



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs L Martin  
**Respondent:** Promotional Logistics Limited  
**Heard at:** Nottingham **(Closed Telephone Preliminary Hearing)**  
**On:** Tuesday, 27 March 2018  
**Before:** Employment Judge Blackwell (sitting alone)

## Representation

**Claimant:** Mr Tom Clements, Clements Solicitors  
**Respondent:** Mr James Carmody, Reculver Solicitors

## JUDGMENT

1. The Claimant's application of 7<sup>th</sup> March 2018 to amend the claim form, so as to include an allegation of unfavourable treatment pursuant to Section 18 Subsection 4 of the Equality Act 2010 succeeds.
2. The Respondents, if so advised, have liberty to amend their response, not later than 21 days from the date of this decision.

## REASONS

1. The application to amend was made by Mr Clements by email of 7<sup>th</sup> March 2018, and was followed on 9<sup>th</sup> March 2018 by a proposed amended claim form, including the new paragraphs 74 to 79.
2. The application has arisen because Mr Clements says that paragraph 31 of the response form served by Mr Carmody on 20<sup>th</sup> February contains an admission of unfavourable treatment. The paragraph at 31 reads as follows:

“On the 25<sup>th</sup> August 2017, the Respondent issued a payslip for the month of August. The sum of £715.49, being the balance of the overpayment (or 77.41 hours), was deducted from the Claimants pay, and she received £0.03 pay in the August payroll. The full sum owed was deducted from the August payroll due to the fact that the Claimant had asked to commence maternity leave earlier, than the completion of the agreed repayment schedule.”

3. Both parties rely on the written material that they have provided to the Tribunal, and the additional oral submissions they made during the case management discussion by telephone of 27<sup>th</sup> March 2018. Both parties are content that I determine the application on that material.
4. Both parties agree that the relevant Law is contained in the well-known case of **Selkent Bus Co Ltd v Moore [1996] ICR 836**.
5. The first matter for consideration is the nature of the amendment. Plainly it seeks to introduce an allegation based upon a different protected characteristic, namely that of pregnancy and maternity. Mr Clements argues that it is merely relabelling. Mr Carmody disagrees, principally on the basis that all of the facts were known to the Claimant, and her advisers prior to the submission of the ET1 on 8<sup>th</sup> December 2017.
6. Mr Clements' response is that whilst they were aware of the factual background, they could not have been aware of the Respondent's motivation. Mr Clements argues that paragraph 31, as set out above, is a clear admission of unfavourable treatment.
7. Mr Carmody denies that, and argues that it is merely a statement that the Respondent was exercising its statutory right to recoup overpayments pursuant to Section 13 and 14 of the Employment Rights Act 1996.
8. It is however common ground that the same evidence that will have to be heard in relation to the existing claims will deal with the new claim.
9. The next matter is the question of time limits, and plainly the new allegation is outside the three-month required period, though of course Section 123 of the Equality Act 2010 imports a judicial discretion. As I understand it the recent case of **Galileo v Commissioner of The Metropolitan Police** decides that notwithstanding that an application to amend is granted, such does not prevent the Respondent from arguing at the full hearing that the Tribunal does not have jurisdiction to hear the new part of the claim.
10. The next matter is the timing and manner of the application. Mr Clements' case is that it was made when it was because paragraph 31 constitutes an admission of unfavourable treatment. As indicated above, Mr Carmody in response says, all the relevant facts were known at the time of the lodging of original claim form. It is clear, that once Mr Carmody saw paragraph 31, he then acted as rapidly as could reasonably have been expected.
11. Finally, I am required to carry out a balancing exercise in the light of the above factors. If I reject the application, Mrs Martin will still be able to proceed with her claims of disability discrimination and constructive unfair dismissal, but will lose the opportunity to pursue the new claim. That much is obvious.
12. Again, it is obvious that the Respondents will have to face a new and different claim if the application is granted, however it does not seem to me that the Respondents will be put to any significant extra cost in defending the new claim.

13. Having regard to all these circumstances, I am of the view that the balance falls in favour of the Claimant, and I therefore grant the application to amend.

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Employment Judge Blackwell  
Date: 09 April 2018

JUDGMENT SENT TO THE PARTIES ON  
16 April 2018

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FOR THE TRIBUNAL OFFICE