



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr C Smith  
**Respondent:** Nottingham City Transport

**Heard at:** Midlands (East) Region - attended at Nottingham  
**On:** Wednesday 1 September 2021  
**Before:** Employment Judge P Britton  
**Members:** Mr R Jones  
Mr J D Hill

## Representation

**Claimant:** In person  
**Respondent:** Mr K McInerny of Counsel

# JUDGMENT ON A PRELIMINARY POINT

The application of the Claimant to amend the current claims is refused.

# REASONS

1. A preliminary point arose this afternoon as to whether or not the Claimant can bring as a head of claim, in effect as per paragraph 82 of his witness statement dated 10 August 2021, a claim against Gary Mason of harassment as a label although it could also be victimisation or unfavourable treatment in all respects pursuant to the Equality Act 2010, and relating to Mr Mason's involvement in hearing the second stage of the Claimant's second grievance in December 2018. There is currently no such claim before us. Thus the Claimant needs leave to amend.
2. The Respondent opposes this very late application.
3. Suffice it to say that this therefore engages the well-known principles as

to whether or not to grant an amendment pursuant to **Selkent Bus Co Ltd v Moore [1996] ICR 836 EAT** per Mr Justice Mummery, as he then was.

4. In short summary, the tribunal finds as follows.
5. Post the Claimant bringing his claim (ET1) to the tribunal on 7 February 2019, it has had the most extensive case management, indeed at least five case management hearings and four preliminary hearings. By June 2020, the Claimant was represented by Mr Benson of the Nottingham Law Centre. He is known to the employment tribunals as of high competence, being a retired partner from a senior law firm in Nottingham with an extensive litigation practice. For some years now he has given his services pro bono on some cases which are before the tribunal.
6. So, in came Mr Benson. He assisted the Claimant at the two following preliminary hearings before Employment Judge Heap, who is herself very experienced. Prior to his involvement, she could not have tried harder, as did her colleagues who case managed this matter prior thereto, in trying to get the Claimant to focus his claims and put them into a clear pleaded format.
7. Suffice it to say that coming out of all of that, by 1 July 2021 Mr Benson was able to send the tribunal and the Respondent, copying the Claimant, a schedule setting out what claims remained and headed "for the avoidance of doubt". There was no claim specifically against Mr Mason and in particular in relation to his involvement in hearing the stage 2 of grievance number 2.
8. Furthermore, it was not in the final list of issues placed before us and which came out of discussion between Mr Benson and Mr Britton<sup>1</sup> circa 5 August 2021
9. It follows that for over 2½ years, this clearly would have been an issue given that the meeting is minuted and it is part of the scenario. It could therefore have been brought as a claim well before now. There were many opportunities when it could in that respect have been added and finally of course that it could have been once Mr Benson became involved.
11. The Claimant says that he did not realise there was such a claim until he saw the statement of Miss Swift, who is a witness from HR for the Respondent, and her final paragraph and which refers to if she had known, so to speak, then Mr Mason would not have heard that grievance stage.
12. But the Claimant clearly knew of his own disquiet prior thereto as is obvious from what he has told us. But he did not raise it at the appeal hearing after the outcome from Mr Mason and neither did his trade union representative who had accompanied him at every stage of the internal process..
13. Applying **Selkent**, it follows that, putting it simply, this new head of claim could have been brought far earlier than it has and it is therefore not in the interests

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<sup>1</sup> This is Mr Stephen Britton, instructing solicitor for the Respondent. He is not related to the presiding judge.

of justice, given such a lengthy history of matters prior to the start of this trial, for it now to be permitted by way of amendment.

14. However, and we are grateful to the concession of Mr McInerny, the Claimant may cross-examine Mr Mason about his involvement as per his paragraph 82 in terms of whether or not that assists us in terms of findings of fact in reaching conclusions on the actual claims before us and the issues as listed in relation thereto.

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Employment Judge P Britton

Date: 2 September 2021

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