EMPLOYMENT TRIBUNALS

Claimant: **Mrs J Tamburrini**

Respondent: **Drax Power Limited**

Heard Sheffield by video **ON: 7 January 2026**

BEFORE: **Employment Judge Brain**

REPRESENTATION:

Claimant: **In person**
Respondent: **Ms K Moss, counsel**

JUDGMENT

It cannot be said that the claimant's claim that the COT3 agreement dated 22 April 2025 should be set aside has no reasonable prospect of success.

REASONS

Introduction and preliminaries

1. Written reasons were requested by the respondent's counsel at the conclusion of today's hearing.
2. The claimant presented her claim form on 12 August 25. She claims that she was unfairly dismissed by the respondent (which claim is brought pursuant to the Employment Rights Act 1996). She also says that she was discriminated against by being treated unfavourably because of pregnancy or exercising her right to maternity leave (which claims are brought pursuant to the Equality Act 2010).
3. Upon receipt of the respondent's response to the claim, Acting Regional Employment Judge Davies directed there to be a public preliminary hearing to decide whether the claim should be struck out because the claimant had entered into a COT3 agreement at the time of her dismissal, whether the claim against the respondent should be struck out as the claimant was not employed by Drax Power Ltd, and whether Opus Energy Ltd should be substituted as the correct respondent.

4. This matter came before the Tribunal today. No directions had been given for the submission of evidence, but the claimant helpfully provided a witness statement. There was no evidence from the respondent. There can be no criticism of them for this. They weren't directed to do so.

5. The only way of dealing with the issue today (in the absence of evidence) was for the Tribunal to proceed by summarily determining whether it can be said that there is no reasonable prospect of the claimant successfully applying to the Tribunal to set aside the COT3.

6. The Tribunal took into account the claimant's unchallenged evidence and any contemporaneous evidence in the hearing bundle to determine the matter. Upon a summary determination of a matter, it is not appropriate for there to be cross examination and the conduct of a mini trial. Accordingly, nothing said in these reasons constitutes factual findings

7. For brevity, the Tribunal shall refer to the claimant now as 'C.' The respondent shall be referred to as 'R.' The Tribunal has not yet identified the correct respondent to the claim. References to the respondent shall be taken as whichever entity is determined to be the correct respondent to the claim should that be necessary in due course. (The Tribunal notes that R was a party to the COT3 of 22 April 2025 (pages 131 to 138 of today's hearing bundle).

The relevant law

8. By section 18B(3) of the Employment Tribunals Act 1996 ('*ETA 1996*') ACAS have a statutory duty to promote a settlement between parties who would be parties to proceedings. It is not disputed that this duty arose on the facts of the case.

9. In **Clarke v Redcar and Cleveland Borough Council** [2006] IRLR 324, [2006] ICR 897, EAT, (heard in the Employment Appeal Tribunal), HHJ McMullen QC derived the following principles (at [36]). (The Tribunal cites the principles relevant to this case):

'(a) The ACAS officer has no responsibility to see that the terms of the settlement are fair on the employee (Moore [v Dupont Furniture Products Ltd [1982] ICR 84, HL] …).

(b) The expression "promote a settlement" must be given a liberal construction capable of covering whatever action by way of such promotion as is applicable in the circumstances of the particular case...

(c) The ACAS officer must never advise as to the merits of the case…

(d) It is not for the tribunal to consider whether the officer correctly interpreted her duties; it is sufficient that the officer intended and purported to act under the section (Hennessy [v Craigmyle & Co Ltd] at p.303–304 per Sir John Donaldson MR).

(e) ….

10. Once a contracting-out agreement has been concluded through the intervention of an ACAS conciliation officer *('CO')*, it is very difficult for a party to get it set aside. However, challenges have been made to the validity of particular agreements on a number of grounds, which may be considered under two broad headings: (i) those which raise the question whether the CO acted properly in

accordance with his statutory powers and duties, and (ii) those which allege that the agreement is voidable on common law grounds.

11. We are not concerned with the common law grounds. The claimant made it clear that she relies only upon the first ground mentioned in paragraph 10.

12. In **Moore v Dupont Furniture Products Ltd** *[1982] ICR 84, HL* (which was an unfair dismissal case), the claimant signed a COT3 agreement prior to any claim being made to a tribunal, which provided for the payment of a sum of money to him *'in full and final settlement of all claims arising from the termination of his employment … over which the tribunal has jurisdiction'.* The claimant advanced three main arguments to support his contention that the agreement was ineffective to oust the jurisdiction of the tribunal. We need only be concerned with the first of these. This was that the CO had not taken sufficient or proper action in accordance with what is now ETA 1996 s 18B(3)] to '*endeavour to promote a settlement'.* These words, it was alleged, required a CO to take a positive initiative in trying to effect a settlement, which the CO had not done as he had merely accepted an agreement which had already been made by the parties before he came on the scene.

13. The House of Lords in **Moore** rejected this argument. They held that the words *'endeavour to promote a settlement'* as used in the legislation in force at the time (and what is now ETA 1996 s 18B(3)) should be given a liberal construction *'capable of covering whatever action by way of such promotion is applicable in the circumstances of the particular case'* (at [98], per Lord Brandon). Thus, in the circumstances of **Moore**, although the CO was not instrumental in formulating the terms of settlement, their Lordships held that his presence in the room where the agreement was made, his recording of the terms of settlement on form COT3, his ensuring that the parties understood and agreed to the terms and his explanation of their finality and of the advantage to each side of having a settlement*, 'amounted both in fact and in law to the promoting of a settlement of the complaint without its being determined by an [employment] tribunal'.*

14. An CO need not meet with the parties to take action endeavouring to promote a settlement. Telephone contact was held sufficient in **Whittaker v British Mail Order Corp Ltd** 1973 IRLR 296 EAT. However, the CO cannot be a rubber stamp. The **IDS Employment Law Handbook** *vol 10 'Practice and Procedure: Employment Tribunals* [at 3.128] says that if the parties reach agreement without ACAS, then a settlement agreement should be used and if ACAS are to be involved then ACAS will require as a condition of their involvement that the agreement may be changed as a result of ACAS involvement.

15. Where an agreement is drawn up and signed by a party's representative, then provided the representative has ostensible authority to do so, the party will be bound by it. For the doctrine of apparent or ostensible authority to apply, it is essential that the party on whose behalf the representative is acting has, by words or conduct, represented to the other party that the representative has authority to act for them in dealings with that other party; such authority cannot arise simply by virtue of what an adviser says or represents to the other party (see **Gloystarne & Co Ltd v Martin** [2001] IRLR 15, para 18, EAT).

16. The usual type of representative who will have apparent or ostensible authority to act for claimants or potential claimants in connection with tribunal proceedings are lawyers and trade union officers. Others such as members of a Citizens

Advice Bureau or of a law centre, would also seem to have such authority (see **Freeman v Sovereign Chicken Ltd** [1991] IRLR 408, [1991] ICR 853, EAT). In **Freeman**, which concerned the ostensible authority of a CAB adviser, it was held that where such an adviser, who is named as a representative by a party to the proceedings, holds himself out as having authority to negotiate and reach a settlement on behalf of that party, the other party to the proceedings is entitled, in the absence of any notice to the contrary, to assume that the adviser does in fact have such authority, and to enter into an agreement with the adviser on that basis.

17. If the adviser does not have actual authority to reach an agreement, the client or principal may have an action against him, but this will not affect the validity of the agreement so far as the other party is concerned where there was ostensible authority. The EAT pointed out that, in the case of Employment Tribunal proceedings, ostensible authority is not limited to the particular issues arising on the pleadings, but extends to all actual and potential issues which are or should be known to the parties at the time; it includes, for example, a provision in an agreement preventing a claimant from making any other type of employment claim against the employer.

Findings (for today's hearing only), discussion and conclusions

18. C worked as an application support analyst in the IT Team (Core Services) between 30 March 20 and 30 June 25 when C was dismissed for redundancy. She reported to Luke Taylor-Balls. C informed Mr Taylor-Balls of her pregnancy on 26 August 2024. C's MAT1B was received by R on 19 December 24. Her due date was 22 April 2025. Her maternity leave was due to end on 15 October 2025. C was therefore absent from the business at the time of the events with which the case is concerned.

19. It is right to acknowledge that C had a difficult pregnancy. Her baby was born prematurely on 2 March 2025.

20. From the contemporaneous documents we can see that a team meeting took place led by Antony Wouters on 20 February 2025- p63 to 84. C was told of it by Mr Wouters the same day.

21. The team meeting followed an announcement of the sale of part of R's business to Pozitive. The implications of this were explained at the meeting and that the four support analysts including C were at risk of redundancy, with two redundancies proposed for the end of June 2025 and the other two for the end of September 2025 if the redundancies were confirmed.

22. This was followed by the letter at pages 85 to 87 addressed to C from Mark Leonard. There were existing employee representatives from a previous collective consultation redundancy exercise. Mr Leonard proposed they carry on in that role for the current one. C and the other employees had no issue with them continuing for this exercise.

23. R says at para 26 of the ET3 that a COT 3 exit was offered to the impacted employees in exchange for enhanced redundancy terms and that this was negotiated as part of the collective consultation carried out between the employee representatives and the ACAS conciliators.

24. These terms were shared with the employees who were invited to a group session with ACAS on 9 April 25 to discuss them. The letter of invite to the employees is from Rita Mikov, people operations assistant, and opens *'As you know we have been consulting with your EE reps on the COT3 agreement.'* C was sent an invitation to the group session on 3 April 2025 (p104) but this went to an incorrect personal email address, so she did not receive it.

25. C was then sent the COT3 on 16 April 2025 to a correct personal email address, giving her until 22 April 2025 to accept or not. C replied on 18 April 2025 to say that she was happy to accept the terms and for her colleagues (the employee representatives) to sign on her behalf (page 128).

26. This was then signed by one of the representatives on her behalf on 24 April 2024 (page 131 ff).

27. There is no evidence from R in the bundle to show how the representatives were vested with authority to negotiate terms on C's behalf. It is not pleaded that they had such authority derived from the previous redundancy exercise (where C was not at risk of redundancy so the issue of terms of departure did not arise), nor is that mentioned in the letter at page 85. It is not pleaded in the grounds of resistance that C gave them authority or that Antony Wouters asked her if she would vest them with authority when he spoke to her on 20 February 2025.

28. C could not dispute what was said about the authority of the representatives at page104 as she did not receive the email.

29. However, as we have seen, on 16 April 2025 C was sent the COT3. The covering letter at page 129 offered her two options. Option 1 was to accept it and consent to the employee representatives signing on her behalf. Option 2 was to not do so and request individual consultation. As has been said, on 18 April 2025 she confirmed she was happy for colleagues to sign on her behalf.

30. So, even if the representatives had no actual or ostensible authority in February 2025 (as C had not communicated such to R), there is clear evidence that they were vested with actual authority by C which she communicated to R in April 2025.

31. The crucial issue therefore is what involvement (if any) did the ACAS CO have in bringing about the settlement.

32. ACAS held a group session on 9 April 25. On any view*, per* **Clarke**, this is capable of being the *'promotion of a settlement'* for the purposes of ETA 1996 s 18B9(3). That term is to be given a liberal construction in the circumstances of the particular case - here, a collective redundancy exercise. However, we don't know what was said at the group session that day.

33. We don't know anything else about ACAS involvement save that C mentions in her witness statement at paragraph 2 a group meeting with ACAS on 11 March 2025 (in which she was not involved because she was not on notice of it due the incorrect personal email issue).

34. Ms Moss must be right in her submission that it cannot be for ACAS in a collective consultation case to check with the representatives to ensure that the individuals are all aware of matters. R must be entitled to assume the representatives will ensure this is done. It is not for ACAS to contact the individuals directly. ACAS is entitled to assume that the representatives have

notified their constituents. Collective consultation would be wholly undermined if it were otherwise.

35. The difficulty in this case though is that the Tribunal has no evidence from R about the CO's involvement. What (if anything) was said and done by the CO at the collective consultation meetings to fulfil their statutory duty under ETA s 18B(3)?

36. We know of some ACAS involvement but not what the CO did or said. Was the CO acting just as a rubber stamp or did they act to promote settlement as required by ERA s 18B(3)? We just don't know. We were not told any of this at this stage by R. No minutes of the group meeting were produced. There is a paucity of evidence.

37. For these reasons, it cannot be said that C's claim that the COT3 should be set aside has no reasonable prospect of success, without evidence as to what transpired during the collective consultation involving the CO. R has produced nothing to back up the assertion in the grounds of resistance that the CO played an active role in promoting settlement. There is nothing to gainsay C's account that she has no knowledge of any CO involvement in endeavouring to promote settlement. Summary dismissal of the matter is therefore inappropriate as the interests of justice require the matter to be decided after hearing evidence.

38. The Tribunal gave direction for a second open preliminary hearing with evidence at which to decide the issues in paragraph 3 of these reasons. Only with evidence can the question of CO involvement and compliance with ETA 1996 s 18B be decided.

Approved by Employment Judge Brain

Date: 8 January 2026.

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Sent to the parties on:

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For the Tribunal:

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