



Case Number: 2301515/2016

## EMPLOYMENT TRIBUNALS

BETWEEN

**Claimant**  
Aliaa Arafa

**Respondent**  
Epsom & St Helier University  
Hospitals NHS Trust

and

## PRELIMINARY HEARING

Heard at Croydon on 22 June 2017

**Representation**

**Claimant:**  
**Respondents:**

Ms L. Chudleigh, Counsel  
Ms D. Nathan, Solicitor

**Employment Judge** Harrington

## JUDGMENT

The Claimant's application to amend, dated 27 April 2017, is allowed. The Claimant's claim now includes allegations of detriment detailed at paragraphs 11 l) and 11 m) of the agreed list of issues.

## REASONS

- 1 This Preliminary hearing has been ordered to consider the Claimant's application to amend and to make any appropriate case management orders. The Claimant's application to amend is set out in a letter to the Tribunal dated 27 April 2017. Two amendments to the claim are sought. These are set out in the List of Issues at paragraphs 11 l) and 11 m).
- 2 In short the Claimant wishes to add two further detriments to her claim of public interest disclosure detriment (section 47B Employment Rights Act 1996). Firstly, she seeks to allege that on 6 February 2017 the Respondent sent a revalidation document to the Portland Hospital which was unfair and / or incomplete and/ or inaccurate and / or misleading. I have seen a copy of that document today.

- 3 Secondly, she alleges that the Respondent continued with an investigation against her without dealing with concerns she raised in a emailed letter of complaint, dated 31 January 2017, to Mr De Alyn, the Respondent's investigator and by an email, dated 8 February 2017, which was sent both to the Respondent's Chief Executive and the Medical Director.
- 4 Ms Chudleigh, Counsel for the Claimant, has told me that these issues were identified to the Respondent in a proposed list of issues dated 23 February 2017, shortly after the alleged detriments occurred. She has also addressed me on the factors which I should have regard to including potential prejudice. Ms Chudleigh refers to the fact that the trial in this case is not until November 2017 and that the Respondent is not acutally prejudiced at all by these proposed amendments.
- 5 For the Respondent, Ms Nathan has agreed that these proposed amendments do not raise any issues of being out of time. She does however identify that at least one of the proposed amendments (paragraph 11 m) is likely to require a further witness to be called by the Respondent. However that does appear to be the extent of the prejudice identified by the Respondent as resulting, if the amendments are allowed.
- 6 In considering this matter, I have taken into account all the submissions made by both parties. I have looked again at the case of Selkent Bus Co Ltd v Moore [1996] IRLR 661 and the Presidential Guidance on amendments to the claim. I have reminded myself that regard must be had to all the circumstances, in particular any injustice or hardship which would result from the amendment or a refusal to make it. I must carry out a careful balancing exercise of all of the relevant factors, having regard to the interests of justice and the relative hardship that will be caused to the parties by granting or refusing the amendment.
- 7 The Claimant seeks to amend her claim by adding two further detriments to her existing whistleblowing claim. I have taken into account the timing and manner of the Claimant's application, the issue of time limits and what prejudice is caused by the amendment. Applying the overriding objective and taking account of all of the circumstances of this case, in my judgment these amendments should be allowed. I am satisfied that no great or significant prejudice is suffered by the Respondent, that prompt notice of the issues was given by the Claimant and that there is sufficient time before the full merits hearing in this case for the Respondent to respond fully to the two newly alleged detriments.

## CASE MANAGEMENT ORDER

- 1 By a claim form presented on 15 August 2016 the Claimant has brought complaints alleging detriment under s.47B of the Employment Rights Act 1996, automatic unfair dismissal contrary to s.103A of the Employment Rights Act 1996 and 'ordinary' unfair dismissal. A Preliminary Hearing took place on 11 January 2017 at which various case management directions were made. The case is listed for a full merits hearing for fifteen days commencing 6 November 2017. Following a discussion about the case management issues arising and a detailed consideration with the parties of the most recent suggested 'List of Issues', I made the following Orders:

### List of Issues

- 2 It was agreed by the Parties that paragraph 7 of the List of Issues is to be deleted, the dates in paragraphs 11a) and b) are to be changed to read '1 October 2015 onwards'. Further, Paragraph 17 of that document is to read,  
*'If not, was there a potentially fair reason for the Claimant's dismissal? The Respondent relies on some other substantial reason namely the Claimant's conduct and deliberate refusals to act as set out in James Marsh's letter of 18 July 2016.'*
- 3 No later than **13 July 2017** the Respondent shall send to the Claimant and the Tribunal an updated version of the List of Issues to reflect the agreed changes set out above.

### Amended Response

- 4 The Respondent shall, if so advised, present an Amended ET3 considering the amendments to the claim as set out at paragraphs 11 l) and 11m) of the List of Issues, to arrive with the Tribunal and the Claimant no later than **13 July 2017**.

### Disclosure of documents

- 5 The Respondent shall give any disclosure relevant to the matters identified at requests 3 – 10 in the Requests document enclosed with the Claimant's letter dated 19 June 2017, so as to arrive no later than **13 July 2017**.
- 6 This order is made on the standard civil procedure rules basis which requires the parties to disclose all documents relevant to the issues which are in their possession, custody or control, whether they assist the party who produces them, the other party or appear neutral.

- 7 The Respondent shall comply with the date for disclosure given above but if despite their best attempts, further documents come to light (or are created) after that date, then those documents shall be disclosed as soon as practicable in accordance with the duty of continuing disclosure.

#### **Document Guidance**

- 8 “Documents” includes letters, notes, emails, memos, diary entries, audio or visual recordings, text messages and any other legible records.
- 9 If hand written documents are being relied on a typescript must be provided by the party relying on them and inserted in the bundle of documents immediately after the hand written document.
- 10 If a recording is being relied on a transcript must be prepared by the party relying on it. That typescript must be included in the bundle of documents and sent to any other party, together with a copy of the recording.
- 11 **No documents or copy correspondence should be sent to the Tribunal unless a party is required to do so.**

#### **Trial Bundles of Documents**

- 12 The dates in paragraph 7 of the Case Management Order produced following the Preliminary Hearing on 7 January 2017 shall be altered to **13 July 2017** and **27 July 2017** respectively.
- 13 No later than **11 August 2017** the Respondents shall supply one copy of the bundle to the Claimant.

#### **Expert Evidence**

- 14 During the Preliminary Hearing, it was suggested by the Claimant that she might seek to obtain expert evidence. In order for the Tribunal to consider this matter further, the Claimant shall write to the Tribunal and the Respondent setting out whether she proposes to obtain expert evidence, including the precise nature of the expert evidence and the identity of any proposed expert no later than **13 July 2017**.
- 15 The Respondent shall respond, no later than **27 July 2017**, confirming its position in respect of expert evidence including whether it seeks to rely upon any expert evidence and any submissions on the appointment of single experts or a joint expert.

#### **Schedule of Alleged Detriments**

- 16 The Tribunal refers to Paragraph 11 of the Claimant’s Requests document enclosed with the Claimant’s letter dated 19 June 2017. In respect of

disclosures 15 - 36, the Respondent has stated that 'a belief may no longer be reasonable in light of further communications and information received at a later stage'. To provide further information upon this aspect of the defence, the Respondent shall, no later than **27 July 2017**, produce a table setting out the following matters:

15.1 the date of any communication / information relied upon;

15.2 the personnel involved in the communication / information;

15.3 the nature of the communication / information (i.e. oral or written etc.).

### **Simultaneous Exchange of Witness Statements**

17 On **11 September 2017** there shall be a simultaneous exchange of witness statements by each party providing to the others one copy of each witness statement for each of the witnesses that party intends to call to give evidence at the Tribunal hearing.

### **Non-compliance**

18 Each party is required to inform the Tribunal forthwith following any of the above directions not being complied with, in full, on the due date and provide its explanation in respect of any non-compliance.

#### **NOTE:**

1. *Failure to comply with an Order may result on summary conviction in a fine of up to £1,000 being imposed upon a person in default under section 7(4) of the Employment Tribunals Act 1996.*
2. *If a person does not comply with Orders made under the Employment Tribunals Rules of Procedure, rule 8 of the Employment Tribunals (Levy Appeals) Rules of Procedure or rule 7 of the Employment Tribunals (Health and Safety - Appeals against Improvement and Prohibition Notices) Rules of Procedure an Employment Judge or Tribunal may:*
  - (a) *make an order in respect of costs or preparation time (if applicable); or*
  - (b) *make an order to strike out the whole or part of the claim or, as the case may be, the response and, where appropriate, order that a respondent be debarred from responding to the claim altogether.*
3. *The Tribunal may also make a further Order (an "Unless Order") providing that unless it is complied with, the claim or, as the case may be, the response shall be struck out on the date of non-compliance without further consideration of the proceedings or the need to give notice under rule 19 or hold a pre-hearing review or a Hearing.*

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4. *An Order may be varied or revoked upon application by a person affected by the Order or by an Employment Judge on his own initiative.*
5. *This Order confirms orders made/directions given at a hearing on 22 June 2017.*

Employment Judge Harrington  
30 June 2017