



EMPLOYMENT TRIBUNALS

at an Open Attended Preliminary Hearing

Claimant: Mr E Marunda

Respondent: Nottinghamshire Healthcare NHS Foundation Trust & others

Heard at: Nottingham

On: 12 and 13 November 2018
20 November 2018 - Reserved

Before: Employment Judge Blackwell (sitting alone)

Representation

Claimant: Mr O'Odusanya, Solicitor

Respondent: Mr T Shepherd of Counsel

RESERVED JUDGMENT

Save for such substitution at paragraph 4.33 of the Claim Form for the date 12 October 2017 in place of 1 July 2017, all of the Claimant's applications to amend are refused.

RESERVED REASONS

Context

1. The Claimant's extensively pleaded Claim Form was received by the tribunal on 25 February 2018. A case management discussion by telephone was conducted by EJ Heap on 19 June 2018 and her summary and orders were sent to the parties on 20 June. In paragraph 18 she said as follows:

"18. I should stress that the provision of additional information in regard to the above matters is not an opportunity for further previously unmentioned complaints that do not feature in the Claim Form already to be advanced. To any degree that the Claimant may seek to add any additional matters, that must be done by way of a written application to amend the claim."

2. In that paragraph, she was referring to the provision of a Scott Schedule, which was provided by the Claimant on 16 July 2018. The Respondents replied to that schedule and at a number of points asserted that there were new allegations.
3. As a consequence, there was a further, this time attended, preliminary hearing held on 24 August. At paragraph 4.2 EJ Hutchinson said as follows:

“4.2 if the Claimant requires leave to amend in respect of any additional information provided and whether such leave should be granted;”
4. No written application to amend was received prior to this hearing. Indeed, Mr Odunsanya had to be directed that if he wished to make an application to amend, then he must do so. Again, the process was significantly hampered by Mr Odunsanya’s lack of preparation and ignorance of the relevant law.

The applications

5. The applications to amend are predominantly within that section of the Scott Schedule dealing with whistleblowing claims as follows:
 - 5.1 At page 65 of the bundle, an allegation of a protected disclosure relating to a letter of 1 July 2017.
 - 5.2 An email of 27 September 2017 appearing at page 71, again a new allegation.
 - 5.3 At page 72 of the bundle, a letter of 12 October 2017 said by the Respondents to be new alleged protected disclosure.
 - 5.4 On page 73, in relation to a letter of 12 October 2017, the Respondents say this is a new protected disclosure.
 - 5.5 On page 74 in relation to a statement provided by the Claimant on 30 October to a grievance investigation, again an allegation of a new protected disclosure.
6. The next allegation occurs in that section of the schedule dealing with the alleged detriments suffered by the Claimant as a consequence of making protected disclosures pursuant to section 27 EA and is at page 134, the Claimant seeks leave to amend to include a new allegation that he was denied clinical supervision.
7. As to the law, I am required to consider the applications in accordance with the well known **Selkent** test on whether to permit or refuse the Claimant’s applications is a matter of judicial discretion. **Selkent** advises that the following matters are to be taken into account.
 - 7.1 Firstly, the nature of the amendment. Mr Shepherd accepts

that none of the amendments introduces a new cause of action. As to protected disclosures, they are said to be additional disclosures upon which the Claimant can rely. As to the amendment at page 134, this seeks to introduce a new detriment.

7.2 Secondly, again referring to **Selkent**, these are plainly new factual allegations; they do not change the basis of the claim but they do extend it and would undoubtedly require further evidence on the Respondents' part.

7.3 The third matter to be taken into account is the applicable time limits. In both cases, the time limit is 3 months and although Mr Marunda gave evidence, his evidence did not deal either with reasonable practicability or whether it would be just and equitable to extend time in the case of the victimisation claim.

7.4 The fourth matter is the timing and manner of the application. I have set out the chronology above. Mr Marunda's representatives have had ample opportunity to include the new allegations but have not done so. The only explanation advanced was in Mr Odusanya's submissions in that he explained the omissions as part of "*the strategy for presenting the case*" and that the intention of merely to rely upon the documentary evidence.

8. I turn finally to the paramount consideration and that is the balance of hardship. Given Mr Odusanya's explanation for the omissions, it does not seem to me that the Claimant will suffer any significant hardship. His advisers have had ample opportunity to rectify the position, have not done so that have offered no plausible explanation for their inaction.

9. In those circumstances, I refuse the applications, save in respect of an amendment to paragraph 4.33 of the Claim Form where there has been a typographical error and the date 12 October 2017 should be substituted for 1 July 2017.

Employment Judge Blackwell
Date 7 Dec 2018

JUDGMENT SENT TO THE PARTIES ON
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