Appeal No. UKEATS/0005/13/BI

EMPLOYMENT APPEAL TRIBUNAL

52 MELVILLE STREET, EDINBURGH, EH3 7HF

At the Tribunal
On 19 June 2013

Before

THE HONOURABLE LADY STACEY

(SITTING ALONE)

MS CAROLINE OLIPHANT	APPELLANT
BOOTS MANAGEMENT SERVICES LIMITED	RESPONDENT

JUDGMENT

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APPEARANCES

For the Appellant	MR J MUIR (Solicitor) Muir Myles Laverty Solicitors Meadowplace Building Bell Street Dundee DD1 1EJ
For the Respondent	MS A STOBART (Advocate) Instructed by: Geldards LLP The Arc Enterprise Way Nottingham NG2 1EN

SUMMARY

PRACTICE AND PROCEDURE – Amendment

Amendment of pleadings. The Claimant submitted a form ET1 alleging that she had made protected disclosures and had suffered detriment due to that; and that she was disabled and the Respondent had refused to make reasonable adjustments. She submitted an agenda for a Case Management Discussion (CMD) in which she stated that she complained of contraventions of sections 13, 19, 26, 27, 15 and 20 of the **Equality Act 2010**. She also stated that she complained of direct discrimination, indirect discrimination, harassment and victimisation. She produced further and better particulars in accordance with the agenda. At a pre-hearing review (PHR) the Respondent argued that the Claimant sought to introduce new matters, which were time barred. The ET agreed and refused to allow amendment to include the matters raised in the agenda and further and better particulars. They Claimant appealed. The ET did not err in law. The matters were not referred to in the ET1 and so were new. No explanation for their being raised late was given. The ET was entitled in the exercise of its discretion to refuse the amendment.

THE HONOURABLE LADY STACEY

Background

1. I shall refer to Ms Oliphant as the Claimant, and to Boots Management Services Ltd as the Respondent. This case relates to case management and amendment of pleadings. The underlying issues relate to the Claimant's assertion that she made protected disclosures and was subject to detriment in respect of them, and that she is a disabled person. These matters are denied by the Respondents. There has been no full hearing and difficulty has arisen in the pleadings. It is necessary to look at the forms ET1 and ET3 lodged by the parties and at the procedure that has taken place since.

2. The Claimant is employed by the Respondent as a dispenser. Her employment started in October 2000. On 22 June 2012 that she submitted a form ET1. In that form she ticked a box to indicate that she was discriminated against on the grounds of disability and that she had other complaints. She included a paper part. It was drafted on her behalf by her sister. It consists of ten pages in which a sequence of events is set out relating to events beginning in February 2010. The Claimant was signed off sick for a period of two weeks and went off, phoned the Respondent and spoke to Mr Harper. She states that the way in which he responded indicated that he had no regard for her well-being. She concluded that her health was being put at risk and that her mental state was affected by him. She felt bullied and harassed about what she perceived to be his ranting and aggressive behaviour on the telephone. In the week beginning 22 February 2010 she telephoned to the HR department to report Mr Harper's behaviour. It is stated in the form that the phone call constituted a protected disclosure of the purposes of section 43B of the **Employment Rights Act 1996**.

3. The Claimant in her form continues with a narration of events during 2010 in which she states that Mr Harper included her on a shortlist for redeployment from which she claimed that

she should have been exempt on both medical grounds and childcare grounds. She asserts that her inclusion in a shortlist is a detriment, and that Mr Harper included her as a consequence of her telephone call with HR. Following a meeting at which the Claimant was emotionally distraught she was selected for a position with another store. She raised a grievance, in October 2010, about Mr Harper's behaviour in relation to both the telephone call in February 2010 and the decision to redeploy her. She also appealed against the decision to redeploy her. Part of the grievance was upheld. She was not redeployed whilst grievance and appeal were outstanding. The Claimant states in her form that Mr Harper discussed the grievance and the decision making with other members of staff, which upset her. After the appeal the area manager in the Divisional Employee Relations department spoke to the Claimant in an unsympathetic way. The Claimant found the whole phone call very distressing. The appeal against redeployment was successful.

4. In March 2011, according to the Claimant, in the form, it came to her attention that she had been underpaid for the previous year. The Claimant raised this issue with her team manager who confirmed that she was correct. Mr Harper, according to the Claimant, intervened. The Claimant raised the issue higher in management, with Mr Reston. She was awarded the correct salary increase. In June 2011 Mr Harper informed her that Mr Reston had told him everything. This added to the Claimant's anxiety and left her feeling isolated.

5. The next matter raised in the form is that of holidays. The Claimant narrates a difficulty in obtaining a holiday in October to allow for her son's holiday from school, having previously booked a holiday and then being told that she could not get it. The Claimant states that matters were deliberately drawn out in order to concern her. Having been on holiday, the Claimant states that on return she was questioned about allegations made by others about events which

had happened when she was on holiday. She states that the enquiry made her feel anxious and that Mr Harper knew that that would be the effect on her.

6. The Claimant then states that, without her consent, the Respondents sought to change her working hours. She states that the Respondent knew that she could not do the new hours because of her childcare commitments. The Claimant spoke with the regional manager of her concerns. He said that she could have a right of appeal and she expressed to him that she felt that she could not go through another appeal process due to distress. She was asked to attend a meeting at which she was asked by a member of HR staff "do you feel victimised?" She replied that she did. At the end of that week she felt unwell due to the stress that she was experiencing at work. She asked to go home. She became inconsolable and was told by Mr Harper that if she went home she would be disciplined. The Claimant went home and had been signed off work ever since.

7. During her absence, the Claimant produced medical certificates, sent to the Respondents by her sister. She states that despite the certificates, the Respondents phoned her on 23, 24 and 26 December 2011. The Respondents asked for a meeting in January 2012, stating that failure to comply with company procedure could lead to them withholding company sick pay. The Claimant found the respondent's behaviour to be unnecessary and counter-productive. In April 2012 a medical certificate relating to the Claimant was pinned up on the pharmacy notice board within the store in full view of staff members and customers.

8. The next heading in the form is "WHISTLEBLOWING". In the paragraph which follows, the Claimant states that as a result of making a protected disclosure about the bullying and aggressive behaviour of Mr Harper, she suffered a series of detriments "contrary to section 103 A of the ERA 1996." She then sets out the communications which she claims are

protected disclosures, in broadly the terms as narrated above. In the next paragraph, the Claimant sets out in numbered paragraphs the detriment that she claims she suffered between February 2010 and April 2012.

9. The next heading on the form is "DISABILITY DISCRIMINATION/REASONABLE ADJUSTMENTS". In this part of the form the Claimant asserts that she was diagnosed with depression in February 2010 and was therefore a disabled person within section 6(1) of the **Equality Act 2010**. She claims that the Respondent was aware of her disability having been given an occupational health report in June 2010 and a medical certificate from her own GP in April 2010. She states that the management knew of her mental health issue and refused to have regard to it. They refused to make reasonable adjustments. She states that it would have been a reasonable adjustment to allow her to go home as requested in December 2011. She says that it would have been a reasonable adjustment to exclude her from the redeployment exercise and to ensure support for her during pressurised situations, such as profiling exercises. The form finishes with an assertion that it would been a reasonable adjustment to allow the Claimant time to compose herself, offering support and alternative duties.

10. In the form ET3, the Respondents begin by stating that the Claimant's complaint that she has been subjected to detriment contrary to section 103 A of the **ERA 1996**, and that she has been subjected to disability discrimination in terms of failure to make reasonable adjustments, contrary to the **Equality Act 2010** are not accepted. Under the heading "jurisdictional issues" the Respondents state that the Claimant complains about discrete and separate acts occurring between February 2010 and April 2012 which she says constitute detriment on the grounds that she made protected disclosures. The Respondents state that such acts cannot be in contravention of section 103 A of the ERA because she has not been dismissed. They state that such a complaint is misconceived and should be struck out. They then state that if the

Claimant's complaint is made pursuant to section 47(B)(1) of the ERA then as all of the alleged acts of discrimination took place between February 2010 and 10 December 2011, with the exception of the placing of the medical certificate on the board, they are out of time. They also state that the alleged acts of disability discrimination referred to by the Claimant, the latest of which was said to occur in December 2011 are out of time in terms of section 123 of the **Equality Act 2010**.

11. The Respondents then set out their position on the various assertions made by the Claimant. The Respondent denies that it subjected the Claimant to any detriment because she had made protected disclosures. They assert that any disclosures were not made in good faith, but rather were made out of personal antagonism. They assert that if they are wrong in that, firstly the Claimant suffered no detriment as a result of having made disclosures and alternatively if it is believed that the Claimant did suffer detriment, then it was not because she had made the disclosures. As regards disability discrimination the Respondent did not accept that the Claimant was disabled. The fall-back position taken by the Respondent is that if the Claimant is disabled, the Respondent denies any failure to comply with its duty to make reasonable adjustments.

12. A case management discussion (CMD) was held on 24 August 2012. The Employment Judge at that hearing refused the Respondent's application for a pre-hearing review to determine the issue of time-bar. She set the case down for a full hearing. She also made an order for further and better particulars to be provided by the Claimant in the form of answers to questions set out in a schedule. She made an order that within two weeks the parties were to agree a letter of instruction to the Claimant's doctor requesting a report on the issue of disability status. In her judgment the Employment Judge noted that the last act relied on by the Claimant occurred on 11 April 2012, which was within three months prior to the date of presentation of

the ET1. The most recent act prior to that was alleged to have occurred on 10 December 2011. The Claimant's position was that these acts and others were conduct extending over a period and were accordingly not time-barred. The Respondent's position was that each of the acts was separate and at that everything prior to 23 March 2012 was therefore time-barred. The Employment Judge refused the Respondent's application to have a pre-hearing review, taking the view that it would result in duplication and would not be proportionate for the Claimant to give the same evidence twice. The Employment Judge in paragraph 4 stated the following:

> **"On behalf of the respondent, Ms Stobart indicated that, although in her response to the CMD agenda, the claimant had ticked the boxes for all different kinds of discrimination, in her originating application the only claim the respondents could discern was a claim for discrimination by failure to make reasonable adjustments."**

13. The judge stated that she explained to the Claimant and her representative that the Tribunal would only be able to determine those complaints contained within the ET1 and that if she wished other matters to be considered she would need to apply to amend the form. The Claimant's sister, Ms Brown, stated that all the claims ticked in the CMD response were already in the ET1. She stated however that the Claimant had arranged to take legal advice. The Employment Judge found that it was appropriate for the Claimant to provide further and better particulars of her case once she had had the benefit of taking that advice. She set out a schedule with questions that she should answer.

14. The Claimant provided further and better particulars, dated 12 September 2012 and comprising six pages. That document was the subject of discussion at the pre-hearing review on 27 November 2012 at which Employment Judge Craig decided that the further and better particulars sought to introduce new claims; that those claims required to be introduced by way of amendment; that the new claims were out of time; and she declined to exercise her discretion to allow the amendment.

15. It is that decision which is the subject of the appeal. For the purposes of the appeal it was obviously necessary to consider the terms of the agenda of which the Claimant had filled in for the CMD. Parties did not produce it in advance, but having asked for copies to be made, I had the agenda before me at the hearing of the appeal. The document consists of a typewritten questionnaire with answers entered in handwriting. Question 2.1 is in the following terms:

> **"Do you complain of:**
>
> - **direct discrimination (section 13)**
> - **indirect discrimination (section 19)**
> - **harassment (section 26)**
> - **victimisation (section 27)**
> - **discrimination arising from disability (section 15)**
> - **failure to make reasonable adjustments for your disability (section 20)"**

The Claimant ticked each matter and wrote the word "All".

16. In schedule 1 to the agenda the Claimant is asked if she complains about direct discrimination, what less favourable treatment she says she has suffered. The Claimant completed that by reference to the paper apart in the form ET1. The next question is 'if you complain about indirect discrimination what "provision, criteria or practice" do you say the respondent has applied to you?' Once again she completed that by reference to the paper part in the ET1. The following question appears:

> **"What is the particular disadvantage you say that people who share your protected characteristic would have been put at when compared to other people because of that protected characteristic?"**

That the answer given is as follows:

> **"The disadvantage of the protected characteristic is the refusal to acknowledge the illness exists, therefore the psychological impact would cause further detriment if not dealt with appropriately."**

17. The form enquires if you complain about harassment and asks for details which the Claimant gave. She included in it that the harassment was related to the fact that she was a single mother and a sole carer. Once again she makes reference to the paper part in the ET1. In the section concerning complaints about victimisation, the Claimant stated that reference should be made to the paper part in the ET1. Schedule 2 relates to disability and the Claimant completed all parts of it.

18. At the PHR on 27 November the Employment Judge noted that a seven-day hearing had been listed to commence the 3 December 2012 with a separate pre-hearing review on 27 November to determine whether the Claimant was a disabled person. The notice of hearing for the PHR specified that another preliminary issue was to be considered, namely "whether the claimant's additional claims should be included". She noted that that was a reference to the further and better particulars produced after the case management discussion. The Respondent asserted that the terms of the further and better particulars was such that the Claimant sought to introduce new claims out of time. She noted that by the time of the PHR the Respondent had conceded that the Claimant was a disabled person. The Respondent maintained its position in relation to the terms and effect of the further and better particulars. The Employment Judge was then faced with a hearing approximately one week before the date of a full hearing at which she was asked to determine whether or not the Claimant had sought, by means of the further and better particulars, to introduce new matters which may be time-barred. Given the timescale, she gave an oral decision after the hearing, to the effect that the terms of the further and better particulars were an introduction of new claims which were out of time and that she was not persuaded to exercise her discretion to allow the amendment. Mr Muir who appeared for the Claimant advised that he would appeal the judgment and so moved for at the hearing to be postponed.

19. The Employment Judge produced written reasons. She identified the issues at paragraphs 31 and 32 of her judgment as being that the Respondent argued that the further and better particulars sought to introduce new claims; in contrast the Claimant argued that they were merely the provision of further details in relation to existing claims. The Claimant argued that there was no need to amend the ET1. The Employment Judge found that she was required to determine whether the further and better particulars could be accepted as part of the case without further procedure, and if they could not whether they should be accepted nonetheless.

20. The Employment Judge narrated the parties' positions, in which she noted that Mr Muir argued that the ET1 had been brought by a party litigant who had a debilitating illness, and she ought to be allowed to explain her versions of events and then leave it to the Tribunal to sort out what claims came out of all that. He argued that detailed pleadings were not required in an employment tribunal. He argued that as the Respondents had had the further and better particulars since September they were on notice of the Claimant's case and had not suffered any prejudice. The Employment Judge noted that apparently with some reluctance Mr Muir took the view that if the judge found that was necessary then he would move to amend. The judge noted that she asked Mr Muir if he intended to lead any evidence so that if the question of time bar became an issue she would be in possession of facts that would allow the matter to be addressed. The judge found that she did not get a clear answer. The judge notes in paragraph 41 that the Claimant addressed her directly, not apparently because of any issue with Mr Muir's submissions, but because she wanted to reinforce her position. She said that there was nothing in the further and better particulars that had not been in the ET1. At paragraph 40 the Employment Judge noted that the Claimant became upset and seemed to be under the impression that she might be prevented from advancing her case at all. The Employment Judge stated the following:

> **"I sought to reassure her that there was no challenge (save the time-bar point) in relation to the matters set out in the ET1 and that she would have her opportunity to give evidence about those matters in due course whatever the outcome of the PHR. It would be fair to say that she did not appear to be reassured."**

21. The Employment Judge noted that the Respondent submitted that the further and better particulars had been ordered at the CMD because the Claimant had ticked all of the boxes on the agenda suggesting that she was trying to go well beyond the otherwise well pled claims. Counsel argued that it was clear that at the CMD the Employment Judge (who was a different judge from the judge who heard the PHR) did not want to particularise the existing claim. Rather she wanted clarity that matters did not go beyond the claims set out in the ET1. Counsel argued that it was clear from the ET1 that the Claimant's issue with the Respondent surrounded her interaction with Mr Harper and that she put her difficulties down to the fact that she had reported him to HR and had subsequently taken out a grievance against him. Her case was one of alleged detriment due to whistle blowing. Counsel also argued that the issue connected with the Claimant's disability arose squarely in the context of a claim of reasonable adjustments arising out of the Claimant's fragile state of mind. From the ET1 one could tell that the Claimant wished to argue that the breakdown in the relationship between employer and employee was due to the disclosures. Therefore any reference to any other form of disability discrimination amounted to the introduction of new claims. Counsel argued that there was no proper specification of victimisation or harassment. Prejudice would arise as the Respondent would require to investigate these claims. If amendment were not allowed in the Claimant would not suffer hardship and injustice because she would not be deprived of the existing claims in respect of detriment due to whistle blowing and her claim about disability and reasonable adjustments. Counsel argued that if there was to be a motion to amend then evidence would be required on the question of time bar to enable the Employment Judge to decide the matter properly.

22. The Employment Judge took the view that it was clear that the ET1 as presented comprised a claim under section 103 A of ERA together with a claim of failure to carry out reasonable adjustments in respect of disability, which could only be a claim under section 20 of the Equality Act. She noted in paragraph 58 that the Claimant sought to rely on section 103A of ERA which would seem to be erroneous as the Claimant was still employed by the Respondent. She found that the further and better particulars sought to introduce claims under sections 13, 15, 19, 26 and 27 of the Equality Act, none of which had been previously pled. She pointed out that both direct and indirect discrimination were included and quoted the case of **R (on the application of E) v Governing Body of JFS and others** [2010] IRLR 136 as authority for the proposition that a claimant cannot insist on both on the same facts. She decided that the Claimant had made no causative link between the case as set out in the ET1 and the disability claims advanced. The Claimant also wanted to argue that she had been harassed because of her disability, whereas the pleadings to date were to the effect that harassment had been due to the disclosure. The Employment Judge found that claims of victimisation had no explanation of the act that prompted the victimisation. The Employment Judge noted that it could not be the protected disclosure because the protections related to such a disclosure do not derive from the Equality Act but from elsewhere. The Employment Judge noted that these were not advanced as alternative cases.

23. The judge then indicated that she had to consider the party's position on amendment. She noted that Mr Muir had said little except that she should allow the amendment, no doubt because he did not regard it as necessary. The judge therefore found herself without submissions from him as to the proper approach that she should take. The judge said that in light of the importance of the matter she was prepared to consider whether or not amendment should be allowed. She came to the view that it should not, setting out in paragraph 69 that she was satisfied that there was no causative link between the claims advanced in the further and

better particulars produced on 12 September 2012 and the claim as pled in the ET1 which was presented on 22 June 2012. The last date on which any incident was said to have occurred was 11 April 2012, which was more than 3 months before 12 September 2012. Therefore to allow the matters set out in the further and better particulars would be to allow matters which were time-barred. The Employment Judge turned her mind to whether, as a matter of discretion, she should allow the amendment. She took the view that there would be prejudice to the Respondent as it would extend the issues requiring evidence of comparators, and evidence of any provision, criteria, or practice said to be discriminatory. Further, the pleadings were unclear and contradictory. She took the view that she had no explanation why the amendment came when it did, pointing out that there had been no explanation why there was reference to certain statutory claims in the ET1, but not to those now sought to be made.

24. The decision of the Employment Judge therefore was that the further and better particulars dated 12 September 2012 sought to introduce new claims which should have been introduced by way of amendment to the ET1; that the new claims were out of time; and that no amendment should be allowed.

25. On behalf of the Claimant it was argued before me that the Claimant's claim had always been doomed to failure because her claim under section 103A was incompetent. Mr Muir submitted that the Claimant should have been advised of this, apparently not by himself, but by somebody else and certainly by the Employment Judge at the PHR. I had some difficulty in understanding how this submission related to the question before me which was whether or not that had been an error of law made by the Employment Judge in refusing an amendment, having decided that the Claimant was attempting to insert new claims which were out of time. Mr Muir fastened on the Employment Judge's remark at paragraph 72 that she had had no explanation why the amendment came when it did. He pointed out that she knew that it had

come because the judge at the CMD had asked for an amendment. He said that he could accept that there are new claims made but there is no new narrative. He took me to a number of emails between parties to show me that neither the Claimant nor her sister who advised her could understand what the new claims were. He argued that it was in some way incumbent on the Respondent to tell the Claimant before the PHR what the problems were. I did not find this line of argument helpful as it seemed to me firstly that there is no such duty and secondly that the emails do point out to the Claimant that the only complaints properly before the Tribunal were those of whistle blowing and failure to make reasonable adjustments.

26. Mr Muir went on to explain that the Claimant, who had acted on her own behalf, along with her sister to advise, suffered from an essential lack of clarity. He had been instructed only in mid-November and the Respondents conceded only a day before the November hearing that the fact of disability was no longer in contention. He repeated that the real issue was that a party litigant had tried to deal with complex legislation. The narrative itself had not altered. He explained that at the hearing in front of the judge at the PHR he himself was not sure what claim required to be addressed. He would have drafted the ET1 differently had he been instructed in the first place. He repeated that the essential point was that no new facts were sought to be added, it was simply a matter of different legal labels for the same events.

27. He explained to me that his position was that the matters contained in the further and better particulars were an amendment and they should be allowed. Thereafter there should be a hearing on the merits as soon as possible. He would concede that the Respondent should have time to amend the ET3 if they thought it necessary. His fall-back position was that I should remit to a differently constituted ET to determine firstly if the matters in the further and better particulars should be seen as an amendment and if so they should be admitted.

28. Counsel for the Respondent submitted that in the ET3 the Respondent recognises the mislabelling of the claim by using section 103A and at that in the ET3 it is set out that there may be a claim under section 47(B). She emphasised that she did not have instructions on this matter, but was able to say that it might be difficult to resist a motion to amend from section 103A to section 47(B). Counsel argued that the Employment Tribunal at the PHR had made no error in law. The judge had applied the right test. She looked at the nature of the further and better particulars and decided that they were new claims. She made reference to the case of **Ali v Office of National Statistics** [2004] EWCA Civ 1363. She noted in paragraph 56 that that case was authority for the proposition that it is not enough simply to make some reference in passing to, for example, harassment and victimisation in the context of a different type of claim for that to be enough to open the door to any type of harassment and victimisation claim. Ms Stobart argued that the judge was correct in her decision. Taking an example from this case, counsel argued that if the Claimant wished to argue that she had not been paid the correct salary because she was disabled, then she had to say so. She had not said so in her ET1.

29. If she was correct in categorising the matters as new, counsel argued that these matters were time-barred. The judge had been correct in so deciding. She was also correct in considering whether time-barred amendment should be allowed. There was no evidence led to show why they should be. It was a matter of discretion and the judge had exercised her discretion by refusing the amendment and explaining why she had done so. Therefore she had not erred in law and the appeal should be refused. If I was minded to allow the appeal then counsel submitted the case should be sent to a differently constituted tribunal which should decide again whether the matters were new and whether, if they were, they should be allowed.

30. I have decided that there is no error of law in the decision made by the Employment Judge. The ET1 is clear in the factual claims made. They amount to a claim that the Claimant

made protected disclosures and suffered detriment because of that, and that she was (and is) disabled, but her employers did not make reasonable adjustments in that regard. There is an obvious error in the form as the Claimant is still employed by the Respondent and so section 103A does not apply. That was recognised in the ET3, which was of course sent to the Claimant. The Respondents state very clearly that 'such acts cannot be in contravention of section 103A of ERA, because the claimant has not been dismissed.' The Respondents then go onto say 'if the claimant's complaint is made pursuant to section 47(B)(1) …'. Thus the Claimant had notice at an early stage that she had used the wrong section. Counsel conceded that if a request had been made to amend to refer to the correct section, it may have been hard to offer opposition. That is an example of the attitude likely to be taken by a tribunal, where in many circumstances a litigant should not fail in reaching a hearing due to an error which is of form and not substance. I have decided that the matters which the Claimant seeks to introduce cannot be so categorised. She seeks to make new claims under new sections.

31. At the ET the Respondent sought to argue that the case should be set down for a pre-hearing review on time bar. At that hearing the judge disagreed. However, it was raised by counsel at that hearing that the Claimant had in the agenda ticked all of the boxes for all different types of discrimination and the judge explained to her that only those matters raised in the ET1 could be heard. She indicated she was going to take legal advice and for that reason the judge found it appropriate to ask her to provide further and better particulars once she had the benefit of taking that advice. Thus it is clear that the judge explained that if new matters were to be relied on, then permission would be required to amend them in. When the case called for the PHR, the Employment Judge had no explanation before her as to why the Claimant had ticked boxes relating to claims not made by her in her form. She had no explanation why the legal advice which was obtained before the pre-hearing review did not recognise that new claims were being attempted, which would require amendment.

32. In the end a motion was made for amendment, but no explanation was given about time bar, that is no reason was given why these new claims should be allowed after the time limit set by statute had elapsed. In that situation the Employment Judge was acting within her discretion when she refused the amendment. She considered the law fully and gave reasons for her decision.

33. There is no error of law in the ET decision. The appeal is refused. The effect of my decision is that the Claimant can still bring her case to a full hearing; it will be on the matters raised in her ET1.