

Potential victimisation claim not spelt out in COT3 agreement was validly waived

The Court of Appeal has ruled that a Claimant could not proceed with a victimisation claim which had already arisen by the date he had entered into a COT3 settlement agreement with his employer. The broad waiver wording was sufficient to settle potential claims in existence as at the date of the COT3 agreement.

What happened in this case?

The Claimant was employed by Quick Release (Automotive) Ltd for just over one month in 2014. After his employment terminated, he brought a race discrimination claim against them. In January 2018, the Claimant applied for a job with a company called QRG, which was wholly owned by Quick Release. He was rejected for that post on 19 February 2018.

On 1 March 2018, the Claimant and Quick Release settled the race discrimination claim by way of a settlement agreement conciliated by Acas, known as a COT3 agreement. Under the COT3 agreement, the Claimant agreed to settle all claims he had or may have had against Quick Release arising directly, indirectly or in connection with his employment, its termination or otherwise. This included, but was not limited to, any claims arising under the Equality Act 2010.

In May 2018, the Claimant brought a victimisation claim

against Quick Release, alleging that they connived to reject him for the post with QRG because he had brought a race discrimination claim against Quick Release. An Employment Tribunal held that the victimisation claim could not proceed as it fell within the scope of the COT3 agreement.

On appeal, the EAT held that the claim should not be considered as victimisation perpetrated directly by Quick Release, but rather as a claim that Quick Release knowingly assisted QRG to carry out the victimisation. However, the EAT said that this claim was still covered by the COT3 agreement since it was a claim under the Equality Act 2010 which had arisen in connection with his employment with Quick Release. The Claimant appealed to the Court of Appeal.

What was decided?

The Court agreed that the claim was properly categorised as a claim that Quick Release had knowingly assisted QRG to commit an act of victimisation. The question was whether such a claim had been waived under the COT3 agreement.

The Court held that the claim was clearly covered by the wording used in the COT3 agreement as the claim arose “in connection with” the Claimant’s employment. Furthermore, the purpose of the COT3 was to settle all claims that the Claimant had against Quick Release as of 1 March 2018, whether or not they were known about at that date. Here, the circumstances giving rise to the victimisation claim arose on 19 February 2018 and so it was within the scope of the agreement. The Court dismissed the appeal.

What does it mean for employers?

Although this decision is helpful, employers should be wary of viewing this decision as giving carte blanche to waive future claims within settlement or COT3 agreements.

We recently [reported](#) on the case of *Bathgate v Technip UK Ltd*, where the EAT decided that a settlement agreement (not a COT3 agreement) could not settle unknown future claims. However, *Bathgate* concerned a claim arising out of conduct which occurred after the settlement agreement had been signed, meaning the claim in question was a truly unknown future claim. By contrast, in this case, the offending conduct had occurred before the Claimant agreed to waive his claims against the employer (and, therefore, is better described as an existing potential claim rather than an unknown future claim).

In fact, the real issue at play here was whether the broad wording of the COT3 agreement went far enough to cover an existing potential claim that had not yet been brought before a Tribunal. *Bathgate* said that existing potential claims of this nature could be settled in a settlement agreement, but that general wording seeking to waive any claims would not be good enough. Instead, the existing potential claim would need to be particularised in some way.

However, here, the Court of Appeal was concerned with a COT3 agreement rather than a settlement agreement. The Court held that general waiver wording settling “all claims” arising “directly or indirectly out of or in connection with” the employment, termination or otherwise is effective in a COT3 agreement. Employers wishing to achieve a settlement by way of

a settlement agreement rather than a COT3 agreement should follow the approach set out in Bathgate.

[Arvunescu v Quick Release \(Automotive\) Ltd](#)

BDBF is a leading law firm based at Bank in the City of London specialising in employment law. If you would like to discuss any issues relating to the content of this article, please contact Amanda Steadman (AmandaSteadman@bdbf.co.uk) or your usual BDBF contact.