



EMPLOYMENT TRIBUNALS

Claimant: Mr J Bassey

Respondent: (1) The Commissioners for Her Majesty's Revenue and Excise (2) Ms K Finn (3) Mr J Ritchie (4) Ms G Cooper (5) Mr N Lodge (6) Mr M Rhodes (7) Mr P Atkinson (8) Ms A Khan (9) Ms K Roger (10) Mr S Billington (11) Mr A Winkworth

Heard at: Leeds **On:** 11 March 2019

Before: Employment Judge Keevash

Representation

Claimant: In person
Respondents: Mr P Smith, Counsel

JUDGMENT having been sent to the parties on 13 March 2019 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Background

- 1 By an email dated 31 December 2018 the Claimant made an application to amend his claim.
- 2 By an email dated 2 January 2019 the Claimant made an application for an Unless Order.
- 3 By an email dated 14 January 2019 the Claimant made an application for an Order varying the final Hearing dates.
- 4 The Regional Employment Judge directed that the matter be listed for a Preliminary Hearing to consider the applications. He also required the Claimant to provide a GP report in support of the last application which had to address (1) the nature of his impairment, (2) its effect on his day to day activities, what adjustments in the GP's opinion should be made to enable the Claimant to participate fully in the hearing before the Tribunal over 15 days, identifying what feature of the proceedings of hearing will cause the Claimant disadvantage, including cross-examination of witnesses and his own cross-examination and (4) the GP's opinion on the specific adjustments sought by the Claimant in his letter dated 14 January 2019.

Discussion

Application to amend

5 The Respondents consented to the application in respect of twelve paragraphs of the draft amendment. Accordingly, the Employment Judge Ordered that by consent the Claim Form be amended so as to include paragraphs 4, 5, 6, 8, 9, 10, 11, 12, 14, 15, 16 and 17 of the draft set out in the application.

6 The Respondents objected to the application in so far as it related to paragraphs 1, 2, 3, 7 and 13 of the draft.

7 The Employment Judge considered the guidance set out in **Selkent Bus Co Ltd v Moore** [1996] ICR 836 EAT. He understood that in determining whether to grant an application to amend, he had to carry out a careful balancing exercise of all the relevant factors, having regard to the interests of justice and to the relative hardship that would be caused to the parties by granting or refusing the amendment. In exercising his discretion he had to seek to give effect to the overriding objective set out in Rule 2 of Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.

8 The Employment Judge reviewed the history of the litigation to date. The Claimant had made two previous applications to amend and he had provided supplementary particulars of his claim on two other occasions. The Employment Judge considered the Claimant's explanation for making this application at such a late stage and, in particular, letters from his GP and an Advanced Clinical Practitioner. He was sceptical about the Claimant's contention that he was unable to organise himself. Throughout the litigation the Claimant had demonstrated an ability to conduct the proceedings with the benefit of research. He had made numerous applications. Accordingly the Employment Judge refused the application in so far as it related to paragraphs 1, 2 and 7 of the draft set out in the application because they comprised new claims which could and should have been made earlier.

9 The Employment Judge Ordered that the Claim Form be amended so as to include paragraphs 3 and 13 of the draft set out in the application but only insofar as it was contended that the First Respondent acted unlawfully when dismissing the Claimant. That was in accordance with the overriding objective.

Application for an Unless Order

10 The Claimant's application was made on the ground that the Respondents had failed to disclose seven sets of documents. During this Hearing Mr Smith confirmed that the Respondents would disclose some of the documents. He undertook, in relation to the others, that the Respondents would make reasonable efforts to find them and, if successful, disclose them. The Employment Judge made an Order for disclosure in respect of the former. That Order also incorporated the Respondents' undertaking. In the circumstances the Employment Judge decided that it was contrary to the overriding objective to make an Unless Order. Accordingly, he refused the application.

Application for variation of final Hearing dates

11 By his application the Claimant requested that the matter be listed so as to allow for one or two non-sitting days between hearing days. The Respondents objected to the application.

12 The Employment Judge considered the medical evidence referred to in paragraph 8 above. The letters failed to address the Regional Employment Judge's direction referred to in paragraph 4 above.

13 The Employment Judge decided that there was a need to balance the risk to

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the Claimant's health against the impact of the proposed variation on the Hearing. The medical evidence was of little assistance because among other matters it did not propose any adjustments that could reasonably be made. On the other hand the Claimant's proposed variation would have a significant impact on the listing of this matter. The matter had been listed for some time and a room allocated for fifteen days. If the application were granted, the length of the Hearing would be extended to thirty days or more. In the absence of any clear recommendation based on a medical assessment, that would be contrary to the overriding objective. In rejecting the application, the Employment Judge made clear that it was open to the Claimant to apply for breaks during the course of the Hearing. The time allocation had been fixed with that eventuality in mind.

Employment Judge **Keevash**

30 April 2019