



## EMPLOYMENT TRIBUNALS

Claimant

**Ms M Skeete**

v

Respondent

**LTE Group t/a Novus**

### PRELIMINARY HEARING

**Heard at: LONDON SOUTH**

**On: 10 December 2018**

**Before: Employment Judge Siddall**

**Appearance:**

**For the Claimant: In person**

**For the Respondent: Ms D Coyne, solicitor**

### JUDGMENT

Examples

1. The complaint of unfair dismissal is struck out as the Claimant agrees that she remains employed by the Respondent.
2. The application to amend the claim to include the fourteen allegations set out at paragraph 6 of the Order of Judge Horne dated 5 June 2018 is refused save for items 6.6, 6.8, 6.12, 6.13 and 6.14 which are referred to in the two applications to the tribunal.
3. The Claimant may proceed with her claim for direct race discrimination under section 13 of the Equality Act 2010.
4. The Claimant may proceed with her claim that she was subjected to a detriment on the ground that she made a protected disclosure contrary to section 47B of the Employment Rights Act 1996.

### REASONS

1. In her two applications to the tribunal, the Claimant identified two distinct complaints.
2. First she complained that her manager had 'set her up' by breaking into her drawer at work and accusing her of malpractice. This had resulted in allegations being made against her, as a result of which she lodged a grievance. The Claimant says that this amounted to direct race discrimination.
3. Second, the Claimant observed a colleague, RG, hugging a prisoner at her place of work. She says that this was a breach of 'prison law'. As a result of making this report, she states that she was subjected to a number of detriments

which are itemized below. She says that this treatment amounted to both less favourable treatment because of her protected characteristic (she is Black Caribbean) and to a detriment for making a protected disclosure, namely the intelligence report she submitted about RG. I had noticed that the claims, when received in Manchester, had been coded as including a 'whistleblowing claim'. This had not been identified by Judge Horne at the case management hearing in June but the Claimant confirmed today that she had intended to bring such a claim.

4. At a case management hearing the Claimant described a total of 14 incidents, some of which related to the complaints above and all of which she said amounted to race discrimination. Others appeared to be unrelated to the matters in her claim form, and some pre-dated the incident when her desk was broken into. Five of the allegations, numbered 6.1-6.5 in the tribunal's order, related to events that happened between May 2014 and December 2015. The Claimant says that she did not complain at the time as she did not know who to complain to. However in February 2017 she had raised a grievance about the investigation that had taken place after her desk was broken into.
5. Judge Horne ordered that a preliminary hearing should take place at which the tribunal should consider 'whether any allegations in the Schedule [paragraph 6] require an amendment to the claim and if so whether such amendment should be granted'.
6. Having considered the two claim forms, I note that the complaint about the break-in to her desk and what followed, and the complaint about what happened after the Claimant reported RG, are clearly identified and no application for an amendment is required.
7. In relation to the remaining allegations identified at paragraph 6 of Judge Horne's order, these appear to be quite new matters and all are considerably out of time. The Claimant does not have a good reason as to why she did not raise her concerns earlier. The Respondent argues that it will be difficult to respond to the earliest allegations dating back to 2014 and 2015.
8. Having heard from the Claimant and applying the principles set out in the *Selkent* case, I have decided that it is not in the interests of justice to grant the Claimant leave to amend her claim to include the additional allegations. The Claimant can refer to these in her witness statement by way of background.
9. The Claimant says that her desk was broken into on 29 February 2016. A claim in relation to this incident alone would be out of time, but for the purposes of this hearing I accept that the Claimant argues that it was the start of a series of events continuing through the grievance process which started in February 2017.
10. In terms of the whistleblowing detriment claim, the Claimant observed RG on 3 May but the events that took place after that continued up to 14 December 2017 when the Claimant says she was sent home. As she contacted ACAS on 1 March 2018 and brought her first claim on 1 April, this claim is in time. Whilst noting that Judge Horne had not identified a protected disclosure claim in June, I accept that the Claimant had intended to bring such a claim and the case details that she provided with her claims support such a conclusion. Indeed, the Manchester tribunal had identified the claim as such. Even if not explicit on the claim form, the inclusion of such a claim will amount to a mere re-labelling of matters already pleaded and I conclude that it is in the interests of justice to allow the claim for detriment because of making a protected disclosure ('whistleblowing') to proceed.

11. The Claimant agrees that she remains employed by the Respondent but states that she has been prevented from returning to work. She has not resigned. I explained that an unfair dismissal claim could not proceed unless she was asserting that she had been dismissed by her employer, or that she had resigned and been constructively dismissed. Accordingly the unfair dismissal claim was struck out.

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Employment Judge Siddall

Date: 10 December 2018.