



EMPLOYMENT TRIBUNALS

Claimant

Mrs C Chaney-North

v

Respondents

(R1) Leicestershire Action for Mental
Health Project

(R2) Mrs S Langley

JUDGMENT AT AN ATTENDED OPEN PRELIMINARY HEARING

Heard at: Leicester

On: 26 July 2017

Before: Employment Judge Ahmed (sitting alone)

Representation

For the Claimant:

Mr Keith of Counsel

For the Respondent:

Mr Small of Counsel

JUDGMENT

The Claimant has leave to amend her claim to include complaints of victimisation

REASONS

1. This was a Preliminary Hearing to determine whether the Claimant should have leave to amend her claim to include a complaint of victimisation.
2. The Claimant has brought proceeding of direct and indirect sex discrimination, harassment on the grounds of sex and detriment due to her part time status. The Claim Form (ET1) was presented to the Tribunal on 12 January 2017.
3. At an earlier Preliminary Hearing before Employment Judge Camp on 3 April 2017 there was also an application to amend to add two complaints of victimisation. Mr Keith on behalf of the Claimant accepts that what is being sought by way of an amendment for today is different to what was being sought before Employment Judge Camp. The issue has not therefore been determined or considered already.
4. The allegations of victimisation that the Claimant now wishes to add are twofold. Firstly, the Claimant wishes to add an allegation that the grievance appeal meeting on 10 January 2017 was carried out in an unduly adversarial manner because she had committed a protected act. Specifically, that she was questioned

unnecessarily and at length on the duties she undertook when working from home and that she was questioned about irrelevant matters about her CIPD status, qualifications and training as well as about alleged comments made to her by the investigator. Secondly, that the outcome of her grievance (set out in a letter dated 2 February 2017) was unfavourable because of she had committed protected acts. By way of clarification, in relation to the first of the two proposed amendments, Mr Keith confirms that the amendment does not relate to the way in which the grievance appeal meeting was conducted (i.e its manner) but rather in relation to the *content* of the questions. That means that the notes of the meeting will be an important consideration. Mr Small submits that there is nothing in the notes which would suggest inappropriate questioning and that this allegation has no substance or merit.

5. In coming to my decision I have taken into consideration the guidance in **Selkent Bus Company v Moore** [1996] IRLR 661. That is, in deciding whether to exercise the discretion to give leave to amend, a Tribunal should take into account all of the circumstances and should balance the injustice and hardship of allowing the amendment as against the injustice and hardship of refusing it. The relevant circumstances in determining that issue include:

- (a) The nature of the amendment;
- (b) the applicability of time limits;
- (c) the timing and manner of the application.

6. The nature of the amendment. It is accepted that this is not a re-labelling exercise. It is agreed that the Claimant is seeking to add an entirely new cause of action. The proposed amendment relates to fresh allegations which were not 'pleaded' nor did they form part of the Claimant's case in the Claim Form and one of the facts giving rise to the amendment was known at the time the ET1 was presented. The amendments cannot be said to be 'minor' in the sense that they are the correction of clerical errors but involve the introduction of new allegations. These factors would tend to suggest that the amendment should be refused.

7. The applicability of time limits. There is some dispute as to whether the proposed amendments would relate to allegations that would now be out of time. I do not accept Mr Small's submission that they would be. The grievance appeal hearing took place on 10 January and that is the date of the alleged detriment. The decision on the appeal as I have indicated was communicated to the Claimant by letter of 2 February which is the date of the second detriment. The application for amendment was made on 7 April. Whilst I appreciate that the first allegation could have been contained in the ET1 (which was presented on 12 January), I recognise there were practical reasons not doing so. The ET1 had already been prepared and approved and it would have required substantial re-drafting at a late stage. At the time the Claimant presented her ET1 she did not know the outcome of the grievance appeal. If the amendment had been refused as at 7 April (when the application was made) the Claimant could have issued fresh proceedings and would have been in time to do so. The application to amend was therefore made within the time limit. That is generally a very powerful reason to allow an amendment. It is of course in the interests of justice to avoid multiple proceedings not least because at the time the Claimant would have to pay a second set of fees at the time. She does not need to undergo early conciliation for an amendment although she did contact ACAS on 7 April. The issue of an amendment was canvassed before Employment Judge Camp at the preliminary

hearing I have referred to and the Claimant was given a deadline to apply for an amendment by 10 April. Her application was made within the time stipulated.

8. The timing and manner of the application. Although Mr Small criticises the way in which the proposed amended pleadings have been drafted I am satisfied that they are tolerably clear and the Respondent has sufficient information to prepare a defence. If further information is required there is nothing to prevent the Respondents from seeking further and better particulars. It is not necessary to consider the merits of the amendment application at this stage.

9. In coming to my decision I have taken into consideration all of the relevant circumstances. I note that any amendment shall not upset the existing arrangements for a final hearing in terms of the length of the hearing. The only additional witness that would conceivably be required on the part of the Respondents to deal with the victimisation allegations would be Ms Webb who acted as agent for the first Respondent in the appeal process. Ms Webb is, I am told, available on the dates already fixed for the final hearing.

10. I am satisfied that the balance of hardship favours the Claimant. The hardship to the Respondent is primarily in having to defend another two allegations. But in the overall scheme of things, given the fairly lengthy list of issues which have to be determined in any event, that should not cause undue hardship. The hardship to the Claimant would be considerable because she would lose the opportunity of pursuing a separate free standing cause of action.

11. For those reasons the application to amend to add the two additional complaints of victimisation is granted.

Employment Judge Ahmed

Date: 23 August 2017

Sent to the parties on:

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For the Tribunal:

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