



EMPLOYMENT TRIBUNALS

Claimant: Miss E Lee

Respondent: Carers Support West Sussex

RECORD OF A PRELIMINARY HEARING

Heard at: London South Employment Tribunal (by CVP)

On: 16 and 18 March 2021

Before: Employment Judge Kelly (sitting alone)

Appearances

For the claimant: In person

For the respondent: Mr O'Kane, consultant

REASONS

1. By email of 28 April 2021, the respondent applied to the Tribunal in relation to the orders sent out on 26/04/2021 following the hearing of 16&18/03/2021, requesting written reasons in respect of the refusal of the applications made by the respondent regarding postponement and strike out as well as the decisions in relation to which parts of the claimant's application to amend were allowed and which failed.
2. On the first day of the hearing, the Tribunal heard evidence and submissions on whether the claimant had a disability under the Equality Act 2010 at the relevant time. The Tribunal determined that the claimant did have such a disability. We then dismissed the claimant's unfair dismissal claim because she did not have the requisite qualifying service.
3. We then went on to consider the disability discrimination issues which required us to consider the claimant's Further Particulars of disability discrimination supplied further to an order of the Tribunal of 14 August 2020 which set out, at order 1.1, what those particulars should contain. We also considered an application to amend her claim provided by the claimant further to Order 1.2 of that order. This process began on the morning of 16 March. The hearing having only been allocated a half day, it was agreed that it would continue on the afternoon of 18 March. We asked the respondent to state whether it was

contesting the points raised by the claimant on 18 March. The respondent raised no objection to this

4. The Tribunal received a letter from the respondent on 17 March making various applications including:
 - a. Applying for a postponement of the hearing agreed for 18 March on the grounds that it could not take instructions to say whether or not it contested the points raised by the claimant in time for 18 March. We accepted that the respondent should not be required to provide such information so quickly if it could not take instructions in the time frame. We did not grant the postponement application because we allowed the respondent more time after the hearing to reply to the claimant's allegations in an amended response. This provided a solution to the issue which did not require a postponement.
 - b. Applying for the claim to be struck out for non compliance of order 1.1 of 14 August 2020 in that the claimant had not particularised her claim in the manner set out in the order. We rejected this application on the grounds that the failure of an unrepresented party with a mental health disability to comply fully with an order to provide particulars did not warrant strike out of the claim.

Decision on amendment application

5. The respondent objected to the claimant including as issues in the claim those arising from certain factual matters in her Further Particulars because it said they were not pleaded in the claim form and required a successful amendment application.
6. In making our decision on amendment (both in relation to the Further Particulars and the application to amend), we relied on the principles in *Selkent Bus Company v Moore EAT*.
7. The Tribunal refused to allow the claimant to amend her claim to add the factual matters referred to in the following sections of the Further Particulars: Section 8i, 8v, 10, 14 because the claim was out of time, the claimant had not provide a satisfactory explanation for the delay (just that she did not realise she had to put everything she relied on in her claim form), and the passage of time meant that the respondent would be unfairly prejudiced in having to ask witnesses to remember the events at this stage.
8. The Tribunal refused to allow the claimant to amend her claim to provide examples of bullying and criticism as referred to in line 4 of section 8.2 of the claim form (as at Further Particulars 8ii, 8iv, 12, 13) because they all contained new factual allegations of which the respondent was not aware and were not raised until about 12 months after the event, the respondent would be prejudiced in terms of attempting to get evidence after the delay, and they would significantly widen the necessary investigation to be carried out.
9. The Tribunal allowed the claimant to amend her claim to add the withholding or delaying of a reference as a victimisation claim because the claimant tried to

raise the amendment at the hearing in August 2020, at which point, it was in time.

10. The Tribunal refused to allow the claimant to amend her claim to add a claim of sex discrimination. The claim was out of time. The claimant knew of the issue when she presented her claim. This was an entirely new claim, there being no claim for sex discrimination on the claim form. The claimant had substantial disability discrimination claims to be considered and, even if she succeeded in her sex discrimination claim, she would only likely be awarded compensation in the lowest Vento band so that we did not consider that the claim would add substantially to her potential level of compensation and it would not be proportionate to add it.
11. The rest of the information in the Further Particulars either related to actual matters referred to in the claim form or did not constitute a factual matter relied on to form the basis of the claim.

Employment Judge Kelly

Signed on: 12 May 2021