



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr J F Edwards

**Respondents:** 1. Unite the Union  
2. Miss Jennie Formby  
3. Miss Gail Cartmail  
4. Mr L McCluskey

**Heard at:** Liverpool

**On:** 18 November 2019

**Before:** Employment Judge Robinson  
(sitting alone)

## REPRESENTATION:

**Claimant:** In person

**Respondents:** Mr M Potter of Counsel

# JUDGMENT

The judgment of the Tribunal is as follows:

1. The claimant's application to strike out the respondents' ET3 is refused and dismissed and full reasons have been sent out under separate cover with regard to this matter.

2. With regard to the amendments of the claim, I have allowed the amendments as set out below.

3. With regard to which party should start the proceedings at the full hearing in February I am happy to suggest to the Tribunal panel that the respondents' witnesses give evidence first so that the claimant can get through cross examination, and that the claimant then gives his evidence after the respondent witnesses. I suggest this on the basis that I do not wish to tie the hands of the Employment Judge dealing with the final hearing in Manchester. However, I believe that it will be an appropriate reasonable adjustment in view of the claimant's medical, and full reasons are set out below.

4. The issue with regard to exchange of witness statements and disclosure of documents will be dealt with as per the directions document which is sent under separate cover.

# REASONS

## **Amendments**

1. The claimant presented ten amendments that he wished to raise, which are set out in Part 20 of the supplemental bundle starting at page 5 and finishing at amendment 9 on page 13, and in the bundle supplied to me today at page 60 where his further amendment 10 is set out with (i)-(xii) subparagraphs. With regard to the third and fourth amendment, the respondents accept that those claims can be pursued.

2. I therefore had to deal with eight amendments, namely the first, the second, the fifth, sixth, seventh, eighth, ninth and tenth. Having read the original application and listened to Mr Edwards' and Mr Potter's submissions I came to the following conclusions.

### First amendment

3. The first amendment is simply giving more information to sub paragraph (x) on page 12 on the paper apart in the claimant's original 2018 claim. There is nothing new in this claim save that the claimant now says that the union, via Mr Gillam, pressurised the claimant into dropping his internal complaints. The substance of the claim is therefore contained in the original application to the Tribunal and this new paragraph is simply more details to that claim in the same way as a replied to a request for further particulars would give.

4. There is no prejudice to the respondents, no issues with regard to time limits as the claim was contained in the original application, and applying the guidance in **Selkent Bus Company v Moore** I see no reason why it cannot be classified as simply the additional factual detail to existing allegations.

5. Consequently, I allow the amendment.

### Second Amendment

6. This amendment would be an additional clause which would be inserted after paragraph 42 of the paper apart at page 12 of the original application to the Tribunal. Again, the claimant is simply giving more details of a claim that is already in place. In fact, the amendment assists the respondents because it names Mr Passfield and Miss Nicky Marcus as the two officers of the first respondent who the claimant believes made the decision that his claims had less than a reasonable prospect of success.

7. The respondents have already indicated that both Mr Passfield and Miss Marcus will be giving evidence at the final hearing and they can deal with this matter easily. There is no prejudice to the respondents, and for the same reasons I allow the first amendment, I allow this second amendment.

### Fifth Amendment

8. This complaint is contained in the Scott Schedule which the claimant lodged with the respondents in April 2019. Consequently, the respondents have known about this claim for some time. Indeed, it is simply an amendment which substitutes four lines in the original paper apart annexed to the first application, for a paragraph which had 11 lines. I understand that Mr Potter's position is that there is no such procedure which allows the claimant, once he has had his appeal relating to legal assistance dealt with, which allows the matter to proceed either to the fourth respondent to make a decision on legal support or to allow the fourth respondent to place that issue before the NEC. This is a matter which can easily be dealt with at the final hearing. There is no prejudice to the respondents. The essence of the claimant's complaint, if not contained in the original application, is certainly contained in the Scott Schedule which Employment Judge Ryan asked the claimant to complete, and one assumes that that Judge did so, so that the respondents were able to, more easily, see the allegations being made by the claimant.

9. I therefore allow that amendment to proceed.

#### Sixth Amendment

10. This is allowed also for the same reasons as the fifth amendment. It is more information for the respondents with regard to the claimant's complaint. The claimant has clearly confirmed that this allegation is being made under the umbrella of section 57(2) and (5) of the Equality Act 2010. Again, there is no prejudice to the respondents by having to deal with that matter.

11. For the same reasons as set out in regard to the first amendment, I allow this amendment.

#### Seventh Amendment

12. I allow this amendment for the same reasons as set out with regard to the first amendment. The claimant is giving more information on the same issues that he has raised previously in the ET1 and his Scott Schedule.

13. The claimant does add something more in bold typed in paragraph (i) where he says that the first respondent pressurised him into dropping his internal complaints, but the respondents have known the other allegations, as they were contained in the claimant's original claim form, for some time and therefore I have no hesitation in allowing that amendment.

#### Eighth Amendment

14. This again is further information being provided with regard to a claim that already exists in the original claim form. The claimant was much exercised by the email that he has now seen Nicky Marcus sent on 6 September 2016 (page 96 of the bundle), and his position is that that email shows that, either consciously or subconsciously, Miss Marcus has discriminated against him.

15. I accept that the respondents disagree with Mr Edwards' analysis of that email, but that is something for the final Tribunal to decide. The claim is in time even if it is a new claim because Mr Edwards has only just seen that email in September 2019. The

matter can be cleared up by the final Tribunal hearing evidence from both parties at the final hearing. There is no prejudice to the respondents in allowing that amendment.

16. Consequently, I allow that amendment.

#### Ninth Amendment

17. The ninth amendment relates to the procedure to which I have already referred to above, which relates to the claimant's conviction that once his appeal with regard to legal assistance has been rejected he is entitled, under some form of procedure, to go to Len McCluskey and/or the NEC to have the matter referred to either the General Secretary or the NEC to have his issues dealt with.

18. There is nothing new in this allegation. I accept that the respondents say there is no such procedure and that the claimant is misinterpreting the information that he has. However, there is no prejudice to the respondents and the matter can be cleared up by evidence being given at the final hearing.

19. The respondents have not been surprised by the information contained in that amendment. This amendment is not dissimilar from the sixth amendment which I have already allowed and simply gives more information.

#### Tenth Amendment

20. This amendment is also allowed on the basis that the claimant is simply giving more information with regard to allegations that have already been made in the paper apart in his first Tribunal claim.

21. If one considers paragraph 41(x) you can see that the claimant has always complained about the union departing from standard procedure, the delay with regard to solicitors dealing with his claim. He sets out in more detail claims that have already been made.

22. However, with regard to this amendment I must remind the claimant that Slater and Gordon are not a party to these proceedings, and that his criticism of that firm will not be something which the final Tribunal can deal with. To the extent that he is critical of the legal officers of the first respondent and critical of the way the first respondent, he says, departed from standard procedure, those matters will have to be dealt with regard to the present respondents.

23. Generally, therefore, I accept that the claimant's ten amendments can be pursued.

24. However, I make that judgment with this caveat. The way in which the claimant has presented the amendments is simply another way of making the same allegations but in slightly different language and in a different way.

25. The claimant must beware that, by doing that, he is, potentially, confusing his relatively straightforward claims, which are that for whatever reason (and that is for the final Tribunal to decide) Unite the Union did not proceed with support for some of the claimant's legal claims.

26. I note that Counsel for all the respondents is anxious that there is not “mission creep” here, in the sense that the claimant's claims expand more and more through amendments being applied for.

27. The claimant therefore needs to step back and understand that his claim has now been made, that the hearing is fast approaching and there is still much work to be done to prepare for that final hearing at Manchester.

28. As set out above, further directions have been made in this matter.

### **The Order of Witnesses**

29. My reason for allowing the claimant to give his evidence after the evidence of the respondent witnesses is that taking into account Mr Edwards' medical condition (and I note that Mr Potter says that there is no written medical evidence for me to consider with regard to this application), the claimant will become ever more stressed over the course of a ten day hearing. I understand he has other proceedings he is pursuing in Manchester Employment Tribunal. I do note the respondent's counsel's concern that Mr Edwards may, when giving his evidence, deviate from his evidence in chief when giving his responses in cross examination. I recognise that there is a danger that witnesses for the respondent will have to return to deal with those additional issues. However, that is something which can occur during any hearing.

30. I have accepted that Mr Edwards will find it easier to deal with the cross examination and get that out of the way before he gives his evidence. I did not view this application by Mr Edwards as a tactical way of gaining some sort of advantage; indeed, I could not see what advantage could be gained by witnesses being heard in a different way from convention. In any event the Tribunal is going to have to hear all the evidence before they can make their mind up whether the burden of proof has shifted to the respondent.

31. I see no prejudice to the respondent by dealing with the matter in this way.

32. However, I am conscious that I am treading on the toes, potentially, of the Employment Judge who deals with this matter in Manchester. He or she will have to deal with housekeeping matters with regard to the timings of witness evidence, but it is not beyond the wit of the respondents to arrange for their witnesses to be in place and ready to give evidence in the first week of this hearing to allow Mr Edwards to have his cross examination of those witnesses completed before he gives his evidence. Two of the main witnesses of the respondent will, in any event, be present during the whole ten days as they are parties to the proceedings. I do accept that Miss Formby may not be in attendance and I am also told that Mr McCluskey will definitely not be attending.

33. No further order or direction need be made save for those directions made in the document which has been sent out under separate cover.

Employment Judge Robinson

Date: 21 November 2019

JUDGMENT AND REASONS SENT TO THE PARTIES ON  
6 December 2019

FOR THE TRIBUNAL OFFICE

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