



## EMPLOYMENT TRIBUNALS (SCOTLAND)

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**Case No: 4102240/20 (P)**

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**Held on 18 February 2021**

**Employment Judge N M Hosie**

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**Mr T Aitchison**

**Claimant  
Represented by  
Ms M Javed,  
Solicitor**

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**Common Thread Limited**

**Respondent  
Represented by  
Mr J Lee,  
Solicitor**

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### **JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

The Judgment of the Tribunal is that the claimant's application to amend, by way of further and better particulars attached to the e-mails of 14 August 2020 and 10 November 2020 from the claimant's solicitor, is allowed.

### **REASONS**

#### **Introduction**

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1. This case has something of a history. By e-mail on 14 August 2020 at 14:57, the claimant's solicitor applied to amend the claim to include a complaint in terms of s.103A of the Employment Rights Act 1996 ("the 1996 Act").

**E.T. Z4 (WR)**

2. By e-mail on 25 August 2020 at 10:56 the claimant's solicitor intimated his objection to the amendment application.
3. I issued a Judgment on 20 October 2020 allowing the amendment ("my Judgment"). The reasons for my Judgment are referred to for their terms. In accordance with my direction, at para. 22, by e-mail on 10 November 2020 at 11:42 the claimant's solicitor submitted further and better particulars.
4. By e-mail on 26 November 2020 at 21:56 the respondent's solicitor intimated his objection to the claimant's further and better particulars.
5. By e-mails on 15 February 2021 at 21:02 and 16 February 2021 at 10:02 the respondent's solicitor expanded upon his objections.
6. I conducted a preliminary hearing for case management purposes by telephone conference call on 16 February 2021. It was agreed that I would consider the claimant's amendment application "on the papers" and issue a written Judgment.

## Discussion and decision

7. I was in error, so far as my Judgment was concerned, in not making it clear that my decision to allow the claimant's application to amend was not only in respect of the inclusion of a complaint in terms of s.103A of the 1996 Act, but also the further and better particulars which were attached to the e-mail of 14 August 2020 from the claimant's solicitor.
8. However, I remained of the view that further specification was required. That was why I directed the claimant's solicitor to provide further and better particulars which she did by e-mail on 10 November 2021.

9. When considering the issues with which I was concerned, I also had regard to the “two steps” approach suggested by the respondent’s solicitor in his e-mail of 25 August 2020.

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10. In my Judgment, I took the “second step”, by allowing the addition of a s.103A complaint. However, I did make it clear that I had also determined the “first step” by allowing the claimant’s further and better particulars. At that time these only comprised the attachment to the claimant’s e-mail of 14 August, but now they also comprise the attachment to the e-mail of 10 November.

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11. As I understood the position of the respondent’s solicitor at the preliminary hearing, he maintained that the only “protected disclosure” relied upon was in December 2019 (starting at para. 10 in the claim form).

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12. While it is true that that disclosure is under the heading “**The Protected Disclosure**”, in claim form, in the preceding paragraphs there are a number of allegations about concerns which the claimant allegedly raised with the respondent. It was not clear whether it was also being maintained that these were protected disclosures, but that has now been clarified in the two sets of further and better particulars which the claimant’s solicitor has submitted.

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13. While the respondent’s solicitor complains that he has not received “fair notice”, these alleged “protected disclosures” are detailed in the claim form and indeed the respondent’s solicitor makes specific reference to them in his e-mails of 15 and 16 February 2021.

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14. In the reasons for my Judgment under the heading “**Discussion and decision**” I set out the relevant law which included the guidance in **Selkent Bus Co. Ltd v. Moore** [1996] ICR 836.

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15. Applying that guidance to the issues with which I am now concerned, I am satisfied that the claimant's application to amend in terms of the two sets of further and better particulars should be allowed.

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**"The nature of the amendment"**

16. I am satisfied that the further and better particulars are exactly that. They provide specification of concerns raised allegedly by the claimant and have clarified that these also comprise "protected disclosures".

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**"The applicability of time limits"**

17. The further and better particulars do not introduce a new cause of action. What they do is to provide further specification and clarify the claimant's position.

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**The timing and manner of the application/prejudice and hardship**

18. While there was a delay in submitting the further and better particulars and the claimant has had legal representation throughout, I am satisfied that the delay will not affect the cogency of the evidence.

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19. Further, so far as prejudice/hardship is concerned, any additional expense which may be incurred by the respondent might be addressed by an award of expenses.

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20. On the other hand, were I to refuse the application to amend there is a possibility that justice will not be done as in my view it is necessary to hear all of the evidence about the concerns which the claimant raised, determine whether these amounted to protected disclosures and if so whether these

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disclosures were a factor in the claimant being treated in a detrimental way and dismissed.

21. In my view, the balance of prejudice and hardship favours the claimant.

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22. I decided, therefore, in all the circumstances, to allow the application to amend by including the two sets of further particulars.

23. **I further direct the respondent, therefore, if so advised, to respond in writing to the claim form, as amended, within 14 days, in writing to the Tribunal, copied to the claimant's solicitor.**

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**Employment Judge N Hosie**

**Dated: 25<sup>th</sup> February 2021**

20 **Date sent to parties: 25<sup>th</sup> February 2021**

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