



# EMPLOYMENT TRIBUNALS

**BETWEEN:** Mrs S Ghotbi **and** City Hearts (UK)  
**Claimant** **Respondent**

**Heard at:** Sheffield

**On:** 21 May 2019

**Before:** Employment Judge Cox

**Representation:**

Claimant: In person

Respondent: Mr McNerney, counsel

## REASONS

1. The Claimant presented a claim to the Tribunal alleging unfair dismissal and direct race discrimination. In the completed agenda she submitted on 18 March 2019, in advance of a Preliminary Hearing for case management on 19 March, the Claimant identified that she wished to amend her claim to include: a claim that she was dismissed because of raising health and safety concerns (whistleblowing); discrimination because of disability; harassment on 23 October 2018 by “KW” because of the Claimant’s race and language; “gesture”; and violation of GDPR in protecting the Claimant’s data.
2. At the 19 March Preliminary Hearing the Tribunal dismissed the claim of unfair dismissal under Sections 94 and 98 of the Employment Rights Act 1996 because the Claimant had insufficient continuous employment to qualify to bring that claim. The Tribunal confirmed, however, that the application to amend the claim, including the application to add a claim of unfair dismissal

because of a protected disclosure, would be decided at a further Preliminary Hearing. This was held on 21 May 2019.

3. At the Preliminary Hearing on 19 March and again at the Preliminary Hearing on 21 May the Tribunal spent time identifying and clarifying the allegations in the existing claim form (now set out in paragraph 2 of its Order of 21 May 2019). The Tribunal also spent time at both Preliminary Hearings clarifying with the Claimant what additional allegations she wanted to make, which included some she had not mentioned in her original agenda. The outcome of that process was to identify that the Claimant wished to add the following claims:
  - a. Detriment on the ground of a protected disclosure by being transferred to outreach work on 2 October 2018. The protected disclosure was informing a manager that a floor lamp had broken and fallen on a client whilst they were in bed.
  - b. Unfair dismissal on 23 October 2018 on the ground of two protected disclosures. The second protected disclosure was telling managers on 22 October 2018 that the front door of the safe house had a broken lock and was therefore unsafe.
  - c. Failure to meet the duty to make reasonable adjustments for her disability of anxiety and stress-related illness when the Respondent transferred her to outreach work on 2 October 2018.
  - d. Harassment related to race (that is, the Claimant's Iranian nationality) by Kirsty Wilson on 23 October 2018 when she looked at the Claimant doubtfully when the Claimant said that she had completed her Masters degree in the English language.
  - e. Damages for breach of contract by failure to give notice of termination.
  - f. Damages for breach of contract by extending her probationary period.
  - g. Direct race discrimination by Becky Wilson in failing to invite her to attend fortnightly meetings after she became an outreach worker on 2 October 2018.
  - h. Direct race discrimination by Becky Wilson in segregating the Claimant from colleagues.
4. These last two allegations ((g) and (h)) were recorded by the Tribunal on 19 March as having been part of the original claim, but they were not in fact included in the claim form and the Tribunal at the Preliminary Hearing on 21 May therefore treated them as part of the application to amend.
5. In considering the Claimant's application to amend, the Tribunal applied the guidance of the Employment Appeal Tribunal in Selkent Bus Co Ltd v Moore (1996) ICR 836.
6. The first matter that the Tribunal considered was the nature of the amendments. It noted that the new allegations that the Claimant now sought

to make were not minor amendments to her existing claim: they were new allegations which substantially expanded the basis of her claim, adding new factual allegations and new causes of action.

7. The Tribunal then considered the issue of time limits. Even taking into account the extension of time provided by the early conciliation provisions, the allegations had been raised outside the time limit for presenting a claim to the Tribunal. They occurred between 2 and 23 October 2018. The Claimant first raised them on 18 or 19 March 2019, making them around four weeks out of time.
8. In relation to allegations (a), (b), (e) and (f), the Tribunal can extend time for such claims only if it is satisfied that it was not reasonably practicable for the Claimant to have raised the claim in time. The Claimant had the opportunity to raise all these allegations in time, by including them in her original claim form, presented on 23 January 2019. She even ticked the box saying that she wanted her claim form to be forwarded to the relevant regulator because she was making a protected disclosure or “whistleblowing” claim. She did not, however, then include a whistleblowing allegation in the section of the form where she gave details of her claim. The form sets out tick boxes that invite a Claimant to say whether they claim notice pay. She did not tick this.
9. The Claimant maintained that she did not understand the types of claim she could bring until she got legal advice before the first Preliminary Hearing. She accepted, however, that she could have obtained that legal advice before completing her claim form. While the Tribunal noted that English is not the Claimant’s first language (she is of Iranian nationality), it also noted that the Claimant had completed a Masters degree in Applied Human Rights, including a 15,000-word dissertation, in English. She confirmed that her studies had included the application of human rights law within the jurisdiction of the UK. The Tribunal was satisfied that the Claimant was well capable of researching her employment rights and setting out those she believed had been breached in her original claim form.
10. The Tribunal concluded that it was reasonably practicable for the Claimant to have raised these allegations in time.
11. With respect to the remaining allegations the Claimant sought to raise, the Tribunal can hear a late discrimination claim if it considers that it has been presented within a just and equitable period. The Claimant did not provide a satisfactory explanation of why she had not included the new discrimination allegations in her original claim form. The form contains a tick box that invites a Claimant to say whether they feel that they have been the subject of disability discrimination. Not only did the Claimant not tick that box, when asked at section 12.1 of the form whether she had a disability she ticked the box labelled “No”. Although she said at the Preliminary Hearing she did not

understand the definitions of disability discrimination, the credibility of that assertion was undermined somewhat by her statement in her claim form that she had submitted a recommendation on equality and non-discrimination in relation to UN legislation on the rights of disabled people. She said that she did not include the allegation of harassment in the original claim form because she thought she would need documentary evidence to support it. Since the allegation was of a gesture or a “look” rather than a written statement, the Tribunal did not find that explanation plausible. The Tribunal did not accept that, in all the circumstances, these new discrimination allegations had been presented within a just and equitable period.

12. The Tribunal also had concerns about the merits of some of the allegations the Claimant wished to add to her claim. She could not explain why she was claiming damages for breach of the contractual right to notice when she had been paid in lieu of notice. She could not explain why extending her probationary period was a breach of contract. Although she was now seeking to argue that the principal reason for her dismissal was her protected disclosures, in her claim form she appeared to accept that the reason for her dismissal related to the Respondent’s assessment of her performance in the job and the standard of her English. She wanted to claim a failure to meet the duty to make reasonable adjustments but it appears from what she said at the Preliminary Hearing that she had told the Respondent only that she was feeling stressed with her job and her studies. The Tribunal considered it very unlikely that this would be sufficient to give the Respondent knowledge that she was a disabled person and establish a duty to make reasonable adjustments.
13. Taking all these matters into account, the Tribunal then made an overall assessment of where the interests of justice lay and the relative hardship that would be caused to the Claimant and Respondent by granting or refusing the application to amend.
14. In her claim form the Claimant gave a five-page narrative of events, the main thrust of which was that she felt she had worked hard for the Respondent and her dismissal was unfair and discriminatory. Although her allegation of unfair dismissal under Sections 94 and 98 of the Employment Rights Act 1996 was dismissed at the first Preliminary Hearing, her allegation that her dismissal was an act of direct discrimination because of her Iranian nationality was going forward, as was her allegation that the Respondent’s requirements in relation to standards of written and spoken English amounted to indirect race discrimination. If the application to amend were refused, therefore, the Claimant’s principal complaints, which could be assumed to be the most important issues she wanted to raise since she included them in the original claim form, would still continue to a Hearing. If the application were granted, on the other hand, the Respondent would have to respond to a significantly increased number of complaints, all of which had been raised out of time and

some of which were of little apparent merit. This would involve it in substantially increased time and expense, including the likely need for a Preliminary Hearing on disability and a significantly extended main Hearing.

15. The Tribunal concluded that it would not be in the interests of justice to grant the application to amend.

Employment Judge Cox  
Date: 25 June 2019