EMPLOYMENT TRIBUNALS

At an Open Attended Preliminary Hearing

By Cloud Video Platform

Claimant: Dr R Nyatando
Respondents: Rolls Royce plc and others

Heard at: Midlands (East) Region by CVP
On: 4 to 7 May 2021
Before: Employment Judge Blackwell (sitting alone)

Representation
Claimant: In person
Respondents: Mr French-Williams, Solicitor

Covid-19 statement:
This was a remote hearing. The parties did not object to the case being heard remotely. The form of remote hearing was V – video. It was not practicable to hold a face-to-face hearing because of the Covid-19 pandemic.

RESERVED JUDGMENT

1. Matters of jurisdiction are best decided at the full hearing.

2. The Claimant's claim of Automatic Unfair Dismissal pursuant to section 100 of the Employment Rights Act 1996 (the 1996 Act) is struck out because it has no reasonable prospect of success.

3. The Claimant's claim of Automatic Unfair Dismissal pursuant to section 104 of the 1996 Act is struck out because it has no reasonable prospect of success.

4. The Claimant's application to amend dated 8 March 2021 is refused.

RESERVED REASONS

1. Dr Nyatando represented herself and gave evidence as to her financial means. Mr French-Williams represented the Respondents and relied on written and oral submissions.

History

2. There have been case management discussions in April and August 2020. I heard a preliminary hearing on 2 December 2020; judgments, reasons and orders were sent to the parties on 15 December 2020.

3. The relevant parts of the summary are paragraphs 2 to 10:

> "2. On 25 November the Respondents made an application to adjourn this hearing on a number of bases including the fact that a bundle had yet to be agreed notwithstanding orders requiring it to be so and the Respondents blamed the Claimant for that position.
>
> 3. Dr Nyatando opposed the application and I note in particular that in her e-mail she stated:
>
> "*Any delay is likely to deteriorate the Claimant's health further*."
>
> 4. I determined to adjourn the claim, the primary reason being that I had underestimated the task that, in particular, the jurisdictional point entails. Which meant that there was no prospect whatsoever of dealing with the issues to be determined in the time available.
>
> 5. We then went on to consider how best to progress the matter to an adjourned hearing. I drew to Dr Nyatando's attention the fact that in addition to the resumed Preliminary Hearing the full hearing was likely to last some weeks and that Dr Nyatando would be cross examined over a period of many days. I have listed that final hearing for January of 2022 for a period of 8 weeks.
>
> 6. In the light of that I reminded Dr Nyatando of the availability of Judicial Mediation and asked her to reflect on whether she wishes to engage in Judicial Mediation.
>
> 7. We reflected on the enormous size of the bundle submitted for today's hearing. I made it clear that for the resumed hearing only relevant documents should form a part of a new bundle. Those documents will plainly include the pleadings and schedules at present pages 1 to 926 of the Respondents' bundle for today. Further documents relevant to Dr Nyatando's health insofar as they concern her ability to bring claims in time would also be relevant. I set out again Section 123 of the Equality Act 2010 for Dr Nyatando to reflect on in considering what is relevant to the out of time issues.
>
> ***"123 Time limits***
>
> *(1) Subject to sections 140A and 140B proceedings on a complaint within section 120 may not be brought after the end of—*
>
> *(a) the period of 3 months starting with the date of the act to which the complaint relates, or*

(b) such other period as the employment tribunal thinks just and equitable.

(2) Proceedings may not be brought in reliance on section 121(1) after the end of—

(a) the period of 6 months starting with the date of the act to which the proceedings relate, or

(b) such other period as the employment tribunal thinks just and equitable.

(3) For the purposes of this section—

(a) conduct extending over a period is to be treated as done at the end of the period;

(b) failure to do something is to be treated as occurring when the person in question decided on it.

(4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—

(a) when P does an act inconsistent with doing it, or

(b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it."

8. We also discussed the schedule containing the Respondents' case on the out of time issues and Dr Nyatando's response. It was agreed that the schedule should be stripped of those matters that do not have out of time issues and thus reformatted and agreed. Dr Nyatando pointed out that a column in the schedule had been removed referring to relevant Protected Acts. Mr French-Williams agreed to reinstate the reference to Protected Acts in column one of the schedule.

9. We also discussed claims 43 and 44 set out on pages 922 and 923 of the existing bundle and I made it clear to Dr Nyatando that if her intention is to bring forward a claim in relation to a discriminatory act that occurred after the date on which her second claim form was served ie 15 March 2020 then she would need formally to apply to the Tribunal to amend her claim.

10. We also covered a point relating to the three named individual Respondents. It was agreed that those named individuals would only be required to answer to such claims where they are specifically named."

4. As to the orders, orders 1 and 3 are relevant:

"1. The Preliminary Hearing will determine the following issues:-

1.1 Whether the Tribunal has jurisdiction to hear any or all of Dr Nyatando's claims of discrimination having regard to Section 123 of the Equality Act 2010.

1.2 Whether having regard to the provisions of Rule 37 of the first schedule of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, Dr Nyatando's claims of automatic unfair dismissal should be struck out as having no reasonable prospect of success.

1.3 Whether having regard to the provisions of Rule 39 of the said first schedule Dr Nyatando should be ordered to pay a deposit not exceeding £1,000 as a condition of continuing to advance her allegations of automatic unfair dismissal.

3. The parties shall agree a bundle of documents which is relevant only to the issues to be determined in the Preliminary Hearing. That bundle is to be agreed by not later than 19 February 2021."

5. Once again, the parties did not comply with order number 3. There was fault on both sides but it seems to me predominantly with Dr Nyatando. I would remind the parties that it is their duty to assist the tribunal. This, in my experience, is a most complex and difficult case and it badly needs the co-operation of the parties which, from now on, is to be expected.

6. As a consequence of the failure to agree a bundle, I am predominantly using the bundle provided by the Respondents and, unless otherwise stated, references to page numbers are in that bundle.

7. Having read the pleadings, the Scott Schedules and much of the relevant correspondence, I am of the view that Dr Nyatando is in danger of obscuring the real issues in this case by pursuing a number of peripheral claims that, in my judgement, are unlikely to succeed, ie

- a failure to make reasonable adjustments
- indirect discrimination on the grounds of sex, race and disability
- victimisation insofar as it predates the bringing of the first Claim Form on 11 April 2019.

8. In relation to the failure to make reasonable adjustments and indirect discrimination, I say unlikely to succeed because none of the provisions, criteria or practices pleaded in the Scott Schedules is likely to be upheld as a qualifying PCP. They appear to be of the nature of one-off events applying only to Dr Nyatando and not having the necessary element of repetition.

9. In relation to victimisation, I say unlikely to succeed because it would be difficult to prove the causal link between the grievances of 2014 and 2017 and subsequent alleged detrimental treatment.

10. I discussed with Dr Nyatando the nature of her claim. In my view, the essence of her claim is that a succession of line managers did not give her project work commensurate with her qualifications and experience. As a consequence, that led to her failure to progress and obtain promotion. There are of course a multitude of other allegations against her line managers but, if they are anything at all, they are allegations of direct discrimination on the basis of either race or sex and once Dr Nyatando can prove that the Respondents either knew or ought to have known of her disability Unfavourable Treatment pursuant to section 15 of the Equality Act, it seems highly unlikely that such knowledge, either actual or constructive, is unlikely to be proved prior to Dr Nyatando's absence from work between July and October 2018.

11. Generally, after her return to work in October 2018 her complaints concern a failure to support her return to work and the general conduct of her line manager and HR personnel, in particular Ms Needham. Again, it seems to me that those complaints are of direct race/sex discrimination.

12. At the time that I set down the jurisdiction issue, ie issue number 1, I had not read the documents in the bundle nor had a I read the documents in earlier bundles to which Dr Nyatando drew my attention, nor had I read the parties' submissions on the jurisdictional point. Thus, there has been a material change in circumstances which, in my view, means that it would not be appropriate to consider the striking out of any of Dr Nyatando's claims on the basis that they are out of time.

Issue one - Jurisdiction

13. **Section 123 – Equality Act 2010**

> *"**123 Time limits***
>
> *(1) Subject to section 140B proceedings on a complaint within section 120 may not be brought after the end of—*
>
> *(a) the period of 3 months starting with the date of the act to which the complaint relates, or*
>
> *(b) such other period as the employment tribunal thinks just and equitable.*
>
> *(2) Proceedings may not be brought in reliance on section 121(1) after the end of—*
>
> *(a) the period of 6 months starting with the date of the act to which the proceedings relate, or*
>
> *(b) such other period as the employment tribunal thinks just*

and equitable.

(3) For the purposes of this section—

(a) conduct extending over a period is to be treated as done at the end of the period;

(b) failure to do something is to be treated as occurring when the person in question decided on it.

(4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—

(a) when P does an act inconsistent with doing it, or

(b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it."

14. This is effectively the Respondents' application. Mr French-Williams in his helpful written submissions set out by way of background the claims of discrimination being brought Dr Nyatando brings claims of direct discrimination, indirect discrimination. Mr French-Williams submits as follows:

"…

2.9 The Claimant's Particulars of Claim cite various alleged act/omissions/events going back a number of years into the history of the Claimant's employment with the First Respondent (with some of the alleged acts of discrimination relied upon dating as far back as November 2012).

2.10 The Claimant asserts that she has suffered discrimination and detrimental treatment at the hands of a significant number of the First Respondent's employees, alleging detriments including resistance to promotion, hampering of her career progression, removal of responsibilities, sexual harassment, bullying and harassment because of race and sex, disability discrimination and a failure to make reasonable adjustments. Allegations are made against numerous individuals who have held line management responsibility for the Claimant, or who have become involved in seeking to help resolve the Claimant's grievances or support the Claimant in returning to work following her extensive periods of sickness absence.

…"

15. Mr French-Williams goes on to draw my attention to three grievances which were raised by the Claimant between 2014 and 2017. The first was raised on 10 April 2014 and related to claims of bullying, intimidation and discriminatory behaviour by her line manager, Mr K Devendra. That grievance was partially upheld (see pages 863 to 867) but the grievance relating to bullying, harassment and any form of unlawful discrimination was not upheld.

16. On 30 September 2016, a grievance concerning a sexual assault on the Claimant was raised in that a male colleague squeezed Dr Nyantando's thigh during a training course. That grievance was upheld, finding as a fact that that event had occurred. Dr Nyatando was not happy with the outcome and appealed it and, as a consequence, a revised grievance outcome was issued.

17. On 10 July 2017, a third grievance was raised. This concerned the behaviour of Dr Nyatando's then line manager, Ms E Morse. The grievance was not upheld though it noted that unfortunate and inappropriate language was used by both Ms Morse and Dr Nyatando.

18. Dr Nyatando used all three levels of appeal open to her in accordance with the Respondents' policies. Mr French-Williams further submits:

> "*…*
>
> *2.15 The Claimant appears to simply assert that anything that has happened over the course of her employment with which she now takes issue (going back in some instances to 2012) must have happened by reason of discrimination. The Respondents submit that not only are a significant number of these claims/allegations substantially out of time, and wholly unconnected to any of the three grievances raised by the Claimant, but the Claimant has disclosed no evidence whatsoever to support them.*
>
> *…*
>
> *2.21 Therefore, the Respondents restate their request that the claims be struck out as being out of time. The ET is reminded of the words of Mummery LJ where he stated "Attempts must be made by all concerned to keep the discrimination proceedings within reasonable bounds by concentrating on the most serious and the more recent allegations". (Commissioner of Police of the Metropolis v Hendricks [2003] I.C.R 530).*
>
> *…"*

19. Dr Nyatando, made both oral and written submissions. Her principal submission was that I should look at the picture as a whole and not just those issues that the Respondents have labelled as having time issues. I have done this by looking at the Scott Schedule submitted for the December hearing.

20. Dr Nyatando further submits, at paragraphs 2(d) and (f) of her written submissions as follows:

> "*On several instances, the Respondents have attempted to divide single declared claims into separate and discrete claims. The Claimant objects to this and in response reiterates that these are continuing acts where linkages provided per her Scott Schedules outlined not only the onset of acts or claims but also define continuation of these acts of claims, even with for instance the*

changing hands of consecutive line managers or responsible persons.

The Claimant submits that all claims are in time, either as themselves or are in time or are linked by similar or the same circumstances, common personalities, continuation of acts, which in themselves gave birth to further discriminatory acts at the hand of the First Respondent's management and consecutive managers to the Claimant culminating in the dismissal of the Claimant."

21. In oral submissions, she also referred me to the disclosure of information in January 2019 of further documents of which she had no previous knowledge, that disclosure being as a consequence of a Subject Access Request.

22. Dr Nyatando also drew my attention to the case of ***Tarn v Hughes [UKEAT/0064/18/DM*** which concerned an order by an employment tribunal requiring the Claimant to select the most recent and serious ten events relied upon as giving rise to the Claimant's complaints and on which the tribunal is required to make findings of fact and determination. In that case, the EAT said that such orders should only be made with great caution.

23. It is abundantly clear that in order to deal with numerous allegations going back as far as November 2012, the Respondents will be put to considerable work and considerable expense. By the time the full hearing takes place, some of the events will be nearly 10 years old. However, I note that there is comprehensive documentation in relation to the three formal grievances. Further, Mr French-Williams did not submit that a fair trial was not possible nor did he indicate that any of the witnesses listed in the Respondents' Response would not be available to give evidence.

24. The crucial question in relation to jurisdiction is whether there is conduct extending over the period from November 2012 to Dr Nyatando's dismissal.

25. It seems to me that that decision is best left to the full hearing once that hearing has established which, if any, of the acts or omissions complained of are discriminatory. I therefore decline to make any order as to jurisdiction.

<u>Issues 2 and 3 – Strike out/deposit</u>

26. **Rules 37 and 39 Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013**

*"**Striking out***

37.—(1) At any stage of the proceedings, either on its own initiative or on the application of a party, a Tribunal may strike out all or part of a claim or response on any of the following grounds—

(a) that it is scandalous or vexatious or has no reasonable prospect of success;

(b) that the manner in which the proceedings have been

conducted by or on behalf of the claimant or the respondent (as the case may be) has been scandalous, unreasonable or vexatious;

(c) for non-compliance with any of these Rules or with an order of the Tribunal;

(d) that it has not been actively pursued;

(e) that the Tribunal considers that it is no longer possible to have a fair hearing in respect of the claim or response (or the part to be struck out).

(2) A claim or response may not be struck out unless the party in question has been given a reasonable opportunity to make representations, either in writing or, if requested by the party, at a hearing.

(3) Where a response is struck out, the effect shall be as if no response had been presented, as set out in rule 21 above."

"*Deposit orders*

39.—(1) Where at a preliminary hearing (under rule 53) the Tribunal considers that any specific allegation or argument in a claim or response has little reasonable prospect of success, it may make an order requiring a party ("the paying party") to pay a deposit not exceeding £1,000 as a condition of continuing to advance that allegation or argument.

(2) The Tribunal shall make reasonable enquiries into the paying party's ability to pay the deposit and have regard to any such information when deciding the amount of the deposit.

(3) The Tribunal's reasons for making the deposit order shall be provided with the order and the paying party must be notified about the potential consequences of the order.

(4) If the paying party fails to pay the deposit by the date specified the specific allegation or argument to which the deposit order relates shall be struck out. Where a response is struck out, the consequences shall be as if no response had been presented, as set out in rule 21.

(5) If the Tribunal at any stage following the making of a deposit order decides the specific allegation or argument against the paying party for substantially the reasons given in the deposit order—

(a) the paying party shall be treated as having acted unreasonably in pursuing that specific allegation or argument for the purpose of rule 76, unless the contrary is shown; and

(b) the deposit shall be paid to the other party (or, if there is more than one, to such other party or parties as the Tribunal orders),

otherwise the deposit shall be refunded.

(6) If a deposit has been paid to a party under paragraph (5)(b) and a costs or preparation time order has been made against the paying party in favour of the party who received the deposit, the amount of the deposit shall count towards the settlement of that order."

27. The claims of automatic unfair dismissal being brought by Dr Nyatando are pursuant to:-

a) **Section 100 of the Employment Rights Act 1996**

*"**100 Health and safety cases.***

(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that—

(a) having been designated by the employer to carry out activities in connection with preventing or reducing risks to health and safety at work, the employee carried out (or proposed to carry out) any such activities,

(b) being a representative of workers on matters of health and safety at work or member of a safety committee—

(i) in accordance with arrangements established under or by virtue of any enactment, or

(ii) by reason of being acknowledged as such by the employer,

the employee performed (or proposed to perform) any functions as such a representative or a member of such a committee,

(c) being an employee at a place where—

(i) there was no such representative or safety committee, or

(ii) there was such a representative or safety

committee but it was not reasonably practicable for the employee to raise the matter by those means,

he brought to his employer's attention, by reasonable means, circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health or safety,

(d) in circumstances of danger which the employee reasonably believed to be serious and imminent and which he could not reasonably have been expected to avert, he left (or proposed to leave) or (while the danger persisted) refused to return to his place of work or any dangerous part of his place of work, or

(e) in circumstances of danger which the employee reasonably believed to be serious and imminent, he took (or proposed to take) appropriate steps to protect himself or other persons from the danger."

b) **Section 103A**

"*103A Protected disclosure.*

An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure."

c) **Assertion of a statutory right – Section 104**

"*104 Assertion of statutory right*.

(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee—

(a) brought proceedings against the employer to enforce a right of his which is a relevant statutory right, or

(b) alleged that the employer had infringed a right of his which is a relevant statutory right.

(2) It is immaterial for the purposes of subsection (1)—

(a) whether or not the employee has the right, or

(b) whether or not the right has been infringed;

but, for that subsection to apply, the claim to the right and that it has been infringed must be made in good faith.

(3) It is sufficient for subsection (1) to apply that the employee, without specifying the right, made it reasonably clear to the employer what the right claimed to have been infringed was.

(4) The following are relevant statutory rights for the purposes of this section—

(a) any right conferred by this Act for which the remedy for its infringement is by way of a complaint or reference to an employment tribunal,

(b) the right conferred by section 86 of this Act,

(c) the rights conferred by sections 68, 86, 146, 168, 169 and 170 of the Trade Union and Labour Relations (Consolidation) Act 1992 (deductions from pay, union activities and time off)

(d) the rights conferred by the Working Time Regulations 1998, the Merchant Shipping (Working Time: Inland Waterway) Regulations 2003, and

(e) the rights conferred by the Transfer of Undertakings (Protection of Employment) Regulations 2006.]

(5) In this section any reference to an employer includes, where the right in question is conferred by section 63A, the principal (within the meaning of section 63A(3)).”

Section103A

28. In relation to dismissal for making a protected disclosure, there is no Scott Schedule relating to that claim, nor are there any further and better particulars. It is therefore inappropriate to consider either striking out or ordering a deposit in those circumstances.

Section 100

29. In relation to the Section 100 and section 104A claims, there are sufficient particulars set out in Dr Nyatando’s submissions and in the Claim Forms.

30. Dealing with section 100, Dr Nyatando relies upon requesting risk assessments and requesting the aid of a health and safety representative in assisting with identification of the management and prevention of further issues of harassment and bullying. These requests seem to have largely arisen in relation to Dr Nyatando’s return to work in late 2018. In that regard, she had the assistance of Solicitor’s Slater

and Gordon and I accept that they were advising her in relation to the issue of returning to work.

31. Those matters may come within the definition set out in subsection (1)(c), although (i) and (ii) would need to be satisfied as preconditions. There is reference to the existence of Health and Safety Representatives in correspondence between the parties It seems to me that the difficulty for Dr Nyatando will be establishing that her raising those matters was the reason or, if more than one, the principal reason for her dismissal. I consider that on the basis of the documentary evidence that I have seen, this claim has no reasonable prospect of success and it should therefore be struck out.

Section 104

32. The claim in relation to the assertion of a statutory right. Dr Nyatando would need to establish that the statutory right being asserted falls within subsection (4) of section 104.

33. In her written submissions, Dr Nyatando lists seven statutory rights. In my judgement, the only right that falls within subsection (4) is the right to paid holiday.

34. However, there is no evidence that Dr Nyatando asserted such a right and, even if she did, there is once again the problem of causation. Again, on the basis of the documentation that I have seen, including that to which Dr Nyatando has referred me, there is no reasonable prospect of the link between the assertion of a right to holiday and the subsequent dismissal. This claim should also be struck out.

Application to amend

35. This issue was added to today's proceedings by an Order of EJ Adkinson at page 853. I should also note that he refused Dr Nyatando permission to add further Respondents to the proceedings and his decision was formalised in a document sent to the parties on 4 May.

36. Dr Nyatando's application begins at page 835 and was made on 8 March 2021.

37. Its effect is to add to the ongoing proceedings paragraphs 43 and 44, which are set out at pages 417 and 418. That document was submitted on 29 June 2020 and was subsequently responded to by the Respondents and their response is also set out on pages 417 onwards.

38. By letter of 15 March, beginning at page 841, Mr French-Williams objected to the application to amend.

39. Case law establishes that a number of factors are relevant to the consideration of an application to amend. They are the nature of the amendment, the applicability of time limits, the timing and manner of the application to amend and the balance of hardship in either allowing or refusing the application. The overall context in which the application to amend must also always be taken into account.

40. It is common ground that both paragraphs 43 and 44 relate to events occurring after the submission of Dr Nyatando's second Claim Form on 11 March 2020. It is common ground that the refusal of Dr Nyantando's appeal against her dismissal was sent to her on 31 March 2020.

41. In summary, paragraph 44 refers to an ongoing failure to disclose documents subsequent to the refusal of the appeal.

42. Thus, the nature of the amendment is to include matters subsequent to the service of the second Claim Form. In principal, that is permissible so as to avoid the commencement of new proceedings.

43. As to the applicability of time limits, it seems to me that this has to be considered in accordance with my decision set out above as to jurisdiction.

44. As part of the hearing which took place on 2 December 2020, is recorded at paragraph 9 on page 563 the following:

> "*9. We also discussed claims 43 and 44 set out on pages 922 and 923 of the existing bundle and I made it clear to Dr Nyatando that if her intention is to bring forward a claim in relation to a discriminatory act that occurred after the date on which her second claim form was served ie 15 March 2020 then she would need formally to apply to the Tribunal to amend her claim.*"

Conclusions

45. Dr Nyatando is a litigant in person who has a number of mental impairments that render her disabled within the meaning of the Equality Act 2010. One of the consequences of that disability she says is that her concentration is affected and I accept that contention for the purpose of determining this issue. On the other hand, Dr Nyatando is highly intelligent and has submitted in recent months a number of well-argued documents, including an application for a reconsideration of my Judgment sent to the parties on 15 December 2020 and an application to the Employment Appeal Tribunal.

46. She submits that paragraphs 43 and 44 are simply a continuation of the discriminatory behaviour of the Respondents.

47. She further submits that those paragraphs were set out in the Scott Schedule and supplied to the Respondents in June 2020 and were thus, technically, in time.

48. She further submits that the inconvenience to the Respondents is limited.

49. She also argues that she will suffer considerable disadvantage if she is not able to pursue the matters set out in her application, partly because she will not be able to pursue the allegation that the Respondents blacklisted her with potential employers. It seems to me that if that were the case, that would be a matter that would be capable of being dealt with as part of a remedy hearing should Dr Nyatando be successful following the final hearing.

50. Mr French-Williams submits, as is the case, that Dr Nyatando has waited some 12 months since learning of the outcome of the appeal. Further, that the refusal of the application would not unduly prejudice Dr Nyatando since she would still be able to pursue all claims up to and including her dismissal.

51. He further submits that there is no evidence that Dr Nyatando's ill-health has been a factor in the delay.

52. The balance of hardship and injustice is to be given appropriate weight. The refusal of the application will prevent Dr Nyatando from pursuing matters post dismissal. However, if she is not able to establish that the Respondents' behaviour has been discriminatory between 2012 and her dismissal in 2019, it does not seem to me that it is likely that the handling and the outcome of the appeal will make any significant difference to her prospects of success.

53. The disadvantage to the Respondents is relatively limited in the context of this claim. It would involve the individual who heard the appeal and an investigation of the appeal process and its supporting documentation.

54. As to the application's context, I have read the pleadings and all of the voluminous Scott Schedules. On balance, I do not consider that it is in the interests of justice to allow the amendment and it is refused.

Employment Judge Blackwell

Date: 25 May 2021