EMPLOYMENT TRIBUNALS

Claimant: **Mr M England**

Respondent: **Metalwash Ltd**

Heard at: **Bristol (by video – CVP)** **On:** **15 October 2025**

Before: **Employment Judge Livesey**

Representation
Claimant: In person
Respondent: Mr Quantrill, solicitor

JUDGMENT

The Claimant's claim has no reasonable prospect of success and is dismissed under rule 38 (1)(a) of the Employment Tribunal Rules 2024.

REASONS

Relevant background

1. By a Claim Form dated 20 October 2024, the Claimant appeared to bring a claim of breach of contract and associated claims. He alleged that he was offered a package to leave his employment with the Respondent due to cutbacks in 'late 2022'. A settlement agreement was drawn up and countersigned by a solicitor. Following the Respondent's sale in 2024, he claimed that the contract was not honoured. He alleged that he was then forced to accept a new agreement which was then also breached. He claimed that there had been "*3 breaches of contract as well as a data protection breach*" which had resulted in financial loss and he also sought compensation for the associated stress that had been caused. By an email dated 1 January 2025, he specified what the contractual breaches were said to have been.

2. In its response, the Respondent alleged that the Tribunal had no jurisdiction to hear the claim for a number of reasons which have been considered below. It invited the Tribunal to dismiss the claim or strike it out.

3. In light of the contents of the Response, the matter was listed for a Preliminary Hearing to consider the Respondent's application to strike out and

the Tribunal's jurisdiction. It was not considered that evidence was required in order to determine the application, but a number of specific questions were raised of the parties in the Notice of Hearing dated 17 June 2025.

4. The Claimant replied to the Tribunal's questions in an email dated 30 June 2025.

Application and relevant factual matrix

5. A bundle of documents was submitted for the purposes of the hearing, electronic pages to which have been referred to in square brackets below. The Respondent also submitted written submissions.

6. It was agreed that the Claimant had been employed from 1 September 2020. The Respondent is in business hiring industrial cleaning machines to specific industries.

7. On 7 November 2022, the parties entered into a 'Settlement Agreement' which provided, amongst other things [68-77];
   - That the termination of the Claimant's employment was to have been on 6 February 2023 (Clause 3.1), which was subsequently confirmed in the P45 [78-80];
   - That the Claimant accepted the terms of the agreement in full and final settlement of all claims set out in Annex A ([74]);
   - The Claimant received a payment in return (a Settlement Payment of £1,713 under Clause 5.1) and an agreed reference (Annex D [77]).

8. Also on 7 November, the parties signed a supplemental agreement which both the Claimant and Mr Quantrill agreed was designed to take effect after the termination date, entitled an 'Employee Agreement' [81-3]. The Agreement was expressly said to have been made "*in conjunction*" with the Settlement Agreement (Clause 1.4). The main additional terms were as follows;
   - Several post-employment restrictions and restrictive covenants were set out (Clause 2);
   - Assuming that those restrictions and covenants were adhered to, in addition to the payment and reference referred to in the Settlement Agreement, the Respondent also agreed to make further payments to the Claimant under Clauses 2.6-2.8;
     - Commission payments in respect of business written by the Claimant during his employment (Clause 2.6);
     - Enhanced commission in respect of any post-termination work introduced as a freelancer (2.7);
     - The Claimant's share in the business (referred to as '5 units under the Krystal Kleen Heritage Ltd Management Incentive Plan ('MIP')') would only normally have been paid out at the point of any business sale if he had then been a continuing employee, but it was agreed that he could still redeem those 'units' after his employment had ended, but the Respondent indicated that it was "*not able for many reasons to indicate a value to this opportunity, or advise as to a likely date of this redemption*" (2.8).

9. In 2024, the Claimant alleged that the Respondent "*was sold* [a share sale to Safetyclean Ltd] *and Metalwash did not honour the terms of the agreement*" (see his Claim Form [14]). He said that a new agreement was reached, but was also breached. That was a 'Settlement and Waiver Letter' dated 26 June 2024 [92-3], the terms of which were as follows;
   - The Letter was expressly said to have been 'with reference' to the Settlement Agreement;
   - The Claimant was to have received further sums of £20,000 and £2,917.17, the latter representing commission due to him for May to August 2024 (Clauses 5.1 and 5.2);
   - In return, the Respondent would have been released from its duties under Clauses 2.6 and 2.8 of the Employee Agreement (paragraph 5.2 (a) to (c)).

10. The Claimant alleged that several terms of all of the three agreements had been breached [29-36]; Clause 11.2 of the Settlement Agreement, Clauses 2.6 and 2.8 of the Employee Agreement and Clauses 5.1 and 5.2 of the Settlement and Waiver letter. When the first of those breaches was discussed in more detail during the hearing, it became clear that he was not asserting that it was breached but, rather, that it took effect to render the Settlement and Waiver Letter ineffective.

11. In response to the claim as a whole, the Respondent asserted that it was doomed to failure because;
   - The Tribunal had no jurisdiction to determine the breach of contract claim because it was not covered by the Extension of Jurisdiction Order 1994;
   - The claim was out of time in any event;
   - Any claim was the subject of a valid settlement agreement;
   - The Tribunal had no jurisdiction to determine claims in relation to alleged data protection breaches and/or stress or personal injury.

12. In the Claimant's email to the Tribunal dated 30 June 2025, he had stated that he was not seeking to strike down any of the agreements referred to above [55]. He asserted that he had entered into them all in good faith and had merely wanted them enforced. During the hearing, however, he alleged that the Settlement and Waiver Letter was unenforceable as it had been entered into under duress.

Legal principles

13. Under rule 38 of the Employment Tribunal Procedure Rules 2024, a tribunal could strike a claim out if it appeared to have had no reasonable prospect of success. In other words, that it was "*bound to fail*" (*Twist DX-v-Armes* UKEAT/0030/20/JOJ). It was a two-stage process; even if the test under the rule was met, a judge also had to be satisfied that his/her discretion ought to have been exercised in favour of applying such a sanction (*HM Prison Service-v-Dolby* [2003] IRLR 694).

14. Striking out a claim was a draconian step and numerous cases had reiterated the need to reserve such a step for the most clear and exceptional of cases (for example, *Mbuisa-v-Cygnet Healthcare Ltd* UKEAT/0119/18). In *Balls-v-Downham Market School* [2011] IRLR*,* Lady Justice Smith made it clear that "*no*" in rule 38 meant "*no*". It was a high test. All of the available material had to be considered on such an application (see *Balls* above) and the Claiamnt's case ought to have been viewed at its highest on the face of the papers.

15. Claims for breach of contract could only be brought in the Employment Tribunal by virtue of the jurisdiction given to it in the Employment Tribunals Act 1996 and the Extension of Jurisdiction Order 1994.

16. The Act gave the Tribunal power to determine breach of contract claims if the contract was the employment contract itself or another "*connected with employment*" (s. 3 (2)(a)). The Order provided, amongst other things, that the claim had to have arisen or was outstanding on the termination of employment (articles 3 (c) and 4 (c)). Whether a contractual claim 'arose' from an employment relationship or was 'connected with employment' was a question of fact (*Nosworthy-v-Indistinctif Partners Ltd* UKEAT/0100/18).

17. Further, any such a claim had to have been brought within 3 months beginning with the effective date of termination "*of the contract giving rise to the claim*" (article 7).

18. In a case in which an employer defaulted on a settlement agreement, the employee could obviously claim that there had been a breach of contract and could pursue such a claim in the County Court or High Court, but were they also capable of pursuing it in the Tribunal?

19. Settlement agreements had been held to have been 'connected with' employment but, because of the wording of article 3 of the Order, only agreements entered into before or at the point of dismissal were under the Tribunal's jurisdiction, because a claim had to have arisen, or was outstanding *on* the termination of the employment (see *Rock-It Cargo-v-Green* [1997] IRLR 581, EAT). In *Miller Bros and FP Butler-v-Johnston* [2002] ICR 744, EAT, a settlement agreement which was made some days after the termination of employment did not fall within the Tribunal's narrow jurisdiction.

Conclusions

20. In this case, two of the three agreements which were relevant had been entered into before the termination of the Claimant's employment on 6 February 2023, but only one took effect before it, the Settlement Agreement. There was nothing, however, within that Agreement which the Claimant alleged had been breached. No claim arose from it itself (save for the point in relation to Clause 11.2 dealt with above).

21. The other two agreements were either entered into or took effect *after* end of the Claimant's employment, the Settlement and Waiver Letter post-dated it by over a year. Claims in relation to those agreements did not arise or were outstanding on the termination of the Claimant's employment (see *Johnston* above). The claim was doomed to failure.

22. Further, and in any event, there were problems in relation to time under article 7. The Claim had been brought on 20 October 2024, the Claimant having contacted ACAS on the 14th of that month and having received his early conciliation certificate on the 18th. Only events which occurred on or after 15 July 2024 would therefore have been in time.

23. The Extension of Jurisdiction Order enabled claims to have been brought within 3 months of the effective date of termination of the contract giving rise to the claim (article 7 (a)). Ordinarily, of course, the 'contract' was the contract of employment. In this case, the claim was issued a long time after the contract of employment had ended. Given that the Claimant was seeking to advance claims in relation to the Employee Agreement or the Settlement and Waiver Letter, could he have argued that time started to run upon the termination of those contracts? In my judgment, that was not possible because they had not been terminated and, certainly in relation to the former at least, the Claimant did not wish to have it set aside. He wanted it to be enforced.

24. Alternatively, under article 7 (b), time could have been taken to run from the period of 3 months beginning with the last day upon which he worked "*in the employment*". In the circumstances, that did not help him.

25. No case on reasonable practicability was advanced by the Claimant beyond him saying that he considered that he had had three months from the under payment of £20,000 which was due under the Settlement and Waiver Letter [97]. That was not the timeframe prescribed by the Order.

26. The Claimant also alleged that he was "*enrolled as an employee on 17 June 2024 until the day my payslip was paid issued on 22.07.24*" [97]. That might have saved him if it had been a possible and/or legitimate interpretation of the facts but both he and Mr Quantrill agreed that he had merely been placed onto the Respondent's payroll for a period to facilitate payments under the agreements and that he was not required to undertake any work, given a contract of employment or given any job title. In my judgment, it was inconceivable that it could have been said that an employment relationship recommenced.

27. Then there was the problem of Annex A to the first Settlement Agreement which contained the claims which the Claimant agreed *not* to bring in consideration for the agreement [74]. The Annex included claims for breach of contract (paragraph 5). As stated previously, he did not assert that this contract was null, void or ought to have been set aside.

28. Aside from the contractual claim, the Claimant accepted that the Tribunal lacked jurisdiction in respect of the further complaint of breach of data protection. It also lacked jurisdiction in respect of the claim for stress (s. 3 (3) Employment Tribunals Act).

29. Accordingly, there were no reasonable prospects of these claims succeeding within the meaning of rule 38 and it was appropriate in the circumstances to strike them out to avoid the time and expense of revisiting those arguments at a final hearing.

Employment Judge Livesey
Date: 15 October 2025

JUDGMENT SENT TO THE PARTIES ON
31 October 2025

Jade Lobb
FOR THE TRIBUNAL OFFICE

Notes

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https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/
written record of the decision.