



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr P Roddis

**Respondent:** Sheffield Hallam University

**HELD AT:** Sheffield

**ON:** 23 July 2019

**BEFORE:** Employment Judge Shulman

## REPRESENTATION:

**Claimant:** Mr T Brown, Counsel

**Respondent:** Mr R Gray, the Respondent Solicitor

# JUDGMENT

1. Leave to amend paragraphs 4.2 and 4.6 of the particulars dated 7 June 2019 (particulars) is refused.
2. Leave to amend paragraph 4.5 of the particulars is granted.

# REASONS

## 1. Introduction

- 1.1. This is a preliminary hearing to decide whether amendments claimed contained in the particulars of claim provided by the Claimant on 7 June 2019 (particulars) should be amended.
- 1.2. The Claimant presented his claim on 14 December 2012. For the purposes of any time issues it may be necessary to rehearse the history of and the reasons for the length of time that has passed since 2012 it is not necessary at this time. It is however necessary to say that attached

to the Claimant's representative's letter dated 12 July 2019, prepared for this hearing, is a chronology, which refers to an amended claim provided on 27 February 2013. I have not been able to find a copy of that document. I have found a document dated merely February 2013. I have decided that I can therefore decide this case without the amended claim dated 27 February 2017 because of the way in which the parties have presented this claim. They have named the issues which relate to paragraphs 4.2, 4.5 and 4.6 of the particulars. The argument was limited to those paragraphs. I leave it open to the parties should they feel it appropriate to come back as to whether the amended claim made on 27 February 2013 has bearing on the position, if that document was not the same document as the one dated February 2013.

## 2. Issues

These are contained in paragraph 1.1 above.

## 3. The law

The Tribunal has to have regard to the following:

At the conclusion of the hearing the parties agreed that they did not wish to come back on any legal provisions or precedence to which I have referred in this decision.

- 3.1. The leading case on whether to allow a proposed amendment **Selkent Bus Company Limited v Moore** [1996] ICR 836 EAT (Selkent) when deciding whether to allow an amendment the Tribunal has a complete discretion. In determining whether to grant an application to amend the Tribunal must always carry out a careful balancing exercise of all the relevant factors, having regard to the interest of justice and to the relative hardship that would be caused to the parties, by granting or refusing the amendment.
- 3.2. Relevant factors include (in addition to the interests of justice and relative hardship):
  - 3.2.1. The nature of the amendment – this may encompass more formal amendments as against the making of entirely new factual allegations, which change the basis of the existing claim.
  - 3.2.2. The applicability of time limits – if an amendment comprises new factual allegations the Tribunal must consider whether the allegations are out of time and, if so, whether time should be extended.
  - 3.2.3. The timing and manner of the application – an application should not be refused solely because there has been a delay in making the application. However it is relevant to consider why the application was not made earlier.
- 3.3. The factors set out in paragraph 3.2 above are not exhaustive. The Tribunal may also consider:
  - 3.3.1. The merits of the claim – see for example, **Cooper v Chief Constable of West Yorkshire Police and Another** EAT 0035/06.
  - 3.3.2. The validity of the original claim – see **Cocking v Sandhurst (Stationers) Limited and Another** [1974] ICR 650 NIRC.

- 3.4. Time may be an issue in this case so it is as well to visit the basic principles. Again Tribunals have a wide discretion to admit and extend out of time discrimination claims, where it is just and equitable to do so – see section 123(1)(b) Equality Act 2010. There is no compulsion on a Tribunal to go down a list of factors, including those set out in section 33 Limitation Act 1980, but in *Abertawe Bro Morgannwg University Local Health Board v Morgan* [2018] EWCA Civ 640 CA. It was said that there are almost always factors that are relevant, namely, the length of and the reason for the delay and whether the delay has prejudiced the Respondent.

#### 4. Argument

##### 4.1. The Claimant

###### 4.1.1. Paragraph 4.2

This claim relates to comparative pay between a part-time and a full-time worker. The Claimant says that this is not a new claim and was raised in the claim form by use of the words “these failures form part of a wider pattern of discrimination against me as a part-time worker”. The Claimant says it was also raised in the amended claim dated February 2013, in that the Respondent pays full timers monthly and automatically, but part-timers, as zero contract workers, are obliged to make specific claims, even though their contracts are in reality for a set number of hours. Further the amended claim dated February 2013 said that the Claimant said that the Claimant’s terms and conditions were demonstrably worse, presumably, than those of full-timers.

###### 4.1.2. Paragraph 4.5

This claim related to work taken away from the Claimant. The Claimant says that in the amended claim (presumably of) February 2013 the Claimant claims that he lost work relating to four contracts due to discrimination and then adds a fifth contract in the same document, drawing attention to the insecure nature of the contracts issued to part-time workers. The Claimant adds that paragraph 4.5 (to paragraph 4.1) of the particulars), which of itself alleges that zero hours contracts were only ever issued to part timers. Work under these contracts can be removed from a worker as the employer is under no obligation to provide work. Paragraph 4.5 the Claimant says is a manifestation of what is said in paragraph 4.1.

###### 4.1.3. Paragraph 4.6

This claim relates to statutory holidays and Christmas and Easter university vacations. The Claimant says that the same reference in the claim form a second reference in the amended claim of February 2013, as set out above under paragraph 4.1.1 applies equally to paragraph 4.6.

###### 4.1.4. Selkent

- 4.1.4.1. The Claimant says there was a three year delay between July 2014 and July 2017 relating to the disposal of the Claimant’s appeal in these proceedings.

- 4.1.4.2. The Claimant says that in the intervening period between February 2013 and June 2019 the Respondent never sought further information in respect of the claim.
- 4.1.4.3. The Claimant says if there was a delay the Claimant was not to blame for it.
- 4.1.4.4. The Claimant says the Claimant's complaints are likely to depend more on documentary than oral evidence.

4.2. The Respondent

4.2.1. Paragraph 4.2

The Respondent says that this claim has not hitherto appeared in pleadings and that it is a materially new factual allegation.

4.2.2. Paragraph 4.5

The Respondent says that the claim was originally raised in the claim form but it was not owed in a context of claim under the part-time regulations.

4.2.3. Paragraph 4.6

The Respondent says similarly paragraph 4.2 above and paragraph 4.2.1 are now in relation to paragraph 4.6.

4.2.4. Selkent

- 4.2.4.1. The Respondent says all three claims are out of time.
- 4.2.4.2. The Respondent says too much time (6 and a half years) have passed since the claim was made.
- 4.2.4.3. The Respondent says witnesses' memories have faded. Already there are witnesses that have left the Respondent's employment.
- 4.2.4.4. The Respondent says the Claimant has had numerous opportunities to amend his claim.

**5. Determination of the issues**

(After listening to the factual and legal submissions made by and on behalf of the respective parties):

- 5.1. With regard to paragraph 4.2, there is mention of payment of wages, albeit regarding matters of process, in the claim form at the end of paragraph 5.2 and on page 2c of the amended claim dated February 2013, but these references are not sufficient (of themselves) to make the way for paragraph 4.2 to be a new claim. The documentary arguments upon which the Claimant relies which are set out in paragraph 4.1.1 above insufficiently particularised and/or too general. These factors in themselves are sufficient to allow me not to consider any of the other factors referred to in Selkent. The amendment is refused because paragraph 4.2 contains a new factual allegation.
- 5.2. With regard to paragraph 4.6 of the particulars there is nowhere in the documents any mention of holidays, not even as to process. The documentary arguments upon which the Claimant relies paragraph 4.1.3 above insufficiently particularised and/or far too general. Again these

factors in themselves are sufficient to allow me not to consider any other factors. The claim contains a new factual allegation. The amendment is refused.

- 5.3. The situation with regard to paragraph 4.5 of the particulars is different. Whether the nature of the claim changed, which it may of done, the Respondent was on notice from the outset concerning the Claimant's withdrawal of work, the complaint being in the claim form and so on thereafter. I note that at paragraph 4 of a telephone case management discussion dated 30 January 2013 that Employment Judge Little records the Claimant's loss of work and the same paragraph refers to less favourable treatment. The loss is also referred to in the amended claim dated February 2013 particular under the second paragraph headed "Context".
- 5.4. Taking into account Selkent I am satisfied that paragraph 4.1 of the particulars does link with paragraph 4.5. Paragraph 4.5 if more of a re-labelling (if at all) than a new allegation.
- 5.5. So far as time is concerned, I take into account the points made by the Respondent, but since I have found that the facts in the amendment in paragraph 4.5 were known to the Respondent at the very latest when it received the claim form, I find it just and equitable to extend time to such date as will make the claim in respect of paragraph 4.5 in time.
- 5.6. It is true that there has been delay, but my reasoning is the same as in relation to the extension of time, which I have just granted, namely, that the respondent has been aware of the facts since it received the claim form. Whilst it may have been possible for the Claimant to make the amendment earlier again the Respondent's knowledge of the facts makes it unnecessary for me to consider this.
- 5.7. I have insufficient knowledge of the case to consider the merits and this was not argued before me. Similarly no argument was made as to the validity or otherwise of the claim.
- 5.8. In his written submission the Claimant's representative made reference to vi of the European Convention on Human Rights referring to the Tribunal's obligation and that analysing the Claimant for delay would be a breach of the said article. The Claimant did not argue this at the hearing and I assumed that he decided not to pursue it.
- 5.9. In all the circumstances leave is given so as to allow the amendment paragraph 4.5 of the particulars.

- 5.10. The parties will be notified separately as to a telephone case management hearing to make case management orders and list a final hearing.

Employment Judge Shulman  
Date 1 August 2019

JUDGMENT SENT TO THE PARTIES ON  
7 August 2019

**Public access to employment tribunal decisions**

Judgments and reasons for the judgments are published, in full, online at [www.gov.uk/employment-tribunal-decisions](http://www.gov.uk/employment-tribunal-decisions) shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.