



EMPLOYMENT TRIBUNALS (SCOTLAND)

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Held in Dundee on 28 June 2019

Employment Judge McFatridge

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Case Nos: 4123234/2018 and 4102622/2019

Miss Nicole Bolland

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**Claimant
Represented by:
Mr Johnston
Consultant**

Dunkeld House Hotel LLP

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**Respondent
Represented by:
Mr S Morris
Solicitor**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the preliminary hearing is

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1. that the claimant's application to provide further and better particulars of her claims is accepted;
2. that the claims be heard together with the claims of Natalie Bolland against the respondent being dealt with under claim reference 4121162/2018; and
3. that the respondent may if so advised provide further and better particulars of

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E.T. Z4 (WR)

REASONS

1. In this case the claimant, Nicole Bolland submitted a claim to the Tribunal (her first claim) under reference 4123234/2018. In this claim she essentially made claims of sex discrimination and a claim of discrimination based on her vegetarian belief. A second claim was then lodged on 20 February 2019. This included a claim for victimisation based on the claimant Nicole Bolland having supported the claim of her sister Natalie against the same respondent. Natalie's claim was received on 7 November 2018 and Natalie claimed breach of contract, disability discrimination, unfair dismissal and sex discrimination. Nicole's second claim was for automatically unfair dismissal and having suffered a detriment because she made public interest disclosures as well as sex discrimination claims. The claims of both Natalie and Nicole have already been subject to a degree of case management. At a preliminary hearing held on 13 May 2019 it was agreed that a staged approach would be required. Mr Johnston who acts for both Nicole and Natalie had indicated that he wished to provide further and better particulars of Nicole's claim. This was likely to be objected to by the respondent. In addition, Mr Johnston's position was that he wished to have both Natalie and Nicole's claim heard together. This was resisted by the respondent. It was decided that the claimant be given a period of time within which to lodge further and better particulars of claim and that a preliminary hearing would take place at which the Tribunal would decide whether or not to accept such further particulars. The Tribunal would then make a decision as to whether or not the claims should be conjoined.
2. The hearing took place on 28 June. It proceeded in two stages. At the end of the first stage I indicated to the parties that I was prepared to accept the further and better particulars. I gave brief reasons at the time but for ease of reference I have repeated these below. I then went on to consider the issue of whether or not the claims should be conjoined. I heard representations from both parties. I indicated that at the end of that that I wished to be in a position to review all of the documentation in private before making a

decision. I have now decided that the claims should be conjoined. My reasons for both decisions are set out below.

1. Further and better particulars

3. The position of the claimant was that the purpose of these was simply to helpfully amplify the nature of the second claim made by Ms Bolland. In this case the second claim was submitted as a separate claim albeit the claimant's representative accepts that it would have been open to him to simply apply to amend her first claim. The reason for doing it as a second claim is that the second claim does have some differences from the first claim. The position is helpfully set out in the further and better particulars. The first claim relates mainly to Nicole's allegations about her less favourable treatment because of her vegetarian belief. It was Mr Johnston's position that there was some reference to the sex discrimination aspects of matters in this claim but they are not particularly well defined. He wished to clarify the position which is why the second claim was submitted. Essentially what the second claim is about is that the respondent expected Nicole to support her sister Natalie's Employment Tribunal claim and that as a result of this she was subject to various detriments. The further particulars simply amplify on what is already in the second claim. It clearly sets out the protected act and the detriment. It sets out what is harassment and what is victimisation. It sets out the basis of the discrimination dismissal claim. It also clearly sets out the legal and factual basis of the claim under the public interest disclosure act. It was the claimant's position that essentially this amounted to further and better particulars of the claim which would assist the Tribunal in dealing with the claim justly which is of course part of the overriding objective.

4. Unusually the respondent's representative did not dispute that what we had here was further and better particulars of claims which had already been made. He did not suggest that the further and better particulars amounted to any kind of amendment. His criticism was essentially on the basis of timing. It was his position that they did not add anything to what was already in the second ET1. He considered that there would be an additional burden on the

respondent in having to respond to them. The respondent would incur additional costs in doing this. As I indicated to the parties at the time I considered that the claimant's arguments were to be preferred. It appeared clear to me that the claims being made were already before the Tribunal. The further and better particulars would indeed assist the Tribunal in dealing justly with the case. If the particulars were not allowed in then in my view it was likely that the costs of dealing with the case both for the respondent and for the Tribunal in terms of time would be increased rather than decreased. The further and better particulars will provide assistance to both the parties and the Tribunal in preparing for the hearing.

5. As I indicated to the respondent's representative I would have no objection to the respondent seeking to lodge further and better particulars of the response but the Tribunal in no way insists on this. At the end of the day it can only be of assistance to the parties and to the Tribunal if the legal and factual basis of the claim is stated more precisely and in my view that is exactly what the further and better particulars do.

Reasons 2 – Hearing the cases together

6. The claimant's position was that the claims had sufficient links to make it in line with the overriding objective that they be heard together. There is a background of an allegation that the respondent was not following proper health and safety food procedures. Nicole's position is that she was supportive of Natalie's claim of sex discrimination, sexual harassment and whistleblowing. Whilst there are some witnesses and there will be some passages of evidence which are specific to each individual sister there are a substantial number of factual allegations which are common to both claims. Mr Johnston made the point that if the claims were not heard together then there would be a risk of separate Tribunals coming to separate views on the matter. If the claims were heard sequentially there would be an issue of witnesses all having a second bite at the cherry and being able to modify their evidence given at the first hearing based on their experience of being cross examined.

7. More importantly he said there would be considerable duplication of effort by the Tribunal and by the parties. It was his position that the two claims were so interlinked and interwoven it made sense to hear them together.
8. The respondent's position was that there were two very complex claims and that it may be difficult for a single Tribunal hearing both claims to separate matters out. With regard to the PIDA claims there is no argument that both claimants were treated in the same way by the same individual. Whilst there was some overlap there were also witnesses who were relevant to Natalie's claim but not for Nicole's. The respondent's representative considered that there was a risk of prejudice to both the claimant and the respondent by the Tribunal having to address a complex series of claims at the one hearing. He did not consider that it was proper for the Tribunal to take into account the risk of two Tribunals coming to different conclusions on the same evidence. The assumption had to be made that the Tribunals would come to the correct result in each case. Any risk of witnesses modifying their evidence could easily be addressed in the context of each case. This would be particularly straightforward given Mr Johnston was representing both claimants.
9. Mr Johnston for the claimants responded that this would only be feasible if a detailed transcript of the witness evidence in the first Tribunal hearing was taken. With regard to the number of witnesses his view is that matters could be timetabled so that there would not be a large number of witnesses hanging around in the waiting room. This would be normal case management.
10. As I indicated above I told the parties that I would need time to consider the matter and in particular read the claims in full. During the course of my deliberations the claimant's representative wrote to the Tribunal confirming that Natalie had decided to withdraw the claims number 4 and 7 on page 2 of the Scott Schedule. The claimant's representative had previously indicated that he would be considering these matters once various documents had been disclosed. Natalie Bolland is no longer pursuing her claims of disability discrimination or breach of contract.

11. I considered this information to be of interest but it had no effect on my overall decision.

12. At the end of the day it appeared to me that we had claims by two claimants both of which had a substantial degree of overlap. Both claims are themselves fairly complex and there are some matters and passages of evidence which would be relevant to one claim and not the other. There will be other passages of evidence which are relevant to both. At the end of the day the decision I required to make was whether in line with the overriding objective it would be best for the two claims to be heard together or whether it would be best for them to be heard separately.

13. Neither party made much of a point regarding the prejudice or benefit to each party if the cases were heard either separately or together. All of the points were made on the basis of what would be best from the Tribunal's point of view. Having considered the matter carefully I consider that what would be best from the Tribunal's point of view would be to hear all of the evidence in relation to both cases together and to make a decision on both cases at the same time. The Tribunal will require to carefully bear in mind just exactly what claims are being made and the various strands of the claims will require to be kept separate in the mind of the Tribunal however essentially this is no different to what happens in a number of complex cases in any event. It appears to be that there will be real benefit to the Tribunal in hearing all of the evidence together. In addition to that there is an economic benefit in that evidence which is common to both cases will only require to be heard once. I did not consider that the claimant's arguments about the risk of different Tribunals reaching different conclusions carried much weight but at the end of the day it appeared to me there was a clear advantage timewise in the Tribunal only having to hear evidence once in relation to those matters which are common to both claims. The cases will therefore be heard together. As noted above I have made an order that the respondent, if they so wish, may submit their further and better particulars of their response within 28 days. I feel that it would be appropriate to have one further joint preliminary hearing after this in order to discuss where the claims go from here, whether to a final

hearing or to one or more preliminary hearings. Clearly the fact that there is no longer a disability discrimination claim reduces the need for at least one of these preliminary hearings. I therefore directed the administration asks parties for their availability for a telephone preliminary hearing to discuss case management issues to be held in around six weeks' time. The reason for this delay is to allow time for the respondent to submit their detailed response to the further and better particulars should they so wish.

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14. Finally, as I advised the parties during the hearing, I am aware that this year all Employment Judges in Scotland are to be attending a residential course at the Dunkeld House Hotel, operated by the respondent, in September. Similar events have been held at the venue previously. As I advised the parties I wished to make them aware of the situation but did not consider the matter could lead to any Employment Judge requiring to recuse themselves.

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Employment Judge:	Ian McFatridge
Date of Judgment:	11 July 2019
Date sent to parties:	11 July 2019

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