



EMPLOYMENT TRIBUNALS (SCOTLAND)

5 Case No: S/4100573/16 Held at Aberdeen on 8 May 2017

Employment Judge: Mr J M Hendry (sitting alone)

10	Mr Philip Ratcliffe	Claimant <u>No Appearance:</u>
15	Baker Hughes Limited	Respondent <u>Represented by:</u> Mr A Kemp - Solicitor

**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

20 The Tribunal dismisses the Claimant's application having no jurisdiction to entertain the claims.

**REASONS**

1. The Claimant in his ET1 sought findings that he had been unfairly dismissed from  
25 his employment by the Respondent company. He sought a redundancy payment and alleged that his dismissal (purportedly on the grounds of redundancy) occurred because he had raised health and safety issues.
2. The Respondent in their ET3 pointed to the fact that a COT3 Agreement had  
30 been entered into comprising all employment related claims and that the Employment Tribunal therefore had no jurisdiction.

**E.T.Z4(WR)**

### **Procedural History**

3. In brief the case was listed for a Preliminary Hearing to discuss case management issues. This took place on 10 September 2016. At that hearing the Claimant indicated that his trade union representative Mr Lawson did not have the authority to sign the COT3 on his behalf. He alleged that it wasn't valid. It was explained to him that the representative would have had what is known as ostensible authority to sign the Agreement even if he had no real or actual authority to do so. The claimant disagreed with this legal proposition. It was envisaged that the case would be listed for a Preliminary Hearing on the issue of jurisdiction and the effectiveness of the COT3.

4. Steps were taken to identify dates for a hearing and the claimant instructed John Hughes & Co, Solicitors in Liverpool to represent him. They sought to have the venue moved to Liverpool and ultimately this was refused. The case finally proceeded to a Preliminary Hearing on the 8 May 2017. Prior to the hearing the Claimant indicated that he was unable to attend or to instruct solicitors to attend but that a statement prepared by him, sent to the Tribunal on 5 May together with attachments should be considered.

### **Issues**

5. The issue for the Tribunal was whether or not the COT3 effectively disposed of the Claimant's employment claims. The issue was a mixed matter of fact and law.

### **Evidence**

6. The Tribunal considered the evidence led by the Respondent from their Employment Counsel, Neil Adam relating to the factual circumstances surrounding the completion of the COT3 and also to a bundle of documents lodged for the Tribunal's consideration (JB1-JB19). The Tribunal also considered the position taken by the Claimant set out in his witness statement and attached documents.

**Facts**

- 5 7. The Claimant was an employee of the Respondent company. He was managed from the respondent's Badentoy facility in Portlethen. His job was that of a Senior Pipeline Supervisor.
8. The Claimant was made redundant on 18 December 2015.
- 10 9. The Claimant was dissatisfied with the manner of his dismissal. He was a member of the Unite union. He approached his Trade Union for assistance. Through a full-time official of the union David Lawson the Claimant entered into early conciliation.
- 15 10. The Respondent became aware, through ACAS that the Claimant was seeking to enter into Early Conciliation in relation to employment claims made against them. The ACAS conciliator who principally dealt with the matter was dealt with Mr Kenneth Mathieson.
- 20 11. Terms of settlement were agreed through discussions involving Mr Mathieson of ACAS, the Respondent's Employment Counsel Neil Adam and the Claimant's representative David Lawson. As a consequence of these discussions settlement was agreed and a COT3 form was drafted (JB3 p.18). As part of the settlement a reference was also adjusted.
- 25 12. Mr Lawson signed the COT3 form on 17 March 2016 on behalf of the Claimant. The Agreement was then sent to Mr Adam for signature. Because Mr Adam was on holiday the Agreement was not signed by him until 6 April 2016. It was then returned to ACAS.
- 30 13. Sarah Tiernan a Conciliator from ACAS e-mailed Mr Lawson and Mr Adam on 17 March indicating that terms of the COT3 had been agreed. She wrote:

*"The agreement is now binding upon the parties....."*

14. Almost immediately after the COT3 agreement was signed the Claimant protested that he had not agreed to the offer made by his former employers (JB p.32, p.35). The Claimant wrote to the Respondents on 30 April (JB9) indicating that he did not agree to the settlement offer. He raised Employment Tribunal proceedings.

15. On 17 May 2016 (JB10) the Respondent's solicitor's Clyde & Co wrote to the Tribunal indicating that they were seeking a Preliminary Hearing on the basis that the Tribunal had no jurisdiction because of a completion of a COT3 Agreement.

16. The Claimant e-mailed a Mr Rafferty of the Unite towards the close of the Early Conciliation process in March (JB16 p.75) he wrote:

*"Also a month ago Baker Hughes offered me £15,000 – a reference which I agreed to but the person who has made the offer has gone missing for over 3 weeks now and all of a sudden he is back and now is offering me £7,700 and I literally have until 17/03/16 to accept it or lose everything which is fairly a ploy from Baker Hughes. I asked David Lawson (my Union rep.) to ask ACAS for a 28 day extension which has not been done so basically I have no option but to accept the offer."*

17. The Respondent paid the claimant the sum of £7,728.49 as required by the COT3 Agreement.

### **Witnesses**

18. I heard evidence from Mr Adam, the Respondent's Employment Counsel. Mr Adam was a clear and confident witness although he was not subject to cross-examination I had no doubt that his evidence was both credible and reliable. The evidence was straightforward and uncontentious and reflected the documentation the Respondent's solicitors had lodged.

### **Submissions**

19. Mr Kemp's submission was set out in a detailed and carefully written skeleton submission. The submissions were buttressed by appropriate authorities. The essence of the submission can be stated shortly: in his view a COT3 form had

5 been properly entered into between the parties thus depriving the Tribunal of jurisdiction. The Claimant was represented by David Lawson, a full-time trade union official. The law requires the Claimant to submit an Early Conciliation Notification Form to ACAS. On that form there is a “space” to allow the individual to enter the details of a representative. If they do use ACAS to conciliate it is with the representative rather than with the individual. There was, he submitted, an inference that the Claimant must have written Mr Lawson’s name as representative. In any event the Claimant was clearly aware that Mr Lawson was holding himself out as his representative. The burden lies on the party seeking to show that the agent is not authorised. The Claimant would also have to show that Mr Lawson did not have ostensible authority. It was clear from the documentation that Mr Lawson did have such ostensible authority. The law in the matter was clear. Mr Kemp referred the Tribunal to the case of **Allma Construction Ltd v. Bonner [2011] IRLR 204** the Judgment of Lady Smith :

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*“Where a contract to settle litigation is concerned, it may be that the essentials of the particular agreement amount to nothing more than a certain sum of money is to be paid by the defending party to the pursuing party as the price of bringing the litigation to an end.”*

20. In the present case the settlement sum was paid and the agreement does not even require to be in writing (***Gilbert v. Kent Bridge Fibres Ltd [1984] ICR 188***). In the Stair Encyclopaedia at paragraph 75 the general rule of ostensible authority is described thus:

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*“An agent may not have the requisite authority to enter into a specific transaction. However, the principal through his conduct or representations may create the impression in the third party’s mind that the agent is duly authorised. If the third party acts on this impression and enters into a contract, then the principal will be bound. This is known as ostensible or apparent authority.”*

21. The COT3 complied with the necessary statutory provisions. In these circumstances the Claimant simply cannot now renege on the agreement made on his behalf.

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22. Mr Kemp indicated that he had an application for expenses. He will submit the application in writing in order for the Claimant to be allowed to take legal advice on its terms and set out any opposition to such an application.

5 **Decision and Discussion**

23. The facts of this case are straightforward and mostly uncontentious. An agreement, a COT3, form was executed but before that agreement as to terms had been reached. The litigation was compromised and the claims settled. The law is also settled and well known.

24. It may be that the Claimant has come to regret the settlement that was achieved on his behalf by his trade union representative or that he hoped to accept the settlement and seek more through the Tribunal process. It certainly appears, from the undated e-mail from him that he was prepared to allow Mr Lawson to accept the offer as the time in which he had to do so was limited in the hope of arguing his position once more at an Employment Tribunal.

25. Be that as it may it seems clear to the Tribunal that an agreement was reached, a COT3 form was properly entered into and the agreed settlement terms implemented. In these circumstances the Respondents were entitled to rely on the signature of Mr Lawson as the Claimant's representative. Mr Lawson as the Claimant's representative had ostensible authority to act on the Claimant's behalf as his trade union representative and there is an inference in the e-mail sent by the Claimant to a Mr Rafferty at Unite that he had in fact given him actual authority to accept the offer made by the Respondent.

26. In these circumstances the Tribunal has no jurisdiction to entertain the claims and they are dismissed.

30 Employment Judge: James Hendry  
Date of Judgment: 11 May 2017  
Entered in Register: 12 May 2017  
and Copied to Parties