



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr T F Toher

**Respondent:** Oldlodge Property Management Limited

**Heard at:** Croydon

**On:** 27 March 2017

**Before:** Employment Judge Morton

## Representation

**Claimant:** In person

**Respondent:** Mr G Anderson, Counsel

# JUDGMENT

1. The claimant's claim of breach of contract succeeds in part. The respondent is liable to pay the claimant £3,337.74 in respect of its breach of contract in having failed to reimburse his legitimately incurred expenses.
2. The claimant is also entitled to reimbursement of his Employment Tribunal fees amounting to £390.00.
3. The respondent's counterclaim is dismissed on withdrawal by the respondent.

# REASONS

1. By a Claim Form presented on 10 November 2016, the claimant brought claims in respect of unpaid expenses outstanding on the termination of his employment. The claim was resisted by the respondent and the respondent brought a counterclaim which it then withdrew by email to the tribunal of 23 March 2017.
2. The gist of the respondent's defence was that the claimant had already compromised his claim for any expenses arising before 8 September 2014 by entering into a COT3 agreement on that date which contained the following wording:

"4. *The compensation payment is in full and final settlement of:*

(a) *the claim; and....*

*(c) any other claim that has arisen after the date of this agreement in respect of which a conciliation officer is authorised to act including (without limitation) any claim for breach of contract (including wrongful dismissal), unfair dismissal, redundancy pay, equal pay, unlawful deductions from pay, and unlawful discrimination whether relating to sex, race, disability, age, sexual orientation, religion or belief, pregnancy or otherwise but excluding any claims for accrued pension rights and/or in respect of a personal injury of which the claimant is not aware at the date of this agreement (save for those that merely brought pursuant to discrimination legislation) and/or to enforce the terms of this agreement.”*

3. The respondent also maintained that it did not understand how the claimant had arrived at the expense claim figures that he put forward.

4. At the hearing Mr Toher gave evidence on his own behalf and evidence for the respondent was given by Denise Breheny, the respondent's office manager and secretary. There was a bundle of documents and references to page numbers in this judgment are to page numbers in that bundle.

5. The applicable law is set out in the Employment Tribunals (Extension of Jurisdiction) Order 1994 and it was not disputed by the respondent that the claimant's claim fell within the scope of the tribunal's jurisdiction to determine a breach of contract claim outstanding on termination of employment. I also had regard to the terms of Mr Toher's contract and in particular the implied term that he was entitled to be reimbursed for expenses properly incurred in carrying out his duties at the respondent. He was also the subject of an express term in his written contract that entitled him to reimbursement of the expenses of running a motor vehicle. It was not any part of the respondent's case that Mr Toher had ever made a claim for an expense that had not been properly incurred or that he had exaggerated any claim for expenses or abused its expenses policy.

6. I was greatly assisted by Mr Anderson's skeleton argument in which the elements of the claim that were disputed by the respondent and those that were conceded were clearly set out.

7. On the basis of the evidence of Mr Toher and Mrs Breheny and the documents provided to me I reached the following conclusions.

8. It seemed to me clear that when Mr Toher entered into the COT3 agreement in 2014 he entered into an agreement that had the effect of settling all his claims for expenses that had arisen prior to that date. I have no doubt that that was not his intention but it is very clear from the wording of the COT3 that that was the effect of the agreement into which he entered (page 26-27). Mr Toher's case was that he understood the COT3 to relate only to a claim that he had brought in respect of a variation to his contract and an underpayment and that he had been assured by the ACAS conciliator that the COT3 related only to that claim. However, it was clear to me from the wording of the agreement that the COT3 had a wider effect and that therefore deprives me of the jurisdiction to deal with any breach of contract claim that had accrued as at the date of the COT3. This is an unfortunate outcome for Mr Toher but I cannot see how it can be escaped.

9. As regards expense claims arising after 8 September 2014, the respondent had conceded that £2,174.57 was due to Mr Toher and that that concession also entitles him to repayment of his Employment Tribunal fees. However it disputed various other sums for mobile phone top-ups, unleaded petrol and what was described as “unknown purchases”. However, having heard the evidence it seemed to me quite clear that the mobile phone top-ups were properly claimed by Mr Toher who had been left in a predicament after the respondent’s mobile phone contract provider, T-Mobile, withdrew its services from the respondent owing to late payment of its bills. In order to carry on doing his job effectively therefore Mr Toher was left with little option but to use a ‘pay as you go’ mobile phone and I have no doubt that all of the bills that he incurred were properly incurred and should have been reimbursed far sooner by the respondent. The respondent also conceded during the course of the evidence that the claims for unleaded petrol had been properly incurred and that the unknown purchases were in fact claims for fuel. The respondent therefore accepts that it owes Mr Toher £2,337.74.

10. As regards the expense claims arising prior to the signing of the COT3, I have no power to order the respondent to repay those sums to Mr Toher because the terms of the COT3 mean that this part of his claim was settled, regardless of his intention. It seems to me despite this that Mr Toher has a strong moral claim to repayment of expenses and the respondent will I hope reconsider its position, even though I have no power to compel it to do so.

11. Mr Toher was a credible and upright witness who has obviously given long service to the respondent and it is not right that he should be left out of pocket in respect of expenses that he has legitimately incurred. The evidence suggested that the respondent has a history of being slow to pay bills and expenses which perhaps explains why such a significant sum remained outstanding when Mr Toher’s appointment was terminated for redundancy. Whilst I am plainly bound by the written terms of the COT3 in this instance it has resulted in what I regard as an injustice to Mr Toher, that it is plainly within the power of the respondent to put right even though I cannot order it to do so. I hope that it will see fit to do so.

Employment Judge Morton

Date 20 April 2017