



# THE EMPLOYMENT TRIBUNAL

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**SITTING AT:** CROYDON

**BEFORE:** EMPLOYMENT JUDGE MORTON

**BETWEEN:**

**Miss S Longhurst**

**Claimant**

AND

**Interior Blinds UK Ltd (1)  
Andrew Pike (2)**

**Respondent s**

**ON: 10 October 2017**

**Appearances:**

**For the Claimant: Mr P Doughty (Counsel)**

**For the Respondent: Mr M Mylne (Claims Manager)**

## **JUDGMENT**

1. The Claimant is permitted to amend her claims by the inclusion of the matters set out in her application of 10 August 2017.
2. The Respondent's application to strike out all or part of the Claimant's claims is refused.

## **REASONS**

1. The Claimant brought a claim to the Tribunal which was presented on 30 March 2017. Her claims were of sexual harassment against both Respondents and constructive unfair dismissal against the First Respondent. Both parties correctly referred me to the Selkent principles in dealing with this

- application, to the Presidential Guidance and to various authorities.
2. The Claimant has clearly from the outset of this claim pleaded sexual harassment and constructive dismissal based on both the sexual harassment and the imposition of new contract terms. She has subsequently given some further particulars of her original claim and has now brought forward some additional facts and in my view some of the additional matters amount to a new claim.
  3. The additional facts set out in the application to amend fall into four categories:
    - a) Further and better particulars of the Claimant's claims, which were separately provided in compliance with Paragraphs 1.1.1 – 1.1.4 of Judge Elliott's case management order following a preliminary hearing on 26 July. The Respondent does not object to this and those amendments are therefore permitted.
    - b) Further examples of sexual harassment. These are set out at a paragraph 1 of the proposed amendments. There is no new claim here and although there are substantive new facts involved, given the seriousness of the allegations raised the balance of injustice and hardship clearly in my view favours allowing these matters to be adjudicated through a full trial of the facts.
    - c) Entirely new factual matters giving rise to a new claim – these are set out in paragraphs 12 and 13 of the proposed amendments.
      - a. Paragraphs 12 and 13 of the application involve a new claim of harassment under s26(3) Equality Act and depend on facts that were not originally pleaded at all. It cannot on any view be said that this claim was encompassed in the original claim form. The new matters are therefore pleaded out of time and the Claimant's only explanation for not having pleaded them earlier is the inadequacy of her original legal advice. I must therefore first consider whether it is just and equitable to extend time.
      - b. I am inclined, in a case in a case involving allegations of discrimination in which the Claimant was ill served by her legal advisers in the beginning to extend time on the just and equitable basis. The authorities suggest that in a discrimination case a claimant should not be penalised for the faults of her legal adviser.
      - c. However I still need to consider where the balance of injustice and hardship lies in granting or refusing this substantive amendment. I consider this to be finely balanced, but I am persuaded by Mr Doughty's submission that the prejudice to the Claimant in refusing the amendment outweighs the prejudice to the Respondent in granting it. The Respondent has ample time to prepare to deal with this additional claim and supporting facts, which will depend solely on witness evidence that has not yet been prepared. The new factual matters are not extensive and can be dealt with without

substantial additional cost. They will involve very little documentary evidence.

- d) The relabelling of existing facts – this is the correct analysis in my view in relation to the preface to paragraph 14 of the proposed amendments. Paragraph 14 of the application seeks to put a new spin on facts that were pleaded before, suggesting that they too fell within s 26(3) Equality Act. It seeks to say that the changes to the Claimant's contract were attributable to the fact that the Claimant had resisted the alleged sexual harassment by asking the Second Respondent to behave professionally. The facts were originally pleaded as facts that contributed to the Claimant's constructive dismissal. They are now relied upon in addition as indicating harassment under s26(3). In my view this involves the relabelling of existing facts and I therefore permit the amendment on that basis.
4. I must also deal with the overall time point. The Respondent suggests that many of the Claimant's claims are out of time and that the Tribunal therefore has no jurisdiction to deal with them. This may prove to be correct in relation to some of the matters relied on by the Claimant, but in my view it is preferable for the Tribunal hearing all the evidence to make the decision as to whether the facts support the Claimant's contention that there was a continuing act of discrimination. On the face of it there was a hiatus between August and November 2016, but as Mr Doughty points out the Claimant will seek to rely on these matters in any event in establishing her constructive dismissal claim, so the prejudice to the Respondent in having to deal with the allegations of earlier acts of sexual harassment will be limited. I therefore consider that it would be preferable to allow this issue to be determined at the final hearing.
5. I have considered carefully the Respondent's submission that the Claimant's case is still insufficiently particularised and she has therefore failed to comply with the existing case management orders. The Respondent seeks to have the claim struck out on that basis. However on the test of whether a fair trial of the issues is possible, which is the bedrock of the determination of any application to strike out a discrimination claim, in my view a fair trial can still take place. The case will turn on the witness evidence of the Claimant and the Second Respondent and nothing in the Claimant's conduct of the case so far has put the cogency of that evidence in jeopardy.

Employment Judge Morton  
Date: 25 October 2017