

**EMPLOYMENT TRIBUNAL**

Case N° 42 of 2016

**BETWEEN:**

**ATHONY KENNETH DREW**

**CLAIMANT**

**-and-**

**EUROPEAN FINANCIAL PLANNING GROUP LIMITED**

**RESPONDENT**

**BEFORE JOSEPH NUÑEZ, Chairman.**

Dated the 29<sup>th</sup> day of January 2018.

**DECISION**

On the 8<sup>th</sup> December 2016, the solicitors for the Claimant filed a claim before the Tribunal for unfair dismissal, arrears of pay, arrears of notice pay, arrears of holiday pay, private medical and life insurance, bullying and/or victimisation and breach of the employment contract. The Respondent in due course filed a response to the claim and, as provided in the Employment Tribunal (Constitution and Procedure) Rules 2016 ("the Rules"), the claim was referred to a mediator.

On the 9<sup>th</sup> January 2018, Ms Fiona Young issued her conciliation certificate in which the following statement appears:-

"I have been advised by the Tribunal that the parties have requested that a chairperson be appointed forthwith".

I pause here to note that Rule 25 of the Rules does not provide for the above stated reason as being the basis on which a conciliation certificate should be issued but I assume that on Ms Young having been informed that both parties wanted a chairperson appointed she took the view and concluded that the settlement of the dispute was not possible.

I was then appointed Chairman of the Tribunal to hear this case.

On the 17<sup>th</sup> January 2018, the parties wrote to the Tribunal stating that "following a successful mediation conducted by Ms Fiona Young" they

requested that the chairperson appointed to hear the case approve and sign the consent order attached to said letter. In essence the consent order seeks to stay all further proceedings in the action, permit either party to apply to the tribunal to enforce the terms of the Compromise Agreement signed by the parties without the need to bring a new claim and each party to bear its own costs. The Compromise Agreement has not been produced to the tribunal.

On the 19<sup>th</sup> January 2018, I wrote to the secretary to the Tribunal asking her to request the solicitors acting for the parties to draw to my attention the provision(s) in the Rules enabling the tribunal to sign the draft order submitted in the terms in which it was drafted and pointing out that if the parties so wished the tribunal would sit to hear their submissions.

On the 23<sup>rd</sup> January 2018, Mr Hillman wrote to the secretary forwarding to her the joint submissions made by the parties. The e-mail does not state, and therefore I have assumed, that the parties wish me to decide the issue without having a hearing as provided for by Rule 51 of the Rules.

There is no doubt that Rule 54 of the Rules empowers the tribunal, "if it thinks fit", to make a consent order or judgement. I am in no way querying this and therefore were it not for paragraph (2) of the draft consent order presented to me I would be considering approving and signing the order. Paragraph (2) provides as follows:-

"Each party shall have permission to apply to this tribunal to enforce those terms without the need to bring a new claim".

The words "without the need to bring a new claim" are what in my view causes the problem.

As the parties have stated in the joint submission, they have by virtue of the compromise agreement signed, entered into a new contract governing the employment relationship between the parties and its termination. Thus, if either one of the parties breach the compromise agreement, the other party will want the tribunal, and quite rightly so, to enforce the terms of what the parties have now agreed on. What has now been agreed on is not by any stretch of the imagination part and parcel of the unfair dismissal claim and/or the bullying and/or victimisation claim and/or breach of employment contract claim originally filed by the Complainant. What the parties are in effect asking this Tribunal to do is not to allow the Claimant to add or substitute a new ground to his existing claim(s), and thereafter have the Tribunal to determine those claims, but rather to allow either the Claimant or Respondent to at some time in the future bring a claim to the effect that the other party has breached one or more provisions of the Compromise Agreement. This being the case, it follows that in essence you have a new claim; ie a breach of the compromise agreement which could be brought by either one of the parties. As a new claim the claimant, whichever of the two parties it might be, would have to proceed as provided for by Rule 10 et seq. The wide procedural powers granted to the Tribunal by such provisions as Rule 29 (1) and/or Rule 38, when there is a properly filed claim before it, cannot in my view be extended for the purposes of circumventing the requirements of the Act and Rules with regard to new claims. It does not

seem to me that this Rule or indeed Rules 3, 4 or 84 permit the Tribunal to consider, in situations such as the present one, a claim which has not undergone the set procedure to be followed by any new claim. If the Minister had intended post termination agreements signed between the parties well after the commencement of employment tribunal proceedings to be enforceable before the tribunal without the need to file a new claim then it would have been a simple matter for the Minister to have done so and yet he has not. In this respect it is noteworthy and supportive of the decision I have reached, as well as ironic, that had the parties in the course of the mediation come to the compromise agreement then Rule 84 of the Rules would have applied and the parties might not be faced with the situation that they are now obviously concerned about.

In the circumstances of the above, it is my decision that the order as currently drafted cannot be signed by myself. The parties are free to put before me a new draft.

As I have decided against the parties on the above issue there is no need for me to go on to consider the wider question of whether the broad procedural powers given to the Tribunal permit the Tribunal to stay proceedings indefinitely.



**Joseph Nuñez**  
**Chairperson**

**IN THE EMPLOYMENT TRIBUNAL**

**CASE NO EMP/TRI/42 of 2016**

**BETWEEN:**

**ANTHONY KENNETH DREW**

**CLAIMANT**

**AND**

**EUROPEAN FINANCIAL PLANNING GROUP LIMITED**

**RESPONDENT**

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**CONSENT ORDER**  
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Before Mr. Joseph Nuñez, Chairperson

**UPON** reading the joint letter from the Parties' solicitors

**AND UPON** the Parties having agreed terms of settlement

**1. BY CONSENT IT IS ORDERED THAT:**

- (1) All further proceedings in this action be stayed upon the terms set out in the Compromise Contract made (*inter alios*) between the Parties dated 16<sup>th</sup> January 2018, a counterpart of which has been kept by each of the Claimant's solicitors and the Respondent's solicitors, except for the purpose of enforcing the terms of such Compromise Contract.
- (2) Each Party shall have permission to apply to this Tribunal to enforce those terms without the need to bring a new claim.
- (3) Each Party shall bear its own costs.

\_\_\_\_\_  
Chairperson

Dated this        day of January 2018

Signed:

  
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FBP Solicitors

For and on behalf of the Claimant

  
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Triay & Triay Solicitors

For and on behalf of the Respondent

COPY

## FBP Solicitors

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Employment Tribunal Office  
H.M. Government of Gibraltar  
Employment Tribunal  
75 new Harbours  
New Harbours Walk  
Gibraltar

Your reference: 42 of 2016  
Our reference: TH.D036  
Sent by: HAND & E-MAIL

17 January 2018

Dear Sirs,

**RE: ANTHONY DREW v EUROPEAN FINANCIAL PLANNING GROUP**

We write on behalf of both the Claimant and Respondent in this matter, following a successful mediation conducted by Mrs Fiona Young, in accordance with Rules 3 and 54 of the Employment Tribunal (Constitution and Procedure) Rules 2016 and respectfully request that the Chairperson consider and approve the enclosed draft Consent Order approved on behalf of the parties.

Kindest regards

Yours faithfully

A handwritten signature in black ink, appearing to be 'Tom Hillman', written over a horizontal dotted line.

**Tom Hillman**  
Claimant's Solicitor

A handwritten signature in black ink, appearing to be 'Alan Buchanan', written over a horizontal dotted line.

**Alan Buchanan**  
Respondent's Solicitor

*\*cc'd: Alan Buchanan of Triay & Triay solicitors for the Respondent*