



## EMPLOYMENT TRIBUNALS

**Claimant** Mr John Ellis  
**Represented by** Mr Frater (consultant)

**Respondents** GB+I Limited  
**Represented by** Mr N Smith (counsel)

**Before:** Employment Judge Cheetham QC

**Preliminary Hearing held on 6 October 2020 at  
London South Employment Tribunal by Cloud Video Platform**

### JUDGMENT

1. With regard to the application to amend the particulars of claim:
  - (i) the claim of indirect disability discrimination is withdrawn;
  - (ii) the amendment to add claims of direct disability discrimination and a failure to make reasonable adjustments is not allowed;
  - (iii) the amendment to add a claim under the Equality Act 2010 s.15 is allowed, as set out below;
  - (iv) the amendment to add a claim of harassment is allowed, as set out below;
  - (v) the application to add the Third, Fourth and Fifth Respondents is refused.
2. The parties are asked to confirm to the Judge within 14 days whether or not they agree with the revisions he has made to the draft amended particulars of claim to reflect this Judgment.

### REASONS

1. *This has been a remote hearing on the papers, which the parties have not objected to. The form of remote hearing was: V - video. A face to face*

*hearing was not held because it was not practicable and the issue of the future determination of the claim could be resolved from the papers. The documents that I was referred to are those contained in the Tribunal case file, an agreed hearing bundle, the Claimant's skeleton argument, notes from financial statements.*

2. The ET1 in this claim was filed on 3 December 2018, at which point the Claimant was unrepresented. It arises out of his employment between 20 January 2016 and 11 September 2018.
3. On 8 April 2019, the Claimant's newly instructed solicitors referred to making an application to amend the claim and they were given permission to do so in a telephone case management hearing on 12 April 2019. EJ Cadney said: "*the claimant has permission to serve an amended ET1 together with an application to amend to the extent that it is necessary*".
4. On 10 May 2019, amended particulars of claim were served. Running to some 18 pages, they amounted to an extensive revision and also sought to add three further Respondents. It is that application to amend that was the subject of this hearing. A further Preliminary Hearing and the Full Merits Hearing have already been listed and directions provided.

### **The law**

5. There was no dispute over the applicable legal principles and, in particular, the well-established guidance provided *in Selkent Bus Co Ltd v Moore* [1996] ICR 836. Mummery LJ referred to the relevant circumstances as including the nature of the amendment, the applicability of time limits and the timing and manner of the application.
6. Mr Frater referred in his skeleton to a number of other authorities by name, but did not cite any particular passages. Mr Smith also referred me to *Ali v Office of National Statistics* [2005] IRLR 201, CA (and see paragraphs 39, 40 in particular).

### **The application**

7. Mr Frater had prepared a skeleton argument, which he developed through his oral submissions. Mr Smith was able to rely upon the detailed response to the application, which he had drafted and which he also developed through his submissions. Rather than separately record their competing submissions, I shall set out my conclusions on the application.
8. As an initial point, the Claimant provided "original" particulars of claim with his ET1. EJ Cadney noted that the claims and the ambit of the claims were not entirely clear, but with all due respect to the Judge, I think it is perfectly clear what the Claimant was complaining about. There are 5 pages of closely typed narrative, plus information in the relevant boxes of the ET1. In essence, he alleges he was forced to resign as a result of the treatment he describes. He refers explicitly to disability discrimination and also

harassment, although he mistakenly references “the Discrimination Act 2010”. As is often the case with claims drafted by litigants in person, there is a clear narrative, but it lacks the legal labels.

9. As I suggested to Mr Frater, this presented him with a problem, because the Claimant had already provided a detailed narrative, which contained explicit allegations. There was no obvious reason why he would not have included within his particulars of claim all of the matters about which he wanted to complain (with or without the correct label).
10. Taking each of the heads of claim in turn, the Respondent accepts that there is a complaint of constructive unfair dismissal on the basis pleaded in the original particulars of claim and also a claim for unlawful deduction of wages.
11. After some discussion, the application in respect of the claim for indirect disability discrimination was withdrawn by Mr Frater.
12. I agree with Mr Smith that the application to amend the claim by adding a complaint of direct discrimination is misconceived and that, in any event, it cannot be extrapolated from the original particulars of claim. During our discussions, I also agreed with Mr Smith that it is very often the case that litigants in person will claim direct disability discrimination, when they mean to bring a claim under the Equality Act 2010 s.15. It is an understandable confusion and the number of complaints that are truly direct disability discrimination will (thankfully) be rare.
13. In this case, the pleaded complaint clearly comes under s.15, namely discrimination arising from disability. The particulars of claim identify two separate complaints under this heading: stalling on the Claimant’s salary and forcing him to cancel insurance. The application to amend is much less specific, wishing to add, “*all of the allegations above under Disability Discrimination*”, which is a reference to the allegations of direct discrimination. However, Mr Smith is correct that these further allegations make little sense in the context of direct discrimination and, in any event, do not reflect the original claim and there is no basis for adding them now, either on **Selkent** principles or “just and equitable” principles. It would be unfair to extend the claim in this way, even if there was some basis for a claim of direct discrimination.
14. The claim for a failure to make reasonable adjustments is, on any view, a new claim. I do not find it anywhere in the original particulars of claim and I can see no reason why the Claimant would not have made reference to it, had he wished to do so. Applying the **Selkent** principles, I am not persuaded that an amendment should be allowed. It would extend the claim considerably and I note that – even now – it would still need further particularisation as to the PCPs. It causes relatively little prejudice to the Claimant, because other parts of his claim will proceed. On the other hand, it prejudices the Respondent by introducing new matters, which will require significant additional evidence.

15. As to harassment, it is accepted that these complaints should proceed as set out at paragraphs 66 and 124 (ii)-(iv) of the amended particulars of claim. I do not allow the amendment set out at paragraph 55, which is new.
16. Turning to the application to add Respondents, there is no basis at all for adding Lee Wakemans as Third Respondent. At most, they were involved in loans and payments, but there was no contractual relationship with Claimant and nothing that suggests they could share liability. The fact that GB+I Ltd., which is the sole surviving Respondent, may not have many assets is not a reason for adding another respondent.
17. As to Mr Wong and Mr Hughes, I accept that accusations were made against them as individuals in the original particulars of claim, but it is almost always the case that allegedly responsible individuals will be named in particulars of claim. However, there is a huge difference between being named in a claim and being a named respondent. It causes prejudice to that individual to add them as a party 18 months after a claim was brought, especially where – as here – the Claimant could quite easily have added them as respondents at the time if he had wished to do so. The Claimant gains very little from adding them now, but they would suffer significant prejudice. The application to add them as Fourth and Fifth Respondents is refused.
18. We agreed that a sensible way forward was for me to amend the amended particulars of claim in the light of the judgment, which I have done by tracking deletions. The parties are then going to confirm to me within 14 days whether they agree with the revisions I have made or, if not, what suggestions they would make.

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Employment Judge S Cheetham QC  
Dated 10 October 2020