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Settlement agreements – what are the limitations post Bathgate?

Settlement agreements in an employment context are ordinarily used to provide both parties with certainty following the conclusion of an employment relationship – but what happens when there is alleged discrimination after entering into a settlement agreement?

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Settlement agreements in an employment context are ordinarily used to provide both parties with certainty following the conclusion of an employment relationship – but what happens when there is alleged discrimination **after** entering into a settlement agreement?

The recent case of Bathgate v Technip UK Ltd and Ors considered this question. The Claimant in this matter, C, was employed for some 20 years before he agreed to take voluntary redundancy. C entered into a settlement agreement waiving his right to bring past, current and future claims against his employer in consideration for enhanced redundancy pay, notice pay and an additional payment calculated in accordance with the terms of a collective agreement. After C entered into this agreement, the Respondent discovered that the terms of the collective agreement provided that the additional payment would only apply to those who had not reached the age of 61. C was not entitled to receive the collective agreement payment as he was 61 or over as at his termination date.

C brought an employment tribunal claim, citing age discrimination in relation to the non-payment of the collective agreement payment. The Respondents sought to defend this claim on two grounds, firstly that C had compromised his ability to bring a claim by entering into the settlement agreement, and secondly on jurisdictional points relating to the meaning of “seafarers” that we will not be considering within this article.

The Employment Tribunal found that C was precluded from bringing his claim, due to the settlement agreement; the wording of this was an effective full and final settlement of all current and future age discrimination claims. C appealed against the Employment Tribunal’s decision.

The EAT upheld his appeal. For an agreement to be valid to settle claims under the Equality Act 2010, it must meet a number of requirements, including that it must relate to “the particular complaint”. In this case, the settlement agreement referred to a “long list” of legislation, including that relating to age discrimination and purported to include future discrimination claims of which C was unaware. The EAT held that an unknown future claim could not fall within the statutory meaning of a “particular complaint” under the Equality Act 2010.

It was previously understood, based on the decision in Hilton UK Hotels Limited v McNaughton, that it was possible to settle future unknown claims within a settlement agreement but that, if this was the intention of the parties, the wording needed to be clear and unequivocal. The decision of the EAT in Bathgate has, however, restricted this principle as being relevant only to matters of contract law and contractual interpretation, highlighting the potential limitation of settlement agreements, and the protection afforded to employers in certain circumstances. The reduction in certainty, and the inability to secure a clean break, will need to be considered by employers when deciding whether to enter into settlement agreements and/or the amount of consideration that will be offered.

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