



EMPLOYMENT TRIBUNALS

Claimant:
Dr O Iourin

and

Respondent:
The Chancellor, Masters and
Scholars of the University of Oxford

PUBLIC PRELIMINARY HEARING

Heard at: Reading

On: 30 October 2019

Before: Employment Judge Vowles (sitting alone)

Appearances

For the Claimant: In person

For the Respondent: Ms J Danvers, counsel

REASONS FOR THE JUDGMENT SENT TO THE PARTIES ON 6 NOVEMBER 2019 AND REQUESTED BY THE CLAIMANT

1. On 11 July 2019 I made case management orders in respect of this public preliminary hearing today. The case management orders said that this hearing would be held to consider the following:
 - (a) Whether the cases should be consolidated to be heard together;
 - (b) Whether any claims should be struck out as having no reasonable prospect of success or made the subject of a deposit order if they have little prospect of success;
 - (c) Whether the tribunal has jurisdiction to consider any claims which have been presented out of time;
 - (d) The Claimant's application dated 27 February 2019 for reconsideration in case number 3305245/2018;
 - (e) Any other applications by either party; and
 - (f) Whether any further case management orders are necessary for the future conduct of the proceedings.
2. At an earlier preliminary hearing on 12 February 2019 I considered two applications by the Claimant to amend his first claim presented on 27 March 2018. The case management order which records my decisions in

that respect are as follows:

- (1) The application dated 23 October 2018, that is the blue amendment to amend the claim by adding further detail and claims, which was not resisted by the Respondent, was granted;
 - (2) The application dated 12 February 2019, that is the red amendment to further amend the claim by adding further detail and claims, was refused
3. Reasons for those decisions were given orally at the hearing.
 4. On 27 February 2019 the Claimant made an application to reconsider my refusal to allow the red amendments and that document is set out at page 68 of the bundle prepared by the Respondent for this hearing.
 5. On 7 May 2019 the Respondent objected to the application for reconsideration and that is set out at page 220 of the bundle before me today.
 6. So far as the application for reconsideration is concerned which is before me today, but for one matter which I shall come to shortly, that application is refused on the grounds set out in the Respondent's objection. The objection, which I accept, is largely as follows – that there are no interests of justice requiring a reconsideration of the refusal of the red amendments.
 7. On 12 February 2019 I conducted a balancing exercise of the relevant factors. I took into account the interests of justice and the relevant hardships caused to the parties by granting or refusing the application. I took account of the principles set out in the leading case of Selkent Bus Company Ltd v Moore [1996] and I took account of the nature of the amendment, the applicability of time limits, and the timing and manner of the application. There is nothing in the Claimant's application for me to reconsider the red amendments apart from the one matter, which I will come to, which persuades me today to change that decision.
 8. The new claim is a claim which was presented by the Claimant on 14 March 2019 and so it came after my decision on 12 February 2019. I find that that new claim and, in particular paragraphs 123.1 to 123.7 which were gone through in detail today, are seeking to reintroduce the red amendments which were refused on 12 February 2019. The rest of that new claim effectively repeats the original claim presented on 27 March 2018 and is to that extent a duplication. All the matters but for the training event which took place on 18 December 2018 are now out of time. Any new documents seen by the Claimant on or before 23 October 2018 could have been included in his 23 October 2018 amendment which was allowed.
 9. I find that the new claim is as claimed by the Respondent an abuse of process. It is seeking to reintroduce matters which have been excluded. The matters referred to, apart from the 18 December 2018 event, are all out of time. It is, as I have said, a duplication and I have taken account of

the case referred to by the Respondent of Agbenowossi-Koffi v Donvand Ltd [2014] Court of Appeal which stated:

“The question was whether it was oppressive or otherwise an abuse of the process of a court for the Claimant to raise in second proceedings a claim which he could have raised in the first proceedings. The very fact that a defendant is faced with two claims where one could and should have sufficed will often of itself constitute oppression. It is not necessary to show that there has been harassment beyond that which is inherent in the fact of having to face further proceedings.”

10. On that basis, the new claim having been an abuse of process and a duplication of the original claim, is struck out. It is unreasonable and has no reasonable prospect of success.
11. The one matter on which I have decided it is in the interests of justice to allow the application for reconsideration is the allegation regarding the training event on 18 December 2018 and I revoke my decision to refuse the red amendment relating to that matter. That matter was in the red amendment at paragraph 110.6 and it read as follows:

“Intensive one to one training about harassment was chosen for Claimant to ensure to avoid misinterpretation of any physical contacts after 23 years of spotless employment at 63 years old of age instead of apologies to the innocent person. Claimant who proved his innocence from allegations of harassment and suffered severe injustice during the investigation was subjected to mobbing with request to undertake humiliating and insulting him training about harassment. That training was provided by HR officers who were subordinates to Mrs Dawn McNish, accused by Claimant in this claim while [Ms A] did not go through such training after her false statements.”
12. Unlike the other red amendments which could have been included in the 23 October 2018 amendment, the requirement to undergo training, is already in the list of issues at paragraph 1.10 but here the Claimant’s claim is about the nature and the manner of the training. He says it was training about harassment, not about equality and diversity and that is different to the allegation in paragraph 1.10 of the list of issues. That was an allegation that the Claimant had to undergo training and that [Ms A] did not have to go through such training.
13. Additionally, I find that the complaint regarding the 18 December 2018 event was not out of time as at 29 February 2019. I also find that there would be no hardship or no significant hardship to the Respondent by including that amendment because of course the training course attended by the Claimant on 18 December will be documented and the content of such a training course will be available to the Respondent and to those who conducted the training.
14. It follows that paragraph 110.16 of the red amendment will be added to the list of issues as paragraph 1.11.

15. Lastly, the Respondent's application for an anonymity order in respect of [Ms A].

16.

17. I therefore make an order under Rule 50(1)(iii)(b) that the identity of [Ms A] shall not be disclosed to the public at any hearing or in any listing and I also make a restricted reporting order regarding her identity under section 11(6) of the Employment Tribunals Act 1996. That latter provision reads as follows:

"A restricted reporting order means an order-

- (a) Made in exercise of a power conferred by regulations made by virtue of this section; and*
- (b) Prohibiting the publication in Great Britain of identifying matters in a written publication available to the public or in its inclusion in a relevant programme for reception in Great Britain.*

Employment Judge Vowles

Date:07/12/2020

Reasons sent to the parties on

.....07/12/2020.....

T Henry-Yeo

.....
For the Tribunals office