EMPLOYMENT TRIBUNALS

Claimant: Ms F Burns

Respondent: University Hospital Coventry and Warwickshire NHS Trust

Heard at: **Midlands West** **On:** **5 6 7 8 and 9 August 2019**

Before: **Employment Judge Woffenden**
Members: **Mr D McIntosh**
Mr P Talbot

Representation
Claimant: In Person
Respondent: Mr. M Islam-Choudhury of Counsel

RESERVED JUDGMENT

1The respondent's application that the tribunal recuse itself is refused.

2 Written reasons for the tribunal's decision to permit the claimant to amend her claim having also been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, reasons below are provided for both decisions:

REASONS

1 During the course of the final hearing (which addressed liability only) and after the written and oral submissions made by Mr. Islam-Choudhury on behalf of the respondent on 8 August 2019 the tribunal permitted the claimant to amend her claim to include an allegation that the appeal against her dismissal was unfavourable treatment under Section 15 Equality Act 2010 ('EqA') and /or part of her complaint that the respondent had failed to comply with its duty to make reasonable adjustments under section 21 EqA.

2 On 9 August 2019 Mr. Islam-Choudhury asked for written reasons for that decision and made an application that the tribunal recuse itself on the grounds of apparent bias which the claimant opposed. The tribunal decided to reserve its decision for the latter application and provide reasons for both decisions at the same time.

3 The claimant has been a litigant in person throughout. She was employed by the respondent in the position of Health Care Assistant from 2 April 2012 to 7 July 2017.

4 On 10 October 2017 the claimant presented a claim to the employment tribunal in which she complied of unfair dismissal and disability discrimination and because she had been discriminated against because of her part-time workers status. At that time her appeal against her dismissal had not been heard. Section 8.2 of the claim form comprised an extract from her letter to the respondent setting out her grounds of appeal dated 27 July 2017 (the first 2 pages only).

5 The respondent had presented its response to the tribunal on 4 December 2017. It contained 4 paragraphs (16 to 19 inclusive) which addressed the claimant's appeal and the appeal hearing conducted by a Mr Kee and recorded his decision to dismiss the claimant's appeal and that he had written to the claimant to confirm that decision.

6 On 6 September 2018 EJ Britton conducted a preliminary hearing for case management purposes at which the respondent was represented by a solicitor Ms. Harris (who has sat behind Counsel throughout the final hearing) and the claimant was in person. By this time the claimant's appeal had been heard by a Mr. Kee and it was unsuccessful.

7 In his order EJ Britton made no reference to the appeal having post-dated the claim in the order he made. He did set out the issues which fell '*potentially*' to be determined in relation to unfair dismissal (what was the principle reason for dismissal and if capability as asserted by the respondent was the dismissal fair or unfair under section 98(4) Employment Rights Act 1996('ERA') and within the '*band of reasonable responses*'. He also identified the alleged unfavourable treatment for the purposes of her complaint under section 15 EqA as '*dismissing her* '.

8 EJ Britton also noted the reasonable adjustments which the claimant alleged should have been taken as:
"(i) provided with adequate time in which to recover by extending the timescales envisaged by the relevant policy applied by the respondent within which she was expected to be fit to return to her substantive role;
(ii) place the claimant into a vacant job role, just the role of emergency receptionist, that may have been available for her to perform within her normal hours (weekends only) and was suitable for her taking into account the limitations arising from her "disability";
(iii) the creation of a shift roster or rotor elsewhere within the Trust that facilitated a requirement for someone to work we can shift only that would have been available for the claimant to work and was suitable for the claimant to take into account the limitations arising from her "disability"."

9 EJ Britton made orders for disclosure by the claimant of her relevant medical notes and other evidence on which she relied in relation to the disability issue and the provision of a witness statement. He went on to require the respondent to inform the tribunal and the claimant by 6 December 2018 whether the "*disability question*" was conceded, having noted the claimant alleged she was a disabled person because of pain and restricted movement in her right shoulder and impingement in her left shoulder.

10 On 27 December 2018 the respondent wrote to the tribunal to say it "*concedes the disability question*." No more information was given. It also served an amended response.

11 At the commencement of the final hearing (listed from 5 to 12 August 2019) Mr. Islam-Choudhury had prepared a draft agreed list of issues. The Tribunal asked from what date the respondent had conceded disability. Mr. Islam-Choudhury said it was from 24 December 2016 (the date on which the claimant first went off work sick with shoulder pain) but knowledge was not admitted for the purposes of either the claimant's complaints under section 15 EqA or section 21 EqA. He also conceded that (subject to knowledge) the claimant's dismissal for ill-health capability was unfavourable treatment and dismissal was for something arising from disability (namely' *the claimant's sickness absence*.' Subject to knowledge therefore the respondent's defence to that claim was confined to legitimate aim and proportionality. He also applied for and was granted permission by the Tribunal to amend the response to include a third legitimate aim ('*Employees should be able to perform the essential functions of their substantive roles*.'

12 In relation to the claimant's dismissal Mr. Islam -Choudhury had reproduced in the draft agreed list of issues the wording used by EJ Britton (see paragraph 7 above).

13 It was in the circumstances above therefore that the tribunal approached its prereading. It read the claimant's complete letter of appeal dated 27 July 2017 and appeal outcome letter which were included in the agreed bundle of documents and the respondent's bundle of witness statements which included that of Mr. Kee (who had heard and rejected the claimant's appeal). He was evidently to attend the final hearing to give evidence. The claimant's complete letter of appeal dated 27 July 2017 had raised a number of points which included ' *Disability discrimination ,as technically temporarily disabled until confirmed otherwise*.' and unfair treatment '*as treatment ongoing/not completed and specialist has not given opinion yet or advised of plan prior to the panel making their outcome decision*'. The appeal outcome letter of 30 November 2017 had noted the claimant had been unfit for work for almost twelve months but did not address the claimant's point about disability discrimination although Mr. Kee's witness statement said he had decided to dismiss '*every ground*' of the claimant's appeal.

14 It is trite law that in relation to a claim of unfair dismissal a tribunal must consider whether the disciplinary process as a whole is fair (**Taylor v OCS Group Ltd [2006] IRLR 613 CA**).

15 In **Baldeh v Churches Housing Association of Dudley & District Ltd [2019] UKEAT 0290** His Honour Judge Shanks held in relation to a section 15 EqA complaint and a complaint of unfair dismissal (under section 103A ERA) the outcome of an appeal against dismissal was integral to the overall decision to dismiss (paragraph 15) and that in that case the tribunal should have considered the appeal decision as part of the overall decision to dismiss the claimant and decided whether it was itself discriminatory. In that case an earlier tribunal had identified one act of unfavourable treatment namely the claimant's dismissal in the case management summary of a preliminary hearing . Further a failure by a respondent to make reasonable adjustments is relevant to objective justification under a section 15 EqA complaint (see Paragraph 5.21 of The Code of Practice on Employment (2011) ('the Code') –'*If an employer has failed to make a reasonable adjustment which would have prevented or minimised the*

unfavorable treatment, it will be very difficult for them to show that the treatment was objectively justified'.) and the duty to make reasonable adjustments applies at all stages of employment including dismissal (Paragraph 6.8 of the Code).

16 The tribunal therefore formed the initial view that the appeal was part and parcel of the claimant's dismissal and relevant to all her complaints.

17 The claimant applied to amend her claim to include holiday pay, but that application was refused. She also indicated she intended to apply to amend her claim to include a complaint of indirect disability discrimination and after discussion with the tribunal and having being given the opportunity to consider her position overnight and referred to the Code of Employment (2011) and the Employment Tribunals (England and Wales)-Presidential Guidance-General Case Management (2018) in particular Guidance Note 1: Amendment of the Claim and Response Including Adding and Removing Parties she decided not to make that application.

18 The claimant was cross-examined by Mr. Islam-Choudhury on 5 and 6 August 2019. She confirmed she had presented her claim to the tribunal on a precautionary basis because she understood there were time limits which ran from her dismissal. She said she had not told EJ Britton at the preliminary hearing she was complaining about the way the respondent had handled her appeal and that it was discriminatory because she did not see that was the place to do so and she had found him '*quite direct'*. She accepted Mr. Kee had dealt with all the bullet points in her appeal but said she did not agree with the outcome and later agreed he had dealt with her appeal in a fair and reasonable manner but repeated that she did not agree with the outcome.

19 Mr. Kee attended the hearing on 8 August 2019 and was cross examined by the claimant. She began by asking him what experience he had had of managing capability hearings when the employee concerned was disabled and later whether he was happy due process had been followed and whether he had authority to change the outcome of dismissal and reinstate her. He was also asked about the evidence he had about reasonable adjustments and whether disability had been considered and the nature of the hearing he had undertaken and whether he had before him or sought to obtain new evidence.

20 Rule 41 of the Employment Tribunals Rules of Procedure 2013 reads as follows "*The Tribunal may regulate its own procedure and shall conduct the hearing in the manner it considers fair, having regard to the principles contained in the overriding objective. The following rules do not restrict that general power. The Tribunal shall seek to avoid undue formality and may itself question the parties or any witnesses so far as appropriate in order to clarify the issues or elicit the evidence. The Tribunal is not bound by any rule of law relating to the admissibility of evidence in proceedings before the courts*."

21 After the claimant had concluded her cross-examination of Mr. Kee and in the light of the view it had formed (as set out paragraph 16 above) and in accordance with Rule 41 the members of the tribunal each asked him as decision maker in relation to the appeal questions in order to clarify what training he had had about disability ;whether he thought he was conducting a rehearing or review of Mr Palmer's decision to dismiss ; whether further investigations would have been carried out if new information emerged ;whether or not he had considered the

disability discrimination point raised by the claimant in her appeal and if he had not done so was this because it was not a point raised before the dismissing officer Mr. Palmer ;and whether he had regarded the disability discrimination point as new information which warranted further investigation by him. Mr Kee did not decline to answer questions put to him and Mr. Islam -Choudhury did not object to any question put by the tribunal or (when asked if he wished to do so) conduct any re-examination of Mr. Kee and told the tribunal that concluded the respondent's case.

22 Having considered Mr Islam-Choudhury's cross-examination of the claimant about the appeal the tribunal became unsure whether the respondent had had regard to **Baldeh**. The tribunal therefore took the opportunity prior to written and oral submissions by the parties to provide Mr Islam Choudhury with its copy of **Baldeh** (an authority of which he told the tribunal he had not hitherto been aware) with paragraph 15 highlighted.

23 Mr. Islam-Choudhury made his oral submissions later that day. He first addressed the issue of knowledge in the context of the claimant's section 15 EqA complaint .His written submissions (prepared the previous afternoon) stated it was irrelevant whether Mr. Kee had actual or constructive knowledge because the appeal was heard after the presentation of the claim and the claimant had not amended the claim or put the tribunal on notice that she wished to allege his decision was discriminatory; therefore the issue of knowledge was relevant only to Ms. Nurse (the claimant's line manager and Mr. Palmer (the dismissing officer) . The claimant had had the opportunity to clarify on what matters in the appeal she wanted to rely at the preliminary hearing before EJ Britton on 6 September 2018 but had not referred to the appeal. The tribunal sought clarification from which it emerged that although Mr. Islam-Choudhury accepted that in relation to the unfair dismissal claim the appeal was integral he did not accept that was the case as far as disability discrimination was concerned because the last act complained of was the dismissal by Mr. Palmer on 7 July 2017 .He submitted this case could be distinguished from **Baldeh** because in the latter the claimant (also a litigant in person) had referred to discrimination on grounds of disability and recited the appeal and the appeal decision letter in her claim form. The tribunal asked him why he had not then objected to what (on his analysis) were irrelevant questions posed by the tribunal to Mr. Kee .He said it was up to him to decide to do so if he wished ;he was reserving his position and to do so at the time might have been more time consuming. He then went on to conclude his oral submissions before the lunch time adjournment.

24 After the lunch time adjournment and before the claimant made her submissions the tribunal referred her to **Baldeh** and gave her a copy (highlighted as for Mr. Islam-Choudhury) .It asked the claimant to clarify if she wanted the tribunal to consider the appeal decision as part of the overall decision to dismiss her and whether it was discriminatory as part of her section 15 EqA claim and/or part of the respondent's alleged failure to comply with its duty to make reasonable adjustments under section 21 EqA. She confirmed she did.

25 The tribunal informed her that in that case she would have to apply to amend her claim to include those matters in the absence of any reference to the appeal in her claim form and reminded her of the contents of Guidance Note 1 which she had read earlier in connection with her application to amend her claim to include

a complaint under Section 19 EqA. The tribunal expressed its regret at this turn of events at such a late stage in the proceedings. Mr. Islam-Choudhury observed that an application to amend could be made at any time before judgement was issued.

26 The claimant then made an application to amend and said she had not been aware as a litigant in person hitherto that the whole process would not be considered by the tribunal as far as her disability discrimination complaints were concerned. She did not know that after the issue of her claim (which she had presented because she was aware there were time limits) there was any subsequent action for her to take.

27 Mr. Islam-Choudhury objected to the application to amend. He submitted the claimant's witness statement did not deal with the appeal. If an unrepresented claimant brought such a claim, they might presume incorrectly that an appeal was included. However, in this case there were two aspects which pointed against leniency. Firstly, the claimant did have a preliminary hearing before EJ Britton and he would have explored all such issues precisely. The appeal hearing had been in 2017. The preliminary hearing was in 2018. Secondly if the claimant had erroneously thought this was a technical amendment there would be a proper evidential basis for it in her witness statement. It had only arisen because he had taken the point. If parties changed their positions where they realised where the other party was coming from there would be a never-ending circle of amendments. There was prejudice to the respondent; he would need to cross-examine the claimant further and Mr Kee would have to be recalled. The timescale for the hearing would be prejudiced and the production of judgement would be delayed, and the relevant facts had taken place as long ago as July 2017.

28 The claimant responded that she believed that because she was complaining about the way the respondent's attendance policy had been applied to her that would cover everything which happened under that policy. She thought everything was covered in one application to the tribunal. It would be detrimental to her case if the appeal was not dealt with as part of her disability discrimination claims. The tribunal decided to grant the application and gave oral reasons for its decision.

29 Mr. Islam-Choudhury asked for and was given a short adjournment in order to consider the way forward. He then asked that the claimant provide further information about what she alleged Mr Kee had or had not done so that he could prepare further cross-examination of the claimant. The tribunal ordered her to do so by 9 August 2019 and gave the respondent leave to amend the response and for Mr. Kee to prepare a supplementary witness statement (if so advised). The tribunal did not envisage that these steps and any further evidence and submissions could not be concluded in the remaining time available and proceedings ended for that day.

30 On the next day (9 August 2019) Mr. Islam-Choudhury first applied for written reasons for the decision to permit the claimant to amend and for a stay so that the respondent had the opportunity to consider an appeal to the Employment Appeal Tribunal and then that the tribunal recuse itself.

31 The tribunal sets out its reasons for its decision to permit the claimant to

amend her claim in paragraphs 31 to 36 below.

32 Under its general power to regulate its own proceedings and specific case management powers, an Employment Tribunal can consider an application to amend a claim at any stage of the proceedings.

33 The principles in relation to the grant or refusal of an amendment are set out in the case of **Selkent Bus Co Ltd v Moore [1996] ICR 836**. In **Selkent,** the EAT confirmed that the Tribunal should take into account all the circumstances and should balance the injustice and hardship of allowing the amendment against the injustice and hardship of refusing it. What are the relevant circumstances? Whilst it was impossible and undesirable to attempt to list them exhaustively, the EAT considered that the following are relevant:
(a) The nature of the amendment – this can cover a variety of matters such as:
i. the correction of clerical and typing errors;
ii. the additions of factual details to existing allegations;
iii. the addition or substitution of other labels for facts already pleaded;
iv. the making of entirely new factual allegations which change the basis of the existing claim.
(b) The applicability of time limits - if a new complaint or cause of action is proposed to be added by way of amendment, it is essential for the ET to consider whether that complaint is out of time and, if so, whether the time limit should be extended under the applicable statutory provisions.
(c) The timing and manner of the application - it is relevant to consider why the application was not made earlier and why it is now being made: e.g. the discovery of new facts or new information appearing from documents disclosed on discovery.

34 The tribunal reminded itself the claim ,as set out in the claim form is '*not just something to get the ball rolling as an initial document necessary to comply with time limits but which is otherwise free to be augmented by whatever the parties choose to add or subtract merely on their say so'* (Langstaff P in **Chandhok v Tirkey UKEAT/0190/14/KN**).The claimant's claim form does not contain any anything about what part any appeal played in the unfair dismissal claim and disability discrimination complaints she is making since the appeal and its outcome had not occurred at the time she presented her claim to the tribunal. In our judgment the amendment she now applies to make to her disability discrimination complaints is a substantial one, in that it includes an new act (the appeal conducted by Mr Kee) and / or his failure to comply with the duty to make reasonable adjustments as part of those existing complaints .In our judgment even if the appeal and its outcome was the end of conduct extending over a period for the purpose of section 123 (3) (a) EqA complaints about these matters are now very substantially out of time.

35 However, under section 123 (1) (b) EqA tribunals have the power to extend time where they consider it would be just and equitable for time to do so. It is for the claimant to persuade us to exercise our discretion in her favour. She has discharged that burden. She is a litigant in person and did not realise until 8 August 2019 that the appeal was not included as part of her complaints which she understood to encompass the application to her of the respondent's attendance policy in its entirety including appeal. She had not appreciated that she could have brought up the appeal with EJ Britton at the preliminary hearing. There was no evidence before us about what was explored at that hearing other

than the record of it. She has acted as soon as she became aware of the situation. There is no evidence that the cogency of Mr. Kee's evidence has been affected by the delay. The prejudice to the claimant would be substantial; she will be deprived of the opportunity to have the entirety of the application of the respondent's attendance policy considered by the tribunal as part of her disability discrimination complaints (as she believed it would do) but truncated at the point of dismissal. Any prejudice to the respondent however (other than potential delay and legal costs) can be mitigated by the giving the respondent the opportunity to amend its response in relation to the appeal (which already pleaded the fact of the appeal by Mr. Kee though the claimant's claim form was silent about it) and the preparation of a supplementary witness statement by him.

36 As far as the manner and timing of her application is concerned the tribunal has accepted the claimant's explanation why it was made at this very late stage. Although she (like the claimant in **Baldeh**) complained of unfair dismissal and the unfavourable treatment under section 15 EqA was dismissal and under **Baldeh** the outcome of an appeal against dismissal is integral to the overall decision to dismiss ,her claim form had predated the appeal conducted by Mr. Kee and she had not known until this point in the proceedings that amendment was necessary to include this .We do not consider that omission of the appeal from the claimant's witness statement is a relevant circumstance which we should take into account against the claimant as submitted by Mr.Islam-Choudry. Although she did not raise any procedural complaints about the appeal, she had made it clear under cross examination that she did not agree with the outcome and she then cross-examined Mr. Kee about his conduct of the appeal as set out in paragraph 17 above.

37 The tribunal reminds itself that the balance of hardship and injustice is a balancing exercise. It has decided it would be just and equitable to extend time and that that is a forceful (though not determinative) factor in favour of granting permission to amend. The tribunal concludes that the hardship and injustice on the claimant is greater if the amendment was refused than to the respondent if were granted. The application to amend is therefore granted.

38 As far as the application that the tribunal recuse itself is concerned Mr Islam-Choudhury submitted that this was made on the basis of apparent bias. He relied on paragraphs 906 to 915.01 of Harvey on Industrial Relations and Employment Law Division PI Practice and Procedure /1 Employment Tribunals/Y. Procedure at the hearing/ (12) Duty of tribunal to act fairly/ (b) Bias and the appearance of bias.

39 In particular Mr Islam-Choudhury relied on paragraph 11. (d) and (e) of the principles summarised by Burton J in the EAT and approved by the Court of Appeal in **Ansar v Lloyds TSB Bank plc [2006] EWCA Civ 1462**. They were:
*'11. Whilst recognising that each case must be carefully considered on its own facts, a real danger of bias might well be thought to arise (**Locabail** at paragraph 25) if:*
….
(d) on any question at issue in the proceedings before him the judge had expressed views, particularly in the course of the hearing, in such extreme and unbalanced terms as to throw doubt on their ability to try the issue with an objective judicial mind; or
(e) for any other reason, there were real grounds for doubting the ability of the

judge to ignore extraneous considerations, prejudices and predilections and bring an objective judgment that on the issues."

40 Mr. Islam- Choudhury submitted that the factual basis upon which he made his application was at that on day two of the hearing he had cross-examined the claimant and, on the appeal, and she had conceded it was fair and reasonable in the context of the dismissal. It he had put it to her that it was not part of her claim because her appeal had been launched on 23 November 2017 and she had not suggested that the appeal was part of her disability discrimination claim. EJ Britton said that at the preliminary hearing her claim had been explored at great length and detail and she had not said that the appeal was part of her claim of disability discrimination. The tribunal was therefore live to the fact that this was an argument which the respondent was running. When the appeal officer was cross-examined by the tribunal panel a number of questions were asked which went to the issue of whether the claimant had been discriminated against. The tribunal had acted as the claimant's advocate beyond ensuring "equality of arms". Any reasonable person would have found that the tribunal had gone beyond its remit when embarking on that line of questioning because immediately afterwards although there have been no objections the witnesses informed him that they felt the tribunal had become the claimant's advocate. He was an experienced practitioner and was familiar with the way in which tribunal is conducted themselves. He was aware that it was the tribunal's duty to ensure equality of arms and that the claimant's case was properly put but he was not confident that he could say that here because it was not part of the case that the claimant had put ;in fact in his closing submissions he made that very point. The claimant had never asserted in her claim form or in the proceedings that the appeal was discriminatory. She had provided a witness statement and had not made the allegation in it either. She had conceded in reply to his cross examination that although she did not agree with the outcome, the appeal had been conducted in a reasonable and fair manner and that the respondent had been fair to dismiss her for capability. The tribunal had identified the discrimination complaint as extending to the appeal and had acted quite improperly by inviting the claimant to cure a defect in her claim. The tribunal had descended into the arena rather than ensure equality of arms. He asked what a claimant was to do when the tribunal had embarked on detailed questions and then asked, "Do you wish to amend your claim to include what you have heard?" A fair-minded and informed observer would have formed the view that the tribunal was unconsciously biased. It was not an application he made lightly but what had persuaded him was that after the tribunal had invited the claimant to make an application to amend the immediate reaction of his witnesses was that the tribunal was biased. He volunteered that they were not objective but were informed observers. He had taken instructions this morning and the result was this application.

41 The claimant opposed the application. She said she appreciated the assistance she had been given by the tribunal in directing her to the Code of Employment 2011 .She had been upset while giving her evidence and just said yes when asked if the procedure was reasonable but had limited knowledge of employment law and had made a plethora of errors in her witness statement; she had not known what to do and there were lots of matters she did not address. She had been given a fair opportunity to put her case and had been grateful for the opportunity to understand the process and address the issues. She repeated that she had regarded her complaints as not being segregated but all part of one

process.

42 The test for apparent bias is set out in **Porter v Magill [2002] UKHL 67** formulated by Lord Hope of Craighead as follows:

'*The question is whether the fair- minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased*.'

43 Such an observer would be informed of all the relevant circumstances above which include the tribunal's reasoning, the way the final hearing had progressed and the crystallisation of the approach the respondent was taking to the appeal as far as the ambit of the claimant's disability discrimination complaints concerned. They would have in mind the overriding objective (Rule 2 of the Employment Tribunals Rules of Procedure 2013) to which tribunals are required to seek to give effect in interpreting and exercising any power given to it under those Rules. The overriding objective of the Rules is to enable tribunals to deal with cases fairly and justly. Dealing with a case fairly and justly includes, so far as practicable –
'*(a) ensuring that the parties are on an equal footing;*
(b) dealing with cases in ways which are proportionate to the complexity and important of the issues;
(c) avoiding unnecessary formality and seeking flexibility in the proceedings;
(d) avoiding delay, so far as compatible with proper consideration of the issues; and
(e) saving expense.'
They would also be aware of the tribunal's powers under Rule 41 of the Employment Tribunals Rules of Procedure 2013 to put questions to witnesses and to permit amendments. They would know that the former reflects the long standing practice that the tribunal gives assistance to unrepresented parties (like the claimant) and the latter can be made at any time provided the parties have been given the opportunity to set out the grounds of any such application and make any objections . They will also be aware that if assistance is provided the tribunal must not overstep the mark and act (or give the impression of) acting for that party because if it did so it would not be deal with a case fairly or justly.

44 Having regard to those circumstances such an observer would not have concluded either from the fact the tribunal questioned Mr Kee or the content of the questions or the way were they posed to Mr. Kee at the material stage in the proceedings or the way the tribunal approached the question of the amendment of the claimant's claim that there was a real possibility that the tribunal was biased. The respondent's witnesses are neither as objective nor as well-informed as the hypothetical fair minded and informed observer. Such an observer would not have considered the tribunal had descended into the arena and acted as the claimant's advocate, thus going beyond ensuring "equality of arms". The application to recuse is therefore refused.

ORDER

1 The claim is stayed until the date on which the reasons are sent to the parties.

Employment Judge Woffenden
22 August 2019