Appeal No. UKEAT/0178/17/LA

EMPLOYMENT APPEAL TRIBUNAL

FLEETBANK HOUSE, 2-6 SALISBURY SQUARE, LONDON EC4Y 8AE

At the Tribunal
On 11 September 2017

Before

HER HONOUR JUDGE EADY QC

(SITTING ALONE)

MR A B CONTEH — APPELLANT

FIRST SECURITY (GUARDS) LIMITED — RESPONDENT

Transcript of Proceedings

JUDGMENT

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APPEARANCES

For the Appellant	MR AHMED BILL CONTEH (The Appellant in Person)
For the Respondent	MR NICHOLAS SMITH (of Counsel) Instructed by: BPE Solicitors LLP St James' House St James' Square Cheltenham Gloucestershire GL52 6DZ

SUMMARY

PRACTICE AND PROCEDURE - Amendment

Although the Claimant had apparently considered he might have been subjected to detriment and subsequently dismissed for making protected disclosures, when he lodged his ET claim he did not include such a claim but made complaints of unfair dismissal (under section 98 **Employment Rights Act 1996**) and unlawful race discrimination (under the **Equality Act 2010**). The claim referred to the **Data Protection Act** but this was in respect of an alleged violation falling outside the jurisdiction of the ET and was struck out at the first Preliminary Hearing. At that hearing the Claimant raised the possibility of protected disclosure claims of detriment and dismissal and it was directed that any application to amend should be considered at a further Preliminary Hearing. That first took place before EJ Stewart, when the application was refused. That decision was set aside on appeal and the matter remitted for fresh consideration. At the remitted hearing, before EJ Lewzey, the application was again refused, the ET identifying that the amendment raised new causes of action and new issues, specifically as to whether the Claimant had made any protected disclosures, whether any disclosures were in the public interest and whether he had reasonably believed there was a breach of a legal obligation. These questions would require the Respondent to adduce significant further evidence and the ET concluded the balance of prejudice meant it should refuse the application. The Claimant appealed.

Held: *dismissing the appeal*. The ET had permissibly considered the application to amend was to include a new cause of action. It had then gone on to determine whether the application should be allowed, having regard to the guidance laid down in **Selkent Bus Co Ltd v Moore** [1996] IRLR 661. Doing so, the ET had regard to that which was relevant and not to any irrelevant matter. It had concluded that the balance of prejudice meant the application should be refused. The Claimant had not met the high test to show that was a perverse conclusion.

HER HONOUR JUDGE EADY QC

Introduction

1. This is the expedited hearing of an appeal against a refusal to permit an application to amend. In giving Judgment I refer to the parties as the Claimant and Respondent, as below. This is the Claimant's appeal against a Judgment of the London (Central) Employment Tribunal (Employment Judge Lewzey, sitting alone on 2 June 2017; "the ET") sent out on 26 June 2017. The Claimant appeared then in person, as he does now. The Respondent was represented by counsel, albeit not Mr Smith. By its Judgment, the ET refused the Claimant's application to amend to add protected disclosure claims under section 47B (detriment) and section 103A of the **Employment Rights Act 1996** ("ERA"). Otherwise, the ET listed the Claimant's existing claims - in which he makes various complaints of race discrimination as well as pursuing a claim of unfair dismissal - for a four-day hearing, due to commence in November 2017.

2. The Claimant's appeal against the refusal to permit his application to amend was considered on the papers by His Honour Judge Richardson who allowed it to proceed to a Full Hearing. Given the limited time before the Full Merits Hearing of the Claimant's claims, HHJ Richardson directed that the appeal should be expedited, which meant that counsel who had otherwise acted for the Respondent in these proceedings - which commenced in August 2015 - was unable to appear. It also meant the parties had to meet a compressed timetable in terms of preparation for this hearing and comply with certain time limits in making their submissions.

The Relevant Background and the ET's Decision and Reasoning

3. The ET has recorded the relevant factual background in neutral terms (I keep in mind that no findings of fact have been reached on these matters), as follows:

> **"6. On 25 February 2015 Mr Conteh was suspended at the behest of the Respondent's clients who requested his removal from site.**
>
> **7. On 3 March 2015 Mr Conteh was invited to an investigation meeting, which took place on 10 March when he was told of the client's decision and that there was a risk of dismissal should no alternative employment be found. The initial redeployment period was 30 days. The Respondent asked the client to reconsider the situation on 12 March, but that was refused.**
>
> **8. On 1 April 2015 Mr Conteh attended a disciplinary and hearing at which he received a verbal warning.**
>
> **9. Mr Conteh was granted extensions of time for the redeployment period up to 7 May 2015, when he was dismissed with effect from 17 June 2015. The dismissal letter was dated 7 May 2015 (page 167)."**

4. The Claimant then lodged an ET claim complaining, amongst other things, that he had been unfairly dismissed. At a case management hearing before Employment Judge Baty on 12 November 2015, an issue arose concerning potential whistleblowing complaints; EJ Baty took the view this would require an amendment: there was no reference to protected disclosures or whistleblowing in the claim form and from the facts pleaded it was not clear that a whistleblowing complaint had been pursued. That said, it was acknowledged that paragraph 3 of the narrative in the claim form did refer to a complaint about the **Data Protection Act 1998** ("DPA"), and there was subsequent reference to detrimental treatment, so any amendment might be a matter of re-labelling. These were issues that EJ Baty directed should be considered at a further Preliminary Hearing, listed for 28 January 2016, before EJ Stewart.

5. At the hearing before EJ Stewart, Judgment was reserved. It was sent out on 3 March 2016; the application to amend was refused.

6. The Claimant successfully appealed against that decision - see the Judgment of the Honourable Mr Justice Singh (as he then was) of 28 February 2017 - and the matter was accordingly remitted to the ET and thus came before EJ Lewzey.

7. In allowing the Claimant's first appeal in this regard, Singh J noted that the particulars of the claim attached to the Claimant's form ET1 had included reference to an email alleged to have been sent by the Claimant on 25 February 2015, complaining of a data violation that he alleged had taken place (see paragraph 3 of box 8.2 of the form ET1). He considered that the reasoning of the Stewart ET suggested it was approaching the application as one to bring a claim of unfair dismissal on the grounds of protected disclosure out of time and whilst that was a relevant factor, it was by no means the only matter to be taken into account in the exercise of the ET's discretion. Although the relevant principles in **Selkent Bus Co Ltd v Moore** [1996] IRLR 661 may have been drawn to the attention of EJ Stewart, they were not then applied.

8. Upon the application returning to the ET, this time before EJ Lewzey, the Claimant emphasised that the amendment was, in fact, a re-labelling. Placing particular weight upon the fact that his original claim had included a complaint of data protection violation under the **DPA** (although that was a claim that EJ Baty had struck out as being outside the ET's jurisdiction), the Claimant also observed that he had raised the additional matters at a reasonable time (at the first case management hearing) and argued that the claim should, in any event, be seen as presented in time that he had obtained a second EC certificate.

9. The ET disagreed. First, because seeking to amend to include claims of detriment and automatic unfair dismissal from making protected disclosures raised new causes of action, distinct from the existing claims, and different issues: in particular, as to whether a protected disclosure had been made, whether any such disclosure was in the public interest and whether the Claimant's belief that there had been a breach of the **DPA** was reasonable; the data protection violation claim had been struck out, what the Claimant was seeking to add amounted to more than a simple re-labelling exercise.

10. Second, the ET did not accept the new claims were made in time, as the Claimant could not rely on the second EC certificate, see **Commissioners for HMRC v Serra Garau** UKEAT/0348/16. He was seeking to bring new claims out of time, when it had been reasonable for him to present those claims in time. That said, the ET accepted the application had been made at an early stage in the proceedings, which was not of itself unreasonable.

11. Turning to the question of prejudice, the ET noted that if the amendment were to be granted, the Respondent would have to adduce new evidence to address the protected disclosures and to respond to the Claimant's public interest arguments. That was likely to substantially increase the evidential burden, not least as the matters complained of had all taken place in 2015 or earlier.

12. Having considered all factors, the ET considered the balance of prejudice fell on the Respondent and the application would be refused.

The Relevant Legal Principles

13. The appeal before me concerns an ET's refusal to permit an amendment of a claim. An ET enjoys a broad discretion in this regard, as part of its wide power to make case management Orders under Rule 29, Schedule 1 of the **Employment Tribunals** (**Constitution and Rules of Procedure) Regulations 2013**. Guidance as to the approach an ET ought to adopt when considering such an application is, however, provided in the case law. In particular in **Selkent Bus Co Ltd v Moore** [1996] IRLR 661 EAT, when the Honourable Mr Justice Mummery (President) (as he then was) emphasised that whenever the discretion to grant an amendment is invoked, the ET should take into account all relevant circumstances and should balance the

injustice and hardship of allowing the amendment against the injustice and hardship of refusing it. As to what are the relevant circumstances, Mummery P continued:

> **"22. (5) What are the relevant circumstances? It is impossible and undesirable to attempt to list them exhaustively, but the following are certainly relevant:**
>
> ***(a) The nature of the amendment***
>
> **Applications to amend are of many different kinds, ranging, on the one hand, from the correction of clerical and typing errors, the additions of factual details to existing allegations and the addition or substitution of other labels for facts already pleaded to, on the other hand, the making of entirely new factual allegations which change the basis of the existing claim. The tribunal have to decide whether the amendment sought is one of the minor matters or is a substantial alteration pleading a new cause of action.**
>
> **23.** ***(b) The applicability of time limits***
>
> **If a new complaint or cause of action is proposed to be added by way of amendment, it is essential for the tribunal to consider whether that complaint is out of time and, if so, whether the time limit should be extended under the applicable statutory provisions, eg, in the case of unfair dismissal, s.67 of the 1978 Act.**
>
> **24.** ***(c) The timing and manner of the application***
>
> **An application should not be refused solely because there has been a delay in making it. There are no time limits laid down in the Rules for the making of amendments. The amendments may be made at any time - before, at, even after the hearing of the case. Delay in making the application is, however, a discretionary factor. It is relevant to consider why the application was not made earlier and why it is now being made: for example, the discovery of new facts or new information appearing from documents disclosed on discovery. Whenever taking any factors into account, the paramount considerations are the relative injustice and hardship involved in refusing or granting an amendment. Questions of delay, as a result of adjournments, and additional costs, particularly if they are unlikely to be recovered by the successful party, are relevant in reaching a decision."**

14. It is also helpful to have regard to the decision of the Court of Appeal in **Abercrombie and Others v Aga Rangemaster Ltd** [2014] ICR 209, in which the principal judgment was given by Lord Justice Underhill. At paragraph 47 of his judgment, Underhill LJ sets out the material passages from the judgment in the **Selkent** case and then continues,:

> **"47. … If the final sentence of point (5)(a) is taken in isolation it could be understood as an indication that the fact that a pleading introduces "a new cause of action" would of itself weigh heavily against amendment. However it is clear from the passage as a whole that Mummery J was not advocating so formalistic an approach. He refers to "the … substitution of other labels for facts already pleaded" as an example of the kind of case where (other things being equal) amendment should readily be permitted - the contrast being with "the making of entirely new factual allegations which change the basis of the existing claim". (It is perhaps worth emphasising that head (5) of Mummery J's guidance in *Selkent*'s case was not intended as prescribing some kind of a tick-box exercise. As he makes clear, it is simply a discussion of the kinds of factors which are likely to be relevant in striking the balance which he identifies under head (4).)"**

15. At paragraph 48 of his judgment, Underhill LJ continued as follows:

> **"48. Consistently with that way of putting it, the approach of both the Employment Appeal Tribunal and this court in considering applications to amend which arguably raise new causes of action has been to focus not on questions of formal classification but on the extent to which the new pleading is likely to involve substantially different areas of inquiry than the old: the greater the difference between the factual and legal issues raised by the new claim and by the old, the less likely it is that it will be permitted. …"**

16. At paragraph 50, Underhill LJ said this:

> **"50. As to point (b), it is true that fresh proceedings under section 34 of the 1996 Act would have been out of time. Mummery J says in his guidance in *Selkent* … that the fact that a fresh claim would have been out of time (as will generally be the case, given the short time limits applicable in employment tribunal proceedings) is a relevant factor in considering the exercise of the discretion whether to amend. That is no doubt right in principle. But its relevance depends on the circumstances. Where the new claim is wholly different from the claim originally pleaded the claimant should not, absent perhaps some very special circumstances, be permitted to circumvent the statutory time limits by introducing it by way of amendment. But where it is closely connected with the claim originally pleaded - and a fortiori in a re-labelling case - justice does not require the same approach: NB that in High Court proceedings amendments to introduce "new claims" out of time are permissible where "the new cause of action arises out of the same facts or substantially the same facts as are already in issue" (Limitation Act 1980, section 35(5)). In the circumstances of the present case the fact that the claim under section 34 would have been out of time if brought in fresh proceedings seems to me to be a factor of no real weight. There is, as I have already said, no question of any specific prejudice to the respondent from the claim being reformulated after the expiry of the time limit."**

17. More specifically, the question of an application to amend an existing claim of unfair dismissal to include a complaint of automatic unfair dismissal, under section 103A **ERA**, was considered by the EAT (Underhill P, as he then was, presiding) in **Evershed v New Star Asset Management** UKEAT/0249/09. Acknowledging that this gave rise to a new basis of claim (see paragraph 15), the EAT made clear that the weight to be attached to that fact would depend on the extent of the difference between the original and the new basis of claim. The ET in that case had considered that the amendment would require wholly different evidence but the EAT was unable to see it had explained the basis of that assertion, which was not considered self-evident; that, it held, was an error of law. Turning itself to look at the proposed amendment, the EAT did not consider that the amended claim would in fact require wholly different evidence to be adduced from that required by the original claim (see paragraph 22); that undermined the ET's view of prejudice and the EAT considered the amendment should be allowed.

The Appeal

18. The Notice of Appeal in the present case was considered by HHJ Richardson to raise the following key issue: whether the ET had erred in refusing the application to amend to include a claim of automatic unfair dismissal under section 103A **ERA**, given that there was an in-time complaint of unfair dismissal and the whistleblowing complaint could be considered to be very closely related to that claim. Although not dismissing other grounds of appeal - which largely took the form of an argument for permission rather than a Notice of Appeal - HHJ Richardson made clear he considered this to be the real issue in the matter.

Submissions

The Claimant's Case

19. The Claimant has complained that the detriments he relies on for his whistleblowing claim are the same as for his race discrimination complaint, which included his suspension and continued to his dismissal. Although the first ACAS certificate issued on 4 June 2015 related to the detriments, the second certificate issued on 6 August 2015 related to his dismissal. Moreover, his arguments on the section 103A claim were clearly closely related to the existing unfair dismissal claim. The ET had wrongly focussed on the additional issues that would be raised by the detriment claim rather than the automatic unfair dismissal claim, in particular as to the issue of time; an error similar to that made by the ET in **Makauskiene v Rentokil Initial Facilities Services (UK) Ltd** UKEAT/0503/13. The Claimant was relying on the matters already set out at box 8.2 - in particular paragraphs 3, 6, and 12 - as part of his proposed protected disclosure detriment claim, albeit those paragraphs were worded in terms of race discrimination. Those paragraphs had not been struck out by EJ Baty, they were in any event separate to the data protection violation claim, which had - albeit not expressly - raised the whistleblowing complaints he now sought to pursue.

20. Accepting this still left the separate issues - whether there had been a protected disclosure and of public interest and reasonable belief, which went both to the detriment complaint and that of automatic unfair dismissal - the Claimant complained that the ET's reasoning in these respects was very limited, effectively, limited to the reasons set out at paragraph 20, and failed to carry out the requisite analysis to determine the real prejudice. Correctly analysed, there was none; these matters would be easy for the Claimant to establish, see **Evershed v New Star Asset Management**.

The Respondent's Case

21. The ET had carefully considered the way in which the Claimant's case had been put in his ET1 and permissibly reached the conclusion that this was not a re-labelling exercise, but an attempt to introduce new causes of action. The ET1 made reference to many statutory provisions and rights but not to the provisions now relied on. Although the Claimant did refer to the **DPA**, his focus was on what he claimed was a breach of the **DPA** - the claim that EJ Baty had struck out. To the extent that the Claimant had not complained that the matter relied on in this regard - the processing of CCTV photo stills - was a breach of the **DPA**, he had characterised his complaint as one of direct race discrimination and not of detriment or dismissal due to having made a protected disclosure. Whilst unfair dismissal under section 103A **ERA** was a species of unfair dismissal under Part 10, it remained a very different animal to a standard claim under section 98(4) and the ET had correctly concluded it was substantively a new cause of action. Even if that were not correct, the most that could be said was that the ET1 contained a submission that the Respondent's stated reason for dismissing the Claimant - some other substantial reason - was a sham. The Claimant's positive case, as pleaded, was that the real reason for his dismissal was a racially motivated decision of the client to ask the Respondent, the contractor, to remove the Claimant from site. In the alternative, the Claimant

A contended the decision was part of a planned **TUPE** transfer. As to the time limit issue, there was no error of law relating to the ET's application of the extension of time provisions.

B 22. For completeness, the ET's reference to the earlier striking out of the Claimant's breach of the **DPA** claim could not go anywhere: it did not form the focus of the ET's reasoning. Paragraph 14 identified the reasons why the ET considered there was a new cause of action and new issues raised by the proposed amendment. Underhill P in **New Star** had accepted that C amending to add a section 103A claim to an existing complaint of unfair dismissal was a new cause of action, albeit that was not the end of the story. Here the ET explained why it did not accept this was simply a re-labelling exercise: it had legitimately taken the view that additional D issues would be raised as to whether there had been a protected disclosure, whether any such disclose had been made in the public interest and whether the Claimant had a reasonable belief in a breach of the **DPA**. Although the Claimant would have to demonstrate these things, the Respondent also faced an evidential burden and the ET had legitimately taken the view that the E Respondent would be prejudiced by the additional matters raised. In **New Star**, the EAT had been troubled by the ET's reference to wholly new evidence; here the ET had been concerned by the fact there would be a requirement for substantial further evidence.

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23. As for the prejudice to the Claimant, the ET had legitimately taken into account the fact that there had been delay and no proper explanation for the late raising of these claims. When G the Claimant first went to ACAS on 4 May, he had in mind he might have been subject of a protected disclosure detriment - as he had explained to EJ Stewart - but had not then made a claim in that regard; something that could be characterised as a deliberate choice on his part and H for which there was no explanation.

Discussion and Conclusions

24. The original claim made by the Claimant in this case made clear he was complaining of unfair dismissal and race discrimination (see box 8 of the ET1). Although he did not complete the section of the ET1 form that allowed him to state whether he was making another type of claim, I can accept his argument that stating he was claiming unfair dismissal did not preclude his making of a claim of automatic unfair dismissal for the purpose of section 103A **ERA**.

25. Turning then to the details of claim provided by the Claimant at box 8.2, the first heading provided was "*The Data Protection Violation Claim*". What then follows is a complaint as to what was said to have been a wrongful process dissemination of data - absent the Claimant's consent - on the part of the Respondent, for which the Claimant sought to pursue a claim for exemplary and aggravated damages. Whatever the merit of that claim, it was not one that fell within the jurisdiction of the ET and I, like Singh J, find it unsurprising that it was struck out by EJ Baty.

26. The Claimant's grounds then continue, however, under the separate heading "*The Induced and Accessory Liability claim against the 2nd Respondent - for discriminatory suspension that culminates [in] termination of a 17years [sic] on-going TUPE covenant*". The use of the data that was the subject of the Claimant's data protection violation complaint then features as part of the background to the claims identified; clarified before EJ Baty to include claims of race discrimination (direct), and of harassment related to race, and of unfair dismissal.

27. The Claimant had, however, already considered that he might have been the subject of detriment due to having made a protected disclosure: he explained, in his evidence at the hearing before EJ Stewart and his witness statement before EJ Lewzey, that he had this in mind

when he first approached ACAS on 5 May 2015, but had not included a claim in that regard when he lodged his ET1. The most on which he could rely, as EJ Baty observed at the original case management Preliminary Hearing, was a passing reference to victimisation, which he clarified was not something he was relying on under the **Equality Act 2010**. Indeed, when the Claimant first raised the protected disclosure point before the ET (before EJ Baty on 12 November 2015), it was acknowledged that this was something that would require an application to amend; it not being apparent from the existing pleading.

28. The Claimant has explained to me, however, that the particular facts on which he seeks to rely for his protected disclosure claim are those already set out in his ET1 grounds, in particular at paragraphs 3, 6 and 12. Those paragraphs explain the various ways the Claimant considers he was treated less favourably and he relies on them both as acts of detriment and also as going to whether the matters relied on by the Respondent in fact constituted the real reason for his dismissal.

29. If the only issue that arose in respect of the proposed amendment related to the grounds relied on to support his claim of having suffered detriment or that he had been dismissed for a reason other than that put forward by the Respondent, the Claimant would have a point. The ET was, however, not troubled by those matters so much as the additional points that would need to be determined in respect of whether there had been a protected disclosure in the first place - the gateway to both the detriment and the unfair dismissal claims under this head.

30. The Claimant has been unable to point to anything in the ET1 that identified the protected disclosure, save the reference that Singh J identified at paragraph 3. He has, further had to accept that the issues identified by the ET would indeed raise additional questions that

the Respondent (and the ET) would have to address. The Claimant says it will be easy for him to establish these points, but that is not the question at this stage. The question I have to address is whether the ET was entitled to take the view that these were additional issues that would require the Respondent to adduce further evidence and thus be likely to substantially extend the evidential burden (see the ET's reasoning at paragraph 20).

31. In identifying these points the ET was not, contrary to the Claimant's initial submission, focussing solely on the detriment claim - these are points that go to both detriment and unfair dismissal. These are also points that are not resolved by the Claimant's attempt to rely on a second EC certificate (a point not identified by HHJ Richardson as having any merit and I am unable to see that the arguments in the Claimant's skeleton argument at this hearing have developed this with any further substance - as the EAT held in **HMRC v Serra Garau**, a Claimant cannot avoid time limit issues by relying on a second EC certificate for their claim in these circumstances). Moreover, the points identified by the ET did not amount to an over reliance on the earlier striking out of the breach of the **DPA** claim; they arose from the application to amend. Equally, the ET did not overly focus on the fact that this gave rise to a new cause of action or to the failure of the Claimant to provide a proper explanation for not including the whistleblowing matters in his original claim. It focussed instead on that which was emphasised in **Selkent**; the substantive question of prejudice. The ET having thus applied the correct legal test, the question for me is whether it then reached a decision that is properly to be characterised as perverse or took into account irrelevant matters or failed to take into account that which was relevant?

32. I bear in mind the discretion afforded to an ET in this regard. If, however, the ET wrongly identified a hardship that did not in fact arise, then I also recognise it would be right

for me to overturn its decision; see **Evershed v New Star**. Here the ET focussed on the additional issues relating to the establishment of a protected disclosure under Part IVA of the **ERA**. These would be real issues that are, as I understand the position, in dispute between the parties: the Respondent does not accept that the Claimant made any protected disclosure; it does not accept that whatever he disclosed was done in the public interest; or that he had a reasonable belief that a legal obligation had been breached. Although not going to liability, the Respondent may also take an issue as to good faith, potentially relevant in terms of any remedy.

33. It is hard for me to assess the amount of evidence that will need to be adduced to address these points. The primary burden may be on the Claimant, but the ET permissibly took the view that the Respondent will need to adduce evidence itself, presumably from witnesses and possibly in documentary form, to counter the Claimant's case. This would be evidence that the Respondent would not otherwise have to adduce. Although there may have been a reference at paragraph 3 to the Claimant making some kind of complaint about a violation of the **DPA**, that was not a matter with which the Respondent would need to engage for the purposes of the existing unfair dismissal complaint, still less the race discrimination complaint. Additionally, there would, on the basis of the initial complaints, be no need for the Respondent to adduce evidence or make any submissions on questions of public interest and/or reasonable belief. I cannot say, therefore, that these were irrelevant matters for the ET to take into account.

34. Did the ET, however, ignore relevant matters? In particular, I note the Claimant's assertion that these things will be easy for him to establish. Apart from the Claimant's assertion that this will be so, however, I have nothing more and I know that the Respondent does not agree. I cannot say there is some obviously irrelevant matter that the ET had to take into

account in this regard; I do not see that it lost sight of both sides' positions and legitimately considered that these were issues that would need to be resolved on the evidence.

35. Can the ET's Decision be said to be perverse? An Appellant faces a high test in this regard and I am not persuaded that is met in this case. I do not know whether I would have reached the same view as this ET on the amendment application, but that does not provide a basis for me to interfere. The point that was being made in **Evershed v New Star** is that it is always necessary to consider the specific claims that will be introduced by the proposed amendment and not make assumptions about the question of hardship: even if an amendment will give rise to a new cause of action, that does not necessarily mean it should not be allowed; even if it is more than a re-labelling exercise, it may be that - in truth - the evidence that is required to be adduced may be little more than that which would already have to be given in the case. Here, however, I am satisfied that the ET made no assumption, but did indeed consider the specific claims that would be introduced by the proposed amendment. Doing that, it was legitimately concerned by the additional points that would need to be addressed when considering whether or not the Claimant had made good the necessary foundation on which he would then rely for his detriment and automatic unfair dismissal complaints. It permissibly took the view that substantial further evidence was likely to be required in that regard and that would place an undue hardship on the Respondent. Balancing that against the hardships that the Claimant would face in not being able to pursue the proposed amended claims, the ET reached the view that the amendment should not be allowed.

36. That, it seems to me, was a legitimate exercise of its discretion and I come to the conclusion that there is no basis on which I can properly allow this appeal. For all those reasons, the appeal is dismissed.