



EMPLOYMENT TRIBUNALS

Claimant: Mr C Lander
Respondent: Incodia International Limited
Heard at: East London Hearing Centre
On Monday 13 July 2020
Before: Employment Judge Elgot

Representation

Claimant: Mr R. Stubbs (Counsel)
Respondent: Mr N. Roberts (Counsel)

JUDGMENT

(Constitution Rules 30 and 34 and Rules of Procedure) Regulations 2013

The Employment Judge gave Judgment as follows: -

1. The Claimant's application dated 25 June 2020 to add Mr. C Huckle, Mr. A Smith and Mr. A Lock as additional individual Respondents to these proceedings is REFUSED.
2. The reasons for this decision are as follows: -
 - 2.1. The three additional Respondents in respect of which this order is sought are senior employees of the Respondent. Mr. Huckle is the Executive Chairman and a statutory Director. Mr. Lock is a statutory Director and the Chief Executive Officer. Mr. Smith's job title is Services Director, he is not a statutory Director.
 - 2.2. The Respondent agrees that it is vicariously liable in law for any acts of discrimination, harassment and victimisation carried out by these employees in the course of their employment. There is no

dispute that the alleged discriminatory conduct occurred in the course of their employment. The Respondent does not seek to invoke the defence under s109(4) Equality Act 2010. In other words, it accepts its liability for the acts of these three employees.

- 2.3. The Respondent is a large organisation with a turnover of approximately £16 million and it has policies of indemnity insurance in place to cover the liability described above. The Respondent accepts that it may be obliged to claim under one or more of its policies of insurance if it is held liable for one or more of the employees' discriminatory conduct.
- 2.4. s110 of the 2010 Act provides for the personal liability of employees. There is no pleaded claim that any of the three proposed additional Respondents has instructed, caused, induced or aided or helped discrimination as defined in ss 111 – 112 of the 2010 Act.
- 2.5. In all the circumstances of this case including consideration of the agreed amendments to the Grounds of Claim and the content of the outcome report in relation to the Claimant's grievance, it is not necessary in the interests of justice to add the three additional Respondents.
- 2.6. The Employment Judge has considered the balance of hardship and injustice and the relevant factors set out in *Selkent Bus Co Limited v Moore* 1996 ICR 836, EAT when considering whether the amendment to add Respondents should be permitted. She declines to make specific findings of fact regarding the applicability of time limits in relation to whether each potential course of action against each of the three individual Respondents is out of time and whether the time limit should be extended. These are matters which as against the original Respondent are to be determined in detail at the substantive hearing over four days in June 2021. There was insufficient time to hear arguments and determine these matters at this Preliminary Hearing listed for two hours. It is sufficient for the purposes of this decision to consider the other relevant factors set out in *Selkent*.
- 2.7. The nature of the amendment is such that there is little prejudice to the Claimant in disallowing this amendment. He will have a comprehensive remedy against the Respondent which accepts liability for the conduct of all three employees and the Respondent is insured for this liability. Respondent's counsel confirmed that the three employees will be key witnesses for the Respondent and will give their evidence at the Hearing and can be cross-examined. They are already intrinsically involved in these proceedings in terms of the information they can give the Tribunal.
- 2.8. There would be hardship and injustice to the Respondent in joining these three employees because it would be faced with the

possibility of the cost of separate representation for them or one or more of them. The length and complexity of the Hearing would be extended. The three proposed Respondents would be exposed to individual prejudice for no apparent advantage to the Claimant. The nature and extent of their alleged “now visible” discriminatory conduct is pleaded fully in the Amended Claim which the Respondent must answer.

- 2.9. In all the circumstances of this case the hardship and injustice to the Respondent outweighs the hardship and injustice to the Claimant and the Claimant’s application is refused.

**Employment Judge Elgot
Date: 20 July 2020**