



EMPLOYMENT TRIBUNALS

Claimant: Mrs A Iliffe

Respondent: Lamp

Heard at: Leicester **On:** Tuesday 12 December 2017

Before: Employment Judge Blackwell (sitting alone)

Representatives

Claimant: Mrs K Rodrigues, Advocate

Respondent: Mr Chaudhury, Consultant

JUDGMENT

1. The Claimant was at all material times disabled within the meaning of Section 6 and Schedule 1 of the Equality Act 2010.
2. The application to amend the Claimant's claim so as to include the allegation of constructive unfair dismissal within the meaning of Section 95(1)(c) is permitted by consent.
3. The application to amend the Claimant's claims so as to include an allegation of detriment pursuant to Section 47B of the Employment Rights Act 1996 and dismissal pursuant to Section 103A of the 1996 Act is permitted.

REASONS

1. This hearing is pursuant to the order of Judge Ahmed of 10 August 2017 and is initially to deal with paragraphs 2.1 and 2.4 of his order, 2.1 reading:

"2.1 To determine whether the Claimant was at the material times a disabled person within the meaning of Section 6 in Schedule 1 of the Equality Act 2010 and;

2.4 To determine whether the Claimant's claim should be amended to include a complaint of detriment/dismissal for making a protected disclosure (whistleblowing) and any other amendment."

Disability

2. The meaning of disability is set out both Section 6 and Schedule 1 of the Equality Act 2010. It is clear that the impairment in this case is a mental impairment. The evidence before me consists of a lengthy impact statement by the Claimant, the contents of which are unchallenged by the Respondent's. Mrs Iliffe's statement indicates that she was as long ago as 1972 treated for an anxiety disorder. In 1991 she was treated for reactive depression which she states is a type of clinical depression. In 2010 she was again treated for anxiety and depression. Her impact statement goes in to considerable detail as to the effect mental impairment has on her day to day activities and I am satisfied without doubt that there is on the basis of that statement a substantial effect.

3. The next section of evidence before me consists of Mrs Iliffe's medical notes which largely support the factual basis of her impact statement. Her General Practitioner confirmed by letter of 23 August 2017 that she was being treated with Citalopram, 20 mg tablets since 13 October 2010. Mr Chaudhury has pointed out that there is a period in the early part of 2016 when that treatment was temporarily postponed, but it seems to me not to affect the overall position. In addition to this letter and extensive medical notes there is an occupational health report obtained by the Respondent of 19 September 2016 prepared by Dr Jane Moore who is a consultant occupational physician. That report includes the following:-

"Medical History. Mrs Iliffe has fitnotes indicating work related stress. You are aware that she has a past history of anxiety and depression and this condition appears to have been exacerbated by the perceived stressors."

Dr Moore goes on to recommend certain adjustments and rehabilitation and in particular that there should be a stress assessment using the health and safety executive management standard headings.

4. Finally in response to the question of whether the employee is likely to be covered under the disability provision of the Equality Act, Dr Moore responds:

"In terms of compliance with the Equality Act, ultimately this is a legal decision. However having given consideration to the definition of disability within the act I am of the opinion that the Act is likely to apply to her underlying condition."

5. In the light of all that evidence I am satisfied that Mrs Iliffe was at all material times disabled within the meaning of the 2010 Act.

6. The second matter to be determined is whether the two applications made pursuant to a schedule submitted on Mrs Iliffe's behalf on 7 July 2017 should be permitted. Mr Chaudhury did not oppose the application to amend so as to include an allegation of constructive unfair dismissal and I therefore permit that application.

7. As to the second application to amend namely so as to include allegations of detriment suffered as a consequence of making a protected disclosure on 11 March and 22 March 2016 and so as to include an allegation of dismissal pursuant to the same protected disclosures, this application is opposed by Mr Chaudhury.

It is common ground that I am to determine the application in accordance with the well known authority of **Selkent**. The first matter to be considered is the nature of the amendment. It is clear that there is no reference in the original claim form received by the Tribunal on 31 January 2017 either factually or by way of reference by topic in that claim form. It follows therefore that given its nature it is an entirely new application both as a matter of law and as a matter of fact. It is not as Mr Chaudhury submits a relabelling exercise. The second matter for consideration under **Selkent** is whether or not the application is made within the applicable

time limits. It is clear from the recent **Galilee** decision that this is a matter that can be left to the main hearing. The Respondent's will be able to argue that this part of the amendment is out of time and it seems that it is better for that argument to be advanced during the main hearing.

8. The third matter is the manner and timing of the application. As I have said the original claim form was submitted on 31 January and the application to amend was not made until 7 July 2017 by way of a Scott Schedule.

9. The final and perhaps the most difficult matter is the balance of injustice as between the parties should I either accept or reject the amendment. It seems to me that the Claimant has an arguable case but as ever the Claimant's difficulty will be to prove a causal link between the two disclosures and the alleged detriments and/or dismissal.

10. As to the Respondent it will have to deal with additional new allegations and it will need to call new evidence to rebut those allegations. That of course will lead to inconvenience and expense for it. Mrs Iliffe's explanation as to why the matters were not expressly pleaded were that she has been unrepresented throughout the proceedings save from moral support from her daughter. Secondly of course I have found that she is disabled with a mental impairment and I accept that that must have had an impact on her ability to properly plead her case.

11. Balancing all those matters I am of the view that the amendment should be permitted having regard to the balance of injustice.

Employment Judge Blackwell

Date: 10 January 2018

JUDGMENT SENT TO THE PARTIES ON

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13 January 2018.....