Case Number: 2301527/2018

EMPLOYMENT TRIBUNALS

BETWEEN

Claimant	**Respondents**
Ms N Hafeez	Jorada Limited t/a Bluebird Care (Medway)

and

PRELIMINARY HEARING

Preliminary Hearing
held at Ashford in person on 17 May 2019

Representation	**Claimant:**	Mr F Saeed, Solicitor
	Respondent:	Mr A Gillett, Solicitor

Employment Judge Harrington

JUDGMENT

The Claimant's application to amend her claim is refused.

REASONS

Background

1 This is a Preliminary Hearing, which follows a case management hearing in January of this year. My summary from that previous hearing makes reference to the difficult history of this case and I am afraid to note that its progression continues to be laboured.

2 The first issue I must determine today relates to an amended pleading which was submitted by the Claimant on 22 October 2018. On 16 August 2018 the Claimant's Solicitor came on the record and he corresponded with the Tribunal

saying that the ET1 needed amending. He asked whether it could just be amended or whether there was a need to make a formal application to do so.

3 By way of a letter from the Tribunal dated 10 October 2018 the Tribunal wrote to the parties on instruction from Employment Judge Martin. That letter included the following sentences,

The Claimant shall send in revised particulars of claim within 7 days of this letter.

The Respondent shall amend response 14 days after receipt of amended particulars of claim.

4 To be clear, the Claimant had not made an application to amend her ET1 at that stage. That is clear because as previously noted, the correspondence had asked whether the Claimant needed to make an application – evidently, that correspondence was not the application. Furthermore to make an application to amend, a party must put in a draft amendment so that the Employment Judge can consider the content of the amendment. The Claimant did not do this until after the letter from the Tribunal.

5 By the email dated 16 August 2018, the Claimant had simply indicated that she wished to amend her claim. Employment Judge Martin had responded that the amendment should be sent in and then an amended response should be sent in addressing the amendment. That letter did not give permission to amend the claim - it set out a process whereby the amendment could be considered. Following receipt of the amended particulars and the amended response, the Tribunal could see if there were any objections to the amendments. If there were, the Tribunal would need to rule on it.

6 Accordingly EJ Martin had not determined an application to amend and the correct process is for me to consider that application today. That I might proceed to consider such an application was absolutely in the minds of the parties prior to coming to this hearing. It was set out in the summary and directions given after the last hearing, including a direction that the Claimant make an application to amend.

7 Turning to that application, I have reminded myself of the principles set out in Selkent Bus Co v Moore 1996 ICR 836. Relevant factors when determining such an application include the time and manner of the application, time limits and balancing the hardship and injustice of allowing the amendment against the injustice and hardship of refusing it.

8 At the outset it is important for me to consider the amendment sought.

9 From a detailed reading of the amended pleading, the Claimant seeks to bring five further claims – disability discrimination, direct race discrimination, indirect race discrimination, harassment and victimisation. Initially Mr Saeed sought to suggest that these claims were already in the existing ET1 and were simply being further particularised in the amended pleading. However he quickly conceded that this was not actually the case. He also accepted that the necessary particulars for each of these claims do not appear in the amended pleading. We did not consider every one of the claims in turn but, for example, he conceded that there was no protected act identified in respect of the victimisation claim (either in the amended pleading or the attached witness statement), there is no conduct or comparator identified for the direct race discrimination claim and there is no PCP identified for the indirect race discrimination claim. It is therefore agreed that the proposed amendment is deficient.

10 What should I do in these circumstances? Mr Saeed asks me to give him more time to produce a further version of the pleading. Mr Gillet says, applying the overriding objective, further time should not be granted.

11 Having taken into account the entirety of the submissions made, I have decided to refuse the Claimant's application to amend. As already identified to the parties, each of the additional claims the Claimant seeks to bring is inadequately particularised and it is therefore impossible to understand the necessary details of those claims beyond the unfair dismissal claim brought in the original ET1. I cannot allow an application to amend where the amendments sought, in this case the introduction of multiple new claims, cannot be understood by the Tribunal.

12 I am not minded to make any particular directions providing for a further application to amend. The case will proceed as an unfair dismissal claim to the hearing date already set down in 2020 and I shall make appropriate directions for preparation of that claim. If the Claimant wishes to make further applications to the Tribunal, she is entitled to do so.

13 For the avoidance of doubt I make no findings as to the conduct of the solicitor originally instructed by the Claimant. I simply know too little of the history of that firm's conduct on the file to assign any negative commentary to that conduct, as sought by Mr Gillett.

Employment Judge Harrington
20 May 2019