



THE EMPLOYMENT TRIBUNAL

SITTING AT: LONDON SOUTH

BEFORE: EMPLOYMENT JUDGE BRITTON (sitting alone)

BETWEEN:

Claimant

MR F HANACHI

AND

Respondent

PEABODY GROUP

ON: 9 January 2020

APPEARANCES:

For the Claimant: In Person

For the Respondent: Mr N Caiden, Counsel

OPEN PRELIMINARY HEARING JUDGMENT

The Judgment of the Employment Tribunal is that:-

1. The application of the Respondent succeeds. The claim is dismissed for want of jurisdiction, the Claimant having entered into valid binding settlement agreements pursuant to Section 203 of the Employment Rights Act and Section 147 of the Equality Act 2010.

REASONS

1. The claim in this matter was presented to the Tribunal on 5 July 2019. It set out a long history of problems which Mr Hanachi had with the Peabody Trust particularly following what seems to have been a transfer of his

employment to it. A response was presented to the effect that the Claimant could not bring this claim in that he had entered into a binding settlement agreement pursuant to Section 203 of the Employment Rights Act 1996 and for that matter, although not particularly articulated, but is obvious, by the same agreement a settlement of any claims that he might have had related to his employment apropos the Equality Act 2010. That is important because the claims that in his ET1 that he brought to the Tribunal, the employment at that stage having not ended, were in fact Equality Act base claims on race and religious discrimination.

2. Suffice to say that I have considered learned Counsel's skeleton argument. I have heard from the Claimant. I have read extensively the trial bundle. Suffice to say that it is self-evident that there was negotiation which was undertaken on behalf of the Claimant but in respect of which he was most fully kept informed by his trade union official recognised at the Respondent, Mr Jonathan Okwuofu, of Unison.
3. Terms were negotiated. The Claimant was kept in the loop all the way through. As a consequence of that, the parties having clearly reached agreement, the matter went down the next stage which suffice to say means that a full settlement agreement was prepared for the Respondent which suffice to say fully meets the requirements of Section 203 of the Employment Rights Act 1996 and in that respect, the sister legislation to which I have referred to in the Equality Act. It covered all potential heads of claim that the Claimant might have been able to bring in relation to the employment.
4. For the avoidance of doubt, that did not just include Equality Act claims but it also included unfair dismissal, redundancy, notice pay, holiday pay and all matters. The settlement agreement is before me commencing at page 25. As is to be expected, it was made plain by the Respondent to the Claimant and his trade union representative that the agreement would need to be passed by, so to speak, for the purposes of the Claimant, an independent solicitor in respect of which the Respondent would pay the advice fee which is set out in the settlement agreement. Thus, the settlement agreement was passed via the Unison local regional office and in due course then sent through to Thompsons, the well-known trade union legal firm.
5. There is no doubt that albeit there might have been some delay, it seems to me down to the incompetency of the Unison secretariat but the Claimant had a consultation with Thompsons on 17 September at 9.30. There is no doubt that he was given advice or to turn it around another way, Thompsons certified that he had been and which is required by Section 203. So, in those circumstances, the Claimant signed-off the settlement agreement on the 18 September 2019. Of crucial importance at schedule 1 to the said agreement was the advisor's certificate complying as it did fully with the statutory provisions to which I have referred.

6. Inter alia set out was how the advisor was a solicitor of the senior courts holding a practising certificate and a contract of insurance. A relevant independent advisor is defined in sundry legislation relating to employment all of which is set out and including crucial issues such as unfair dismissal and the Equality Act, and inter alia at the end it stated:

“I have advised Fethi Hanachi of the claims and the terms and effect of the agreement and its effect on his ability to pursue a claim before an Employment Tribunal or other court with relevant jurisdiction.

I confirm that I am not acting in this matter for the Association or any Associated Company.”

7. That would be a reference to the Respondent and the relevant solicitor stated her name, Caroline Mitchell, that she was a solicitor with Thompsons, gave the address and signed the said document which is attached in the schedule as I have said.
8. The Respondent then signed the said agreement on 30th.
9. There was some delay in paying. The Claimant was making claim that he was not going to accept this agreement unless he did get paid giving the date of the 15 October. He repeated this. However, he was paid into his bank on the 16 October and although he said that the agreement was of no effect because he had alleged they had failed to comply with the payments terms by the right date, he accepted the money having said that he would not.
10. In those circumstances, I have no doubt whatsoever that this is a binding settlement agreement pursuant to Section 203 of the ERA and as I have already stated Section 147 of the EQA. It follows that the Tribunal has no jurisdiction to entertain the claims which all cover the same territory as is self-evident.
11. Furthermore because of the wide compass of the agreement, it cannot cover anything further. I finally, of course, bear in mind that the Claimant became no longer an employee of the Respondent in accordance with the agreement as at 30 August 2019.
12. It follows that this claim is dismissed.
13. It is quite clear from what the Claimant has told me that he was given inadequate advice by Thompsons. There is indeed an email in the bundle which suggests that he put forward matters to the regional office of Unison that he wanted to be put before the solicitor. He tells me that he had a mere ten-minute consultation with the solicitor over the telephone. Having said that, it follows that if he has a claim then it lies at the door of Thompsons

and he must seek legal advice in that respect.

14. For those reasons as it is clear that he wishes to consider doing so, I will publish these reasons.

Employment Judge Britton
Date: 15 January 2020

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