



# EMPLOYMENT TRIBUNALS

**Claimant:**  
Dr J Pila

v

**Respondent:**  
The Chancellor, Masters and  
Scholars of the University of Oxford

## PRELIMINARY HEARING

**Heard at:** Reading **On:** 31 May 2018

**Before:** Employment Judge S Jenkins (sitting alone)

### Appearances

**For the Claimant:** Mr T Cordrey of Counsel

**For the Respondent:** Mr T Coghlin of Counsel

## JUDGMENT

1. By agreement, the Claimant's title is changed to Doctor J Pila and the Respondent's title is changed to The Chancellor, Masters and Scholars of the University of Oxford.
2. The Claimant's claims of indirect sex discrimination and direct discrimination on the ground of disability are dismissed on withdrawal.
3. The Claimant's application to amend her particulars of claim and its supporting schedules is refused.

## REASONS

### BACKGROUND

1. The hearing was a preliminary hearing to address outstanding case management issues (which have been dealt with in a separate document) and also to consider the Claimant's application to amend her particulars of claim and its supporting schedules, which application had been submitted to the Tribunal by email on 10 May 2018. The Claimant's initial claim had been lodged at the tribunal on 11 August 2017 and the Respondent's response had been filed on 22 September 2017.

## ALTERATION OF NAMES OF PARTIES

2. The case management agendas submitted in advance of the preliminary hearing noted that the parties were in agreement that the Claimant's title should be changed from "Ms" to "Dr", and that the correct title of the Respondent is "The Chancellor, Masters and Scholars of the University of Oxford"; I therefore ordered that those amendments be made.

## DISMISSAL ON WITHDRAWAL OF CLAIMS

3. The amendment sought to be made by the Claimant to her particulars of claim involved the withdrawal of two claims: a claim for indirect sex discrimination and a claim for direct discrimination on the ground of her disability. In light of the withdrawal of those claims, I ordered that they be dismissed.

## APPLICATION TO AMEND

4. In addition to the withdrawal of the two claims referred to above, and the deletion of certain sections within the particulars of claim and its supporting schedules which related to those claims, and some other amendments, such as the removal of two named individuals who were asserted to have subjected the Claimant to detriment as a result of making protected disclosures, the Claimant's application to amend included other changes. These were:
  - (i) The addition of further alleged disclosures and, in one case, an expansion of the breach of obligation that a particular group of disclosures is alleged to have shown. These amendments go back as far as October 2010 with the latest of them relating to a period at the start of 2015.
  - (ii) Amendments to the Claimant's schedule of detrimental and/or discriminatory treatment, some of which sought to expand, albeit probably not with significant substance, the detail of alleged treatment going back as far as 2010.
  - (iii) Several new assertions relating to the period between June 2017 and February 2018. These were asserted to give rise to a substantive amendment to the Claimant's particulars of claim to include these matters as the basis of an additional claim of failure to make reasonable adjustments, as well as additional items of detrimental and/or discriminatory treatment.

## ISSUES AND LAW

5. With regard to applications to amend, I was conscious of the direction provided by the long-established authority of Cocking v Sandhurst

(Stationers) Ltd [1974] ICR 650, which noted that consideration of an application to amend involves a balancing exercise of all relevant factors, having regard to the interests of justice and the relative hardship caused to the parties by granting or refusing the application

6. I was also conscious of the more recent authority of Selkent Bus Co Limited v Moore [1996] ICR 836 in which Mummery J (as he then was) noted that in applying the test of relative hardship, all relevant factors should be included, which would include (albeit not in an exhaustive sense); the nature of the amendment, the applicability of time limits and the timing and manner of the application.
7. The Selkent test has, been endorsed in several subsequent cases and also in the Presidential Guidance on General Case Management issued in 2014, with that Guidance going on to say that a tribunal will draw a distinction between adding or substituting claims arising out of the same facts as the original claim and those which add a new claim entirely unconnected with the original claim.

## CONCLUSIONS

8. Having considered the representations of the parties, and having applied the guidance provide by the Selkent case and the Presidential Guidance, I did not consider that it would be appropriate to exercise my discretion to allow the application to amend, other than in relation to allowing the deletions made by the Claimant of two specific claims and their related particulars. My reasons for so concluding in relation to the three areas of the application were as follows.
  - (i) *Further alleged disclosures and (ii) Amendments to the Claimant's schedule of detrimental and/or discriminatory treatment*
9. With regard to the amendments sought to be made in relation to matters which arose prior to the submission of the original claim form, I considered that they did not amount to corrections of errors or to "relabelling" but introduced, albeit I accept not in any significant manner, new factual allegations. Whilst these did not change the fundamental basis of the existing claim, they were nevertheless matters which were within the knowledge of the Claimant at the time at which she submitted her original claim form, which was already very comprehensively pleaded, with, even after the various deletions, her disclosures numbering 15 in total, albeit that many of those 15 referred to more than one date such that there could be as many as 31 separate alleged disclosures. Similarly, the schedule relating to alleged detriments or discriminatory treatment still runs to some 66 separate sections, again with many of those sections referring to more than one date and therefore potentially referring to more than one allegation of detriment or discriminatory treatment.
10. I was also conscious that the application to amend was made in May 2018, some nine months after the original claim form, and I also noticed

that the Claimant had had legal assistance, certainly at the time that the claim was submitted, and also at this hearing, although I understood that she may not have had formal legal assistance throughout the relevant period.

11. Overall therefore, having considered all the factors and the relevant hardship to the parties, I did not consider that it would be in furtherance of the overriding objective for me to grant these amendments.

(iii) *Amendments relating to the period between June 2017 and February 2018 and the addition of a reasonable adjustments claim*

12. With regard to the application to amend to bring in factual issues which have arisen since the date of the submission of the claim form and, in particular, the addition of a new claim of failure to make reasonable adjustments, it was accepted by the parties that this amounted to a significant amendment which added to the basis of the existing claim. These amendments therefore fell into the second category outlined in the Presidential Guidance of being amendments which added a new claim entirely unconnected with the original claim, albeit I noted that certain of the events which were asserted as giving rise to a failure to make reasonable adjustments were also sought to be claimed to have amounted to detrimental and/or discriminatory treatment.
13. I considered closely the issue of the applicability of the relevant time limits in this particular case, noting that the alleged failures to make reasonable adjustments were recorded by the Claimant as arising “from October 2017 onwards”. I was conscious that in the case of Gillette v Bridge 86 Limited (UKEAT/0051/17), it was noted that the fact that an amended claim was still in time, and could therefore have been brought by the issue of fresh proceedings, whilst not conclusive, was a “factor of considerable weight”.
14. I also considered the guidance provided by the Court of Appeal in Abertawe Bro Morgannwg University Local Health Board v Morgan [2018] EWCA Civ 640 which clarified that a failure to make reasonable adjustments should be treated as occurring on the expiry of the period in which the employer might reasonably have been expected to make the adjustments, such point being assessed from the employee’s point of view.
15. Whilst I did not have the opportunity to hear any evidence on these points, looking at the particular amendments sought to be made by the Claimant in support of her reasonable adjustments claim, they did, as I have noted above, refer to a period “from October 2017 onward”. The alleged failures relate to the withholding of appropriate management support for the Claimant’s return to work and it seemed to me therefore that, even from the Claimant’s point of view, the period by which the Respondent might reasonably have been expected to make adjustments in relation to the support of the Claimant’s return to work would be just prior to, or shortly after that return, i.e. in the latter part of 2017.

16. It did not therefore seem to me to be the case that the Claimant's application to amend to include a claim for failure to make reasonable adjustments would be in time, such that she would potentially face difficulties in pursuing a fresh claim.
17. I then considered the application of the "just and equitable" test for extending time under section 123 of the Equality Act 2010. I also considered the guidance provided by the Court of Appeal in Robertson v Bexley Community Centre [2003] IRLR 434, that, when exercising discretion, "*there is no presumption that [a tribunal] should do so unless they can justify failure to exercise the discretion. Quite the reverse, a tribunal cannot hear a complaint unless the applicant convinces it that it is just and equitable to extend time. So, the exercise of discretion is the exception rather than the rule*".
18. I also considered the direction provided in British Coal Corporation v Keeble and ors [1997] IRLR 336, which noted that it would be appropriate to consider the factors listed in section 33 of the Limitation Act 1980 when considering the exercise of discretion to extend time, which include: the length of, and reasons for, the delay; the extent to which the cogency of the evidence is likely to be affected by the delay; the extent to which the party sued has co-operated with any request for information; the promptness with which the Claimant acted once he or she knew of the facts giving rise to the cause of action; and the steps taken by the Claimant to obtain appropriate advice once he or she knew of the possibility of taking action.
19. Of those, no submissions were put before me regarding the request for information and/or co-operation with any requests, though I was informed that the Claimant had made a Subject Access Request under the Data Protection Act and it was indicated that the Respondent had not necessarily responded promptly to that request. I also did not think that the cogency of any evidence in relation to the amendment would be affected by the delay.
20. However, I was mindful of the fact that the Claimant has had the benefit of legal advice, if not continuously, certainly on occasions throughout the process, and had put in an extremely detailed claim at the start. I also did not consider that she acted with any promptness in pursuing the application to amend. I therefore concluded that it would not be a case in which it would be appropriate to extend time to allow a reasonable adjustments claim to be brought, or indeed to allow the amendments as additional assertions of detrimental and/or discriminatory treatment.
21. Overall therefore, applying the Selkent test and the guidance set out in the Presidential Guidance, I did not consider that it would be appropriate to allow the Claimant's application to amend other than, as I have indicated above, in relation to the deletion of two particular claims and the consequent deletion of the particulars relating to those specific claims.

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Employment Judge S Jenkins

Date: 22 / 6 / 2018

Judgment and Reasons

Sent to the parties on: .....

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For the Tribunal Office