



Case Number: 2300296/2017

EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Mrs A Sayeed

and

Respondents

George P Johnson (United
Kingdom) Ltd (1)
Mr J McCallum (2)

Preliminary hearing held at Ashford on 22 May 2017

Representation

Claimant:

Ms C D'Souza, counsel

Respondents:

Mr A Knorpel, solicitor

Employment Judge Wallis

JUDGMENT

1. The Second Respondent is dismissed from these proceedings;
2. The claims at paragraphs 55 and 56 of Draft 2 are dismissed upon withdrawal by the Claimant;
3. The application to amend paragraphs 62 and 63 of Draft 2 is granted;
4. The application to amend paragraphs 58 and 59 of Draft 2 is refused.

REASONS

Oral reasons were given at the end of the hearing. The Claimant requested written reasons.

ISSUES

1. This preliminary hearing was arranged to consider applications from both parties. There was no objection to the Respondent's application for the Second Respondent to be discharged from the proceedings, and that was granted.
2. By letter of 30 March 2017 the Claimant had applied to amend the claims, to withdraw two of the PCPs as the Respondent now accepted that the Claimant

was a disabled person, by reason of epilepsy, from 25 May 2016; and to add two PCPs and amend the section 15 claim. The Respondent objected to the proposal to amend by addition, and did not object to the others. We concentrated on the areas in dispute.

DOCUMENTS

3. I had a small bundle of documents and a skeleton argument from the Respondent, together with copies of *Fergusson v Combat Stress* 4105592/16 (ET Scotland); *HMRC v Serra Garau* EAT/0348/16; and *Kuznetsov v RBS* 2017 IRLR 350.
4. From the Claimant I had copies of *Selkent* and *Abercrombie*. The Claimant had sent in a document 'Draft 2' which I had on the Tribunal file, setting out the amended grounds of claim. References to paragraph numbers below relate to paragraphs in Draft 2. The Claimant wished to add paragraphs 58 and 59 as section 20 claims; and amend the wording relating to 'something arising' in paragraph 62; and add paragraph 63, referring to the dismissal as unfavourable treatment in the section 15 claim.

CONTEXT

5. I noted that the claim had been presented by the Claimant's solicitors on 9 January 2017. The Claimant's employment ended on 31 December 2016. The EC certificate ran from 24 November 2016 to 9 December 2016. A case management discussion had taken place on 8 March 2017 and a list of issues had been agreed and was set out in the case management order. The order permitted the parties to notify the Tribunal if they considered the list 'incomplete or incorrect' within 14 days. I considered that this was not an invitation to expand upon the claim, but merely to point out any errors.
6. I noted that this was a very detailed claim form and that at the end it set out by reference to the relevant sections the claims that were being made, referring to the facts relied upon.

SUBMISSIONS

7. On behalf of the Claimant, Ms D'Souza explained that after the case management discussion, the Claimant's solicitors had sought counsel's advice and she had suggested additional matters for claims. These were the subject of the application to amend on 30 March 2017.
8. She submitted that the amendments were not new claims, but simply expanded the facts; she pointed to paragraphs in the claim form where the facts relied upon in respect of the proposed amendments had been mentioned. She submitted that this was an exercise in re-labelling. She referred to the relevant passages in the authorities and the Presidential Guidance.

9. On behalf of the Respondent, Mr Knorpel submitted that just because there were already claims under section 20 and 15, did not mean that others could be added. He submitted that the proposed claims were new claims, and submitted outside the time limit. He submitted that even if the clock stopped for 15 days – which he said it did not, given the recent authority – it was still presented outside the time limit.
10. He submitted that it was relevant that the claim was very detailed; that there had been a case management discussion and the issues agreed; that the Claimant's solicitors advertised as a 'niche employment practice'; that the Respondent would be prejudiced by the proposed amendments.

BRIEF SUMMARY OF LAW

11. The law regarding consideration of applications to amend is well-known and hence mentioned here briefly. The basic guidelines are set out in Selkent. It is necessary to consider the nature of the amendment; the time limit if it is a new cause of action; and the timing and manner of the application. It is important to note that the balance of hardship and injustice test is a balancing exercise.

CONCLUSIONS

12. I agreed to dismiss the claims in paragraphs 55 and 56, upon withdrawal by the Claimant. In considering the other contested applications, I had in mind the context, as set out in paragraphs 6 and 7 above.
13. I considered the application to add the section 20 claim in paragraph 58 in respect of the use of assessments from 2015 in the redundancy exercise. I concluded that this was a new claim. The reference to this event in the claim form (paragraph 8) was not described as a complaint in the sense that it was used in paragraph 58. It read as a background detail. The fact that there were already section 20 complaints did not in my view assist the Claimant, as this was entirely new.
14. I therefore had to consider the time limit. The Claimant said that it was a continuing act; the Respondent said this had not been pleaded. I agreed with the Claimant that it did not have to be pleaded as it was a matter of jurisdiction. However, having regard to the provisions of section 123(4) and the case of Matuszowicz, I considered that it would be difficult for the Claimant to show a continuing act in the context of an alleged failure to make a reasonable adjustment, which occurs at the time of the failure or, if it is an omission, at the time when action could reasonably have been taken.
15. No grounds had been put forward to extend time on a just and equitable basis.

16. I considered the balance of hardship and prejudice/injustice. I could see no hardship for the Claimant in refusing it, as she had a number of claims relating to the dismissal decision. I could see hardship for the Respondent, having regard to their submissions that it would mean that they would have to trawl back over additional documents relating to previous appraisals, with the added difficulty that the manager involved (who was not involved in the redundancy) had now left their employment.
17. On balance I decided to refuse that application.
18. With regard to the proposed claim at paragraph 59, I decided that this too was a new claim, for the same reasons. The incident related to a proposed consultation meeting on 30 November 2016, but the complaint related to a decision of the Respondent to proceed with that meeting, which must have been made between 21 and 30 November. It was not clear why this was not included in the detailed list of claims within the claim form. My comments about section 123 (4) above are also relevant to this claim. The application to amend to include it was presented outside the time limit.
19. I could see no prejudice or hardship to the Claimant in refusing the application; her claims already refer to the redundancy process. I considered that there was some hardship for the Respondent, to have to meet a new claim some months after the issues seemed clear from the claim form.
20. I refused that application.
21. With regard to the proposed claim at paragraph 62, I considered this a minor amendment; it simply added another description to the 'something arising' relied upon by the Claimant in the section 15 claim. I noted some overlap between that and the paragraph 59 claim, which I had refused, but here it was pleaded differently, and not as a whole new PCP, but as part of the alleged reason for unfavourable treatment.
22. I could see no prejudice to the Respondent, and granted this application.
23. Finally, I considered the proposed claim at paragraph 63, which proposed to add dismissal to the unfavourable treatment relied upon by the Claimant in the section 15 claim. When discussing this, the Respondent had withdrawn their objection and it seemed to me that it was a necessary clarification of the claim form reference, under the heading 'unfair dismissal' of 'unlawful disability discrimination'. That was too vague, now it was clear.
24. I granted that application.

Case Number: 2300296/2017

Employment Judge Wallis
23 May 2017