



EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case No: 4106514/2017

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Heard in Glasgow 11 June 2017

Employment Judge: Robert Gall

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Mrs T Wijesinghe

**Claimant
Represented by:-
James Collier -
Paralegal**

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Teleperformance Limited

**Respondent
Represented by:-
Mr C Asbury –
Solicitor**

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JUDGMENT FOLLOWING PRELIMINARY HEARING

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The Judgment of the Tribunal is that the additional information submitted on behalf of the claimant on 26 February 2018 is permitted to become part of the claim.

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As stated at the hearing, in terms of rule 62 of the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013, written reasons will not be provided unless they are asked for by any party at the Hearing itself or by written request presented by any party within 14 days of the sending of the written record of the decision. No request for written reasons was made at the

Hearing. The following sets out what was said, after adjournment, at the conclusion of the Hearing. It is provided for the convenience of parties.

REASONS

1. This was an application to amend made by Mr Collier for the claimant. It was
5 opposed by Mr Asbury for the respondents.
2. The amendment sought to do two things. Firstly, it sought to add to individuals
at respondents, namely Ms Cooper and Mr Nelson. Secondly it sought to
provide details of the claim or, as the respondents saw it, to add new claims.
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3. Dealing firstly with the proposed addition of new respondents, there was
discussion with the representatives. After that discussion and on assurance
from Mr Asbury on behalf of the current respondents being given, the
application to add Ms Cooper and Mr Nelson was not insisted upon.
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4. The assurance given by Mr Asbury was that the current respondents, the
limited company, accepted responsibility for any finding of discrimination
which might be made in relation to the acting is of Ms Cooper and/or Mr
Nelson. Insofar as any terms currently in form ET3 seek to argue otherwise
20 and to dissociate the limited company from responsibility for the acting is of
Ms Cooper and/or Mr Nelson, those averments will be departed from and
deleted.
5. Mr Collier was content to depart from his application given this undertaking.
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6. The case will therefore continue against the current respondents,
Teleperformance Ltd.
7. In relation to the second part of the application, this comprises a request from
30 the claimant to add details to the claim.

8. There had been a Case Management Preliminary Hearing. An order had been made on 15 February 2018 that additional information would be provided by the claimant in response to questions set out. The respondents had until 26 March to comment and make any representations in reply.
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9. I pause to deal with the timing of the reply from the respondents. They wrote to the Tribunal and to the claimant's representative on 26 March saying that there had been a delay in obtaining instructions from their clients and that a response would be submitted the following day. That response duly appeared at 9.01 on 27 March.
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10. Mr Collier argued that the response should not be considered, having been lodged late and in breach of the order.
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11. I decided however that it was appropriate to accept the response, though late and beyond the date in the Order. Firstly, it was only just late, being received at 9.01 the day after it was due. Secondly, it seemed to me that the problem had been mentioned as a matter of courtesy and the slight delay explained. Thirdly, I could not see any prejudice caused to the claimant through the respondents having time extended to enable their opposition to the application to be advanced in all the circumstances. There is power under the Rules to extend or vary time (Rule 5). It also seemed to me to be consistent with the overriding objective to allow the opposition to be heard by accepting the document submitted late. It was clearly not ideal that it was late as Orders should be adhered to. In all the circumstances however, I was prepared to allow it to be received.
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12. I heard argument for the parties on the application.
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13. For the claimant it was said, in summary, that the additional information responded to the Order and provided the detail asked for. It also set out some events which had happened after the claim was lodged on 22 November 2017. It was consistent with the overriding objective to allow it. Details of

victimisation and harassment alleged to have occurred had been provided as ordered.

14. For the respondents, it was said that new claims were being introduced if the details were permitted to be added. Some events were said to have occurred after the claim had been presented. Some events now set out however were alleged to have occurred before the claimant been presented. Insofar as they had occurred before the claim had been presented, addition should not be permitted, particularly if details were being given of a new incident. The claimant had advice. The events had happened before the claim had been presented. They should therefore have been in the claim form. The claim would grow arms and legs if the further details were permitted. Further, there had been delay from 22 November 2017 in advancing these matters. There was a potential issue with timebar and whether there had been a continuing act. There was injustice and hardship if the further particulars were permitted. There was delay as the respondents would require to reply to those details. There was a cost as the length of hearing would extend and preparation would be greater. The claim insofar as directed against Mr Nelson now set out allegations in relation to 6 December, however those allegations were not sufficiently pled to amount to a potential claim of discrimination.
15. On the latter point, Mr Collier in reply, highlighted that it was pled for the claimant that on a previous occasion in 2016 the claimant had been permitted to bring a representative with to a meeting. That had not been permitted however on 6 December. He said that the allegation was that the refusal to permit that to occur on this occasion constituted victimisation following a grievance having been lodged.
16. I considered the application and the opposition. I considered **Selkent, Cocking** and also **Kusnetsov**.

17. The principles to be considered in determining an application such as this are well established.
18. I bore in mind that there had been a Case Management Preliminary Hearing and subsequent order. The respondents had understandably sought detail of the claim. They had now received that detail. It gave them fair notice of the past events and also the events since 22 November 2017 which were now being founded upon.
19. The claims made are ones of direct discrimination, harassment and victimisation. There was reference in the claim form to harassment and victimisation having occurred, albeit there was no detail of the particular incidents said to constitute such discrimination.
20. It will no doubt be more difficult if further amendment is sought by the claimant in relation to any past acts. At the Hearing evidence would be anticipated as being limited to matters of which fair notice had now been given.
21. I did not see the passing of time as being a particularly significant issue. This is still a relatively early stage in the claim and the information provided was in response to an order. The respondents will have time to obtain information to enable them to respond. Gathering that information is not said to be an issue for them.
22. It is often the case that the claimant does not initially categorise detail a claim as a respondent might wish that to occur. The claimant has responded to the orders made. I am satisfied that the detail required is now been given.
23. There will be prejudice to the claimant if she is not allowed to provide these further details. Her claim may be in difficulty as she has pled it only, generally speaking, on the basis of broad headings at the moment. There will be an element of prejudice to the respondents if the further details are permitted to be added to the claim. There will be an element of delay. There will be a degree of additional expense in replying to those details and in facing a longer hearing.

24. I am satisfied however that the balance, particularly in relation to prejudice, favours allowing the amendment by addition of these particulars. Overall the factors which required to be relevantly considered weighed in favour of allowing the additional information or further and better particulars or amendment to the claim.

25. The respondents will have 21 days to reply to the details now added.

26. A Case Management Preliminary Hearing was agreed as being appropriately set down. It will consider arrangements for the hearing as well as setting the dates for the hearing. It was agreed that it would be held in person, although if parties agree, an application could be made for it to be held by telephone conference call. The date identified for the Case Management Preliminary Hearing is 10am on 12 July, for one hour. The Clerk to the Tribunals is requested to send the appropriate hearing notice to parties.

Employment Judge: Robert Gall
Date of Judgment: 12 June 2018
Entered in register: 15 June 2018
and copied to parties

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