188.

32. The Tribunal must therefore first consider whether there was an offer made by the Claimant to the Respondent, supported by valuable consideration, in the context of an intention to create legal relations. If so, the Tribunal must consider whether there is evidence that the offer was unequivocally accepted by the Respondent.

33. The correct approach requires the Tribunal conduct an objective assessment of the available evidence in order to determine whether and when the parties reached a binding agreement.

Conclusion

34. There was a course of negotiation via the Conciliation Officer Mr Mullen. between the Claimant and the Respondent. The evidence demonstrates that a series of offers and counter offers were made to settle the Claimant's claim.

35. It is agreed that the Claimant made an offer to settle her claims for five months' salary and a reference through the Conciliation Officer Mr Mullen. He communicated the Claimant's offer to settle to the Respondent. The Respondent accepted the Claimant's offer to settle.

36. The Tribunal does not accept the Claimant's evidence that when Mr Mullen communicated the Respondent's acceptance of her offer, she declined to settle her claim. There is persuasive documentary evidence from which the Tribunal has concluded that it is more likely than not that in her call with Mr Mullen on 10 January 2025, the Claimant signalled her agreement to the settlement terms which she had proposed.

37. The Tribunal is satisfied that there is evidence that she did so unequivocally. Shortly after that call, Mr Mullen confirmed to both parties that a legally binding agreement was in place.

38. The Claimant subsequently sought to re-visit and resile from her agreement. The Tribunal notes that the Claimant did not raise the issue of a lack of consent to the settlement terms until February 2025, prior to that date she had asserted that Mr Mullin had lacked impartiality and had pressured her into a settlement, not that no settlement had been reached.

39. The Tribunal has concluded that a binding settlement agreement which contained valid provisions preventing the Claimant from instituting tribunal proceedings against the Respondent, was reached on 10 January 2025. Accordingly, this Tribunal has jurisdiction to hear the Claimant's complaints set out in her ET1 under case number 2600203/2025 and her claim must be dismissed.

Employment Judge Omambala

25 July 2025

JUDGMENT SENT TO THE PARTIES ON

.....Iram Ahmed .....

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FOR THE TRIBUNAL OFFICE

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision. If written reasons are provided, they will be placed online.

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/