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# THE EMPLOYMENT TRIBUNALS

**Claimant:** Ms D Dorrington

**Respondent:** Tower Hamlets G.P Care Group CIC

**Heard at:** East London Hearing Centre

**On:** 16 April 2019

**Before:** Employment Judge Martin (sitting alone)

## Representation

**Claimant:** In person

**Respondent:** Mr N Ashley (Counsel)

## JUDGEMENT ON PRELIMINARY HEARING (OPEN)

1. The judgment is the Claimant's claim for protected disclosure is struck out.

## REASONS

1. The case came before me today following a previous Preliminary Hearing (Open), when the Claimant's complaint of unfair dismissal was struck out as the Claimant had insufficient service to bring her claim. At the end of that hearing, the Claimant suggested that her claim was about protected interest disclosure. She was given an opportunity to clarify her claim for this hearing. She was also warned about

the difficulties in pursuing claims of protected interest disclosure and advised to seek advice. She indicated that she had received some advice.

2. The Claimant has produced a further document seeking to clarify her claims, which was sent to the Tribunal and the Respondent on 13 March 2019. It sets out what she says are various disclosures. Again, the document is not clear about what disclosures the Claimant is relying on or what those alleged disclosures are.

3. During the course of the Preliminary Hearing today, after discussion with the Employment Judge, it appears that the Claimant is saying that she made five disclosures:

- 3.1. The first one being in August 2016, which she is said was on going until April 2017, and related to concerns about the TUPE transfer.
- 3.2. The second one was in October 2016, and related to grievances made to a senior manager about a manager regarding on-call and about the manager's attitude to the Claimant following her retirement from pension leave.
- 3.3. The third one was in March 2017. It related to an issue, also raised about on-call, to her manager.
- 3.4. The fourth one was in June 2017 and related to a complaint about the CEO not responding to keep the hospital open during the London Bridge attack.
- 3.5. The fifth one which seems to be the main one upon which she relies was made in August 2017. It was a disclosure about drivers and the contract on which they were on.

4. During the discussion today, the Claimant said she believed that was what led to investigations into her about fraud, her subsequent suspension, and then a further investigation and her subsequent dismissal.

5. During the course of the discussion however, it was not clear whether she was relying on all of the disclosures or only relying on the last disclosure in relation to dismissal.

6. The Tribunal has considered the Claimant's Employment Tribunal Claim Form. Although, she refers in the five pages which are in Addendum to the ET1, to some of those incidents, she does not refer to all of them. There is however no reference indicating that one or any of them were considered by her to be the reason for her dismissal or indeed for any other treatment suffered. The only reference to this is at page 4 of the Addendum, where she indicates that anyone who complains or raises issues against the Care Group are treated with disrespect.

7. The main body of the ET1 raises concerns about whether the Claimant has the requisite period of service to bring her claim before the Employment Tribunal. The Claimant did tick the box in the ET1 about protected interest disclosure however this Tribunal (like other Tribunals), is aware that this box is regularly ticked by Claimants who are not bringing a protected interest disclosure at all.

8. Nowhere in the Claimant's Claim Form or in any of the detail does she indicate that the reason for her dismissal is because of any of these alleged disclosures which she is now referring to, nor does she indicate that the reason for her dismissal was because of any of the issues that she raises in the Addendum to her ET1.

9. The Addendum itself, at the beginning, states that it is a reference to timelines and these incidents are timelines, but she does not think that the dates are relevant.

10. The Tribunal went on to consider whether it could, or whether the Claimant's clarification document could, amount to an application for leave to amend her ET1, namely whether this matter could be dealt with effectively as an amendment to the Claimant's claim and whether it could be considered today.

11. Both parties consider the Tribunal could, and in the case of the Respondent suggest, the Tribunal should deal with this matter at the hearing today. The Tribunal considered whether, if the Claimant was given further time and the opportunity to make a formal application to amend, there would be any change. The Tribunal noted that the Claimant did not think a formal application would make much difference. The Claimant indicated that she was seeking to get advice, but stated that she was unlikely to get any advice until the Final Hearing. Therefore the Tribunal concluded, that to adjourn this case further, to consider a formal application to amend when it had the clarification document was not in the interest of either of the parties.

12. The Tribunal therefore then went on to consider the question of amendment. It considered the leading case of *Selkent Bus Company Limited v Moore* [1996] ICR 836. That case notes the relevant factors to take into account on an application for leave to amend. These include:- the nature of the amendment, the application of any time limits, and the timing of any application. It requires consideration in balancing the hardship/injustice potentially to either of the parties.

13. In this case, the Tribunal considered that the amendment, as indicated above, was a new cause of action which had not been pleaded and even now, it is unclear exactly what claims the Claimant is pursuing. The clarification document did not clarify in any detail what the disclosures were which were being relied upon. Even following the discussion at this Case Management discussion, it was not entirely clear what disclosures were being relied upon in relation to which detriment.

14. The claim itself of a protected interest disclosure is substantially out of time. It clearly was reasonably practicable for the Claimant to have brought her initial claim in time. Her initial claim was brought in time. The Tribunal notes that the reason the Claimant says that she did not bring this claim in time was because she really did not understand what she needed to do, despite providing a lot of detail in her ET1.

15. The Tribunal also notes that the application is being made now, following effectively, her initial claim of unfair dismissal being struck out. It is noted that this case was always coded by the Tribunal as an unfair dismissal claim and not as a protected interest disclosure claim. The Tribunal considered the question of hardship and injustice to the parties. It has had to balance the potential hardship to the Claimant in not being able to bring her claim against the potential injustice to the Respondent in having to defend a claim which was initially not identified and is still not properly pleaded.

16. For those reasons this Tribunal has not allowed the application for leave to amend the Claimant's claim to bring a claim of a protected interest disclosure.

17. Accordingly the Claimant's claim for protected interest disclosure, insofar as it existed, is hereby dismissed.

Employment Judge Martin

10 May 2019