



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Respondent

Ms D E Bader

Allianz Management Services Ltd

and

PRELIMINARY HEARING

Held by CVP on 23 March 2021

Representation

Claimant: In person

Respondent: Mr A. Smith, Counsel

Employment Judge Harrington

JUDGMENT

- (1) The Claimant's applications dated 7 May 2020 and 5 February 2021 are not well founded and are dismissed.
- (2) The Claimant has previously been ordered to pay a deposit of £100 (one hundred pounds) as a condition of being permitted to continue to pursue her allegation of disability discrimination, identified in paragraphs 5 and 6 of EJ Khalil's Order dated 20 August 2020. **The time for paying this deposit is extended until 4.00 p.m. on 30 March 2021.**

REASONS

- 1 This case has a complex and protracted history before the Tribunal. By way of summary, this was the fourth preliminary hearing ('PH') in the proceedings. The previous PHs took place on 30 September 2019, 23 March 2020 and 20 August 2020. At the August 2020 PH, before EJ Khalil, the Claimant's claims for age discrimination, race discrimination and discrimination on grounds of religion or belief were all dismissed upon withdrawal. Further, all but four of the Claimant's claims of disability discrimination were dismissed upon withdrawal. Of the remaining four complaints of disability discrimination, two were dismissed as being presented out of time and the Tribunal did not have jurisdiction to consider them and one was struck out by reason of the Claimant's non-compliance with the Tribunal's Orders and / or because a fair trial was not possible.
- 2 A deposit order was issued in respect of the single remaining complaint of disability discrimination. The remaining claim is referred to in paragraphs 5 and 6 of EJ Khalil's Deposit Order. He refers to the Tribunal not knowing the clear basis of this claim under the Equality Act 2010 and that there is little detail about the claim provided. EJ Khalil determined that there were little reasonable prospects of success to the claim and accordingly ordered that a deposit of £100 be paid in relation to the continuation of that allegation.
- 3 To date, the Claimant has not paid the £100 deposit in respect of the remaining claim of disability discrimination. Regional Employment Judge Freer directed in his letter, dated 15 March 2021, that the time limit for payment of the deposit was extended to seven days after the date on which the Claimant's application to amend is considered and determined.
- 4 At the start of today's hearing, the Claimant made an application to postpone. A similar application had been made by her prior to the hearing and refused by EJ Balogun.
- 5 I also refused the Claimant's application to postpone or adjourn the PH.
- 6 The Claimant made a number of points concerning the continuation of the hearing today. In summary, these were that she objected to personnel from the Respondent being present at the hearing, that she did not have legal representation and she had not had a sufficient opportunity to prepare.
- 7 The Claimant said that the Respondent was attempting to intimidate her. She was unable to identify any particular individual who was intimidating her and, in fact, referred to the fact that she didn't have any names of those people as being part of the act of intimidation. The Claimant also stated that she did not have legal representation and that she was likely to be assisted if she did. It

- was noted that the Claimant had not been legally represented before the Tribunal at any previous hearings and there was no satisfactory information before me today that suggested this would change going forward if the hearing was adjourned.
- 8 The Claimant referred to her sight issues and described how it affected her ability to prepare for the hearing.
- 9 It was noted that as far back as 24 December 2019, today's date had been included in a seven day listing for the hearing of this case. In August 2020, that listing was shortened to two days, again including this date, as a result of a number of the Claimant's claims having been withdrawn, dismissed for lack of jurisdiction and struck out. On 15 March 2021, the Regional Employment Judge determined that today's hearing should proceed to enable the Claimant's applications to be decided and for further case management directions to be made, as appropriate. In this way, the parties have been on notice since December 2019 of a tribunal listing including today's date. They also had a week's notice that today would be used to hear the Claimant's applications those applications being set out across 3 three pages. The Respondent's objection to the first of those applications is set out across two pages.
- 10 Whilst a great number of pages of documents have been collated for this hearing, including an entire supplementary bundle of documents the Claimant considered were required, and there has been a reasonable amount of correspondence between the parties, the applications are reasonably self-contained and do not require consideration of anywhere close to the vast majority of pages in the bundles. Those documents of course may well become relevant at any full merits hearing in this case.
- 11 I considered each of the points the Claimant raised and took account of the overriding objective; to deal with cases fairly and justly including a consideration of a case being dealt with in a proportionate way, avoiding delay and saving expense, so far as compatible with the proper consideration of the issues.
- 12 I concluded that I should proceed to consider the Claimant's applications today. I did not accept that there was a need to adjourn because a limited number of personnel from the Respondent were in attendance at the CVP hearing. In the usual course of events, where a claimant brings a claim against a respondent, relevant employees from the respondent will attend to hear the case against it and, for example, to provide instructions to their legal representatives. There was no cogent information before me to support the Claimant's suggestions of intimidation or, for example, that any specific individual had engaged in specific conduct which affected the Claimant's ability to make her applications today.

- 13 The Claimant had known for a week that today's hearing was due to take place and the subject of the hearing today, her applications, is well known to her. It was also possible for the Tribunal to take frequent and lengthy breaks if required by the Claimant to aid her during the hearing today. The Claimant had also received an electronic copy of the bundles which enabled on-screen magnification of the pages where required.
- 14 In the event, the Tribunal took breaks during the course of the hearing, as required by the Claimant, from 11.38 am – 1.00 p.m. and again between 2.30 p.m. and 2.50 p.m.
- 15 The Claimant made two applications. The first is dated 7 May 2020. The Claimant confirmed that she was referring to three claims in her first application: harassment, indirect disability discrimination and a failure to make reasonable adjustments. She told me that it was not an application to amend because her document dated 7 May 2020 referred only to the claims that were already before the Tribunal at the hearing on 20 August 2020. The Claimant considered the information set out in her 7 May 2020 document as being refinements of claims already in existence and before the Tribunal at the August hearing. The Claimant stated that at the August hearing she was 'hoodwinked' into her claims not proceeding further, save for the single complaint that is the subject of the Deposit Order. For the avoidance of doubt I have not seen any evidence to support the Claimant's assertions that she was hoodwinked, tricked or that matters were hidden from her at previous Tribunal hearings. In the circumstances, rather than concluding that the first application was not properly before me because, for example, it related to claims already withdrawn, struck out or dismissed by the Tribunal in August 2020, I proceeded to give detailed consideration to the Claimant's first application. I concluded that this approach was in the interests of justice.
- 16 The Respondent referred me to the applicable principles in respect of amendment applications. In the first instance, the Tribunal must consider whether an application to amend is properly formulated and sufficiently particularised such that the Respondent can make submissions and know the case it is required to meet (see British Gas Services Ltd v Basra [2014] UKEAT/0194/14/DM. This consideration arises before the factors derived from the well known case of Selkent Bus Co Ltd v Moore [1996] IRLR 661 are considered.
- 17 Mr Smith, Counsel for the Respondent, referred to the lack of necessary particulars in the Claimant's 7 May 2020 document. For example, under the heading 'Allegations', the Claimant referred to harassment by a manager but did not identify the manager, the dates of the alleged harassment or the specific matters relied upon as amounting to harassment beyond being required to return to work and being invited to attend meetings.

- 18 The Claimant told me that she thought her original ET1 could be considered to be a 'rolling claim' and that these matters could 'piggyback'. She has also spent some time throughout today providing me with many details that go beyond her written applications and refer to a wide variety of matters.
- 19 It is well established that a claimant's claim form is not to be regarded as something that just gets the ball rolling and to which matters can be freely added, as a claim proceeds through the Tribunal process. Following detailed consideration, I concluded that the Claimant's harassment claim was not properly particularised. There was insufficient detail and particularisation for me to consider that part of her application further. A degree of certainty is required to enable the parties and the Tribunal to understand the claims raised and this was lacking in respect of the harassment claim.
- 20 With regards to the claims of indirect discrimination and a failure to make reasonable adjustments, I did consider that there was sufficient information in respect of those complaints to progress to a consideration of the factors derived from Selkent.
- 21 I accepted Mr Smith's submission that these two claims are quite separate from the complaint which is identified at paragraphs 5 and 6 of EJ Khalil's decision from the August 2020 hearing. They refer to the provision, criteria or practice of working with the specific computer programme rather than the conduct of two individual managers. In this way, the introduction of these complaints was not a relabelling exercise and greatly expands the issues raised and, accordingly, the evidence both documentary and witness, that is relevant to the issues.
- 22 By the time the application was made, on 5 May 2020, the claims were also out of time. I accept that, at the very latest, time started to run from 5 December 2019, which is the last quoted meeting date in the May 2020 document. The Claimant has not provided any information as to why it took her until 5 May 2020 to make a written application to amend (for the avoidance of doubt, I am not satisfied she made an application to amend prior to 5 May 2020 although she has told me that she referred to these matters at earlier tribunal hearings) or why it would be just and equitable for these claims to proceed out of time.
- 23 Further, with regards to the timing and manner of the application, I accepted Mr Smith's submission that there had been delay by the Claimant in making the application. She did not make the application before the Tribunal at the hearings in September 2019 or March 2020. Further, whilst I was satisfied that there was sufficient detail of the claims to proceed to consider this application in full, I considered it inevitable that further information of the claims was required. This was confirmed by comments from the Claimant and, in particular, her reference to the fact that she was not complaining about a failure to move her to a different department following her request in

- June 2019, as suggested by her written document, because at that stage this request was unrelated to the introduction of the new software. The Claimant also told me that significant further details were needed and 'should be explored fully' in respect of all of these matters.
- 24 Mr Smith also made detailed submissions regarding the balance of hardship in allowing or refusing the application. He referred to the burden on the Respondent of having to amend its ET3, revisit disclosure and witness requirements and the apparent historic nature of the allegations.
- 25 On balance, I refused the Claimant's first application to amend. I concluded that there had been delay in the making of the application, the complaints of indirect discrimination and a failure to make reasonable adjustments are out of time and taking into account all of the relevant considerations in applying the balance of hardship test, the application is not well founded and is dismissed.
- 26 The second application contained in an email from the Claimant dated 5 February 2021, is brief. Having given the content of that email detailed consideration and spent further time hearing supplementary oral submissions from the Claimant on this matter, I do not consider that the application is sufficiently detailed for me to proceed to consider the Selkent factors. The Claimant has set out headlines of claims that can be brought to a Tribunal but has not set out the factual basis for the claims. The Claimant was dismissed for conduct reasons and she has told me today that her complaint is that there was no acknowledgement of her visual disability. It was not clear to me how the Claimant wished to put her case that her dismissal was unfair. In those circumstances, I concluded that the second application to amend was not well founded and it is therefore also dismissed.
- 27 I confirmed to the parties that the effect of my refusal of both of the Claimant's applications was that the time for the Claimant to pay the deposit, as originally ordered by EJ Khalil and extended by REJ Freer, was seven days after today. For the avoidance of any doubt time is extended until **4 p.m. 30 March 2021**. Following payment of the deposit, further case management directions shall be given by the Tribunal (please see Case Management Order below).

CASE MANAGEMENT ORDER

Preliminary Hearing Date

- 28 The case is listed for a Preliminary hearing to consider appropriate case management directions in respect of the single claim of disability discrimination.

- 29 The hearing shall be a private preliminary hearing by CVP video, before an Employment Judge, commencing at 10.00 a.m. on **14 June 2021** or so soon thereafter as possible, with a time estimate of 2 hours.
- 30 It is noted that the Claimant is assisted by any electronic bundle being emailed by the Respondent as PDF attachments. The Respondent is also asked to ensure, so far as is possible, that any PDF attachments are capable of legible reading following magnification.

NOTE:

1. *Failure to comply with an Order may result on summary conviction in a fine of up to £1,000 being imposed upon a person in default under section 7(4) of the Employment Tribunals Act 1996.*
2. *If a person does not comply with Orders made under the Employment Tribunals Rules of Procedure, rule 8 of the Employment Tribunals (Levy Appeals) Rules of Procedure or rule 7 of the Employment Tribunals (Health and Safety - Appeals against Improvement and Prohibition Notices) Rules of Procedure an Employment Judge or Tribunal may:*
 - (a) *make an order in respect of costs or preparation time (if applicable); or*
 - (b) *make an order to strike out the whole or part of the claim or, as the case may be, the response and, where appropriate, order that a respondent be debarred from responding to the claim altogether.*
3. *The Tribunal may also make a further Order (an "Unless Order") providing that unless it is complied with, the claim or, as the case may be, the response shall be struck out on the date of non-compliance without further consideration of the proceedings or the need to give notice under rule 19 or hold a pre-hearing review or a Hearing.*
4. *An Order may be varied or revoked upon application by a person affected by the Order or by an Employment Judge on his own initiative.*
5. *This Order confirms orders made/directions given at a hearing on 23 March 2021.*

Employment Judge Harrington
23 March 2021

