



EMPLOYMENT TRIBUNALS

Claimant: Miss S Mardell

Respondent: Nacro

Heard at: Manchester (remotely, by CVP)

On: 24 August 2021

Before: Employment Judge Feeney

REPRESENTATION:

Claimant: In person

Respondent: Mr G Graham, Counsel

JUDGMENT

The judgment of the Tribunal is that the claimant's application to amend is refused save in relation to her protected disclosure claim and issues 64.9 and 64.11 (as referred to in the respondent's letter of 11 February 2021).

REASONS

Introduction

1. This was an open preliminary hearing held by video to determine a number of preliminary issues.
2. This matter was listed for a preliminary hearing following a truncated case management hearing on 1 June 2021 held by Employment Judge Hill. The claimant was late in attending and accordingly that hearing was not able to deal with the various matters it was required to deal with. Accordingly, the matter was listed for today.
3. Prior to the hearing the respondent had indicated they wished to apply for a strike out of the claimant's claim for failure to comply with Case Management Orders, however that application was withdrawn today and the hearing concentrated on the issue of whether the claimant was required to amend in relation to various matters set out in the respondent's letter of 11 February 2021, and if so whether the Tribunal gave permission on the usual tests for her to so.

Facts

4. The claimant brought a claim on 9 October 2019 against the respondent for disability discrimination. At that stage the claimant did not suggest she had a protected disclosure claim. The claimant's claim was that she has asthma and in her job as a night concierge at a hostel for vulnerable women she had been asked to clean voids i.e. when a tenancy ended before the next tenant started she was asked to assist in cleaning the empty apartment.

5. The respondent accepts that this was not specifically specified in the claimant's job description, but they said it had always been part of the role as, although the day workers will and can assist, they are often too busy to assist within the timeframe necessary due to their caseload. The respondent knew that the claimant had asthma before she started work with them, however she said that it was not a disability and it would not affect her ability to do the job.

6. The claimant asserts that the requirement to do voids and to do some other jobs, such as sweeping up leaves, caused her asthma to worsen. This was due to the voids which she says had been in bad condition and in some cases full of mould.

7. Accordingly, the claimant began to ask for what are described as "adjustments". The respondent's case is that they provided the claimant with numerous adjustments and also with some extended sick pay whilst she was fit to work but could not work due to adjustments not yet being implemented. The claimant disputes that the reasonable adjustments she required were all made.

8. A case management hearing took place on 8 April where Employment Judge Batten agreed that the claimant could amend her pleadings, her particulars of claim, to include matters arising since she had submitted her claim form up to her dismissal, and she had to identify any post termination matters. The actual order which went out on 8 April stated that:

"By 4.00pm on Wednesday 3 June 2020 the claimant must provide to the Tribunal and to the respondent further particulars of her amended claim identifying all those acts and matters about which she complains in the period from the presentation of her claim on 9 October 2019 up to the date of the termination of her employment on 31 March 2020, and including any acts of discrimination which she says took place post termination. The further particulars must state the basis of her complaints in relation to disability discrimination and must also itemise any unauthorised deductions or breaches of contract."

9. In addition, there was reference to a protected disclosure claim in the case management minutes, and it was envisaged that details of this would be put into her amended particulars of claim.

10. The claimant did provide amended particulars of claim on 3 June 2020. The respondent provided amended grounds of resistance to those particulars of claim.

11. A further preliminary hearing then took place on 14 September in front of Employment Judge Horne. Apparently, this hearing lasted for four hours and Employment Judge Horne had extensive discussions with the claimant about her claim. Subsequent to that hearing in the case management minutes Employment

Judge Horne summarised the claims the claimant said she was putting forward, and then gave liberty to the respondent to make representations that the claimant needed to amend to include some of the matters she had raised in the hearing that day. No doubt Employment Judge Horne had in mind in particular that, as he says at paragraph 29:"

"At today's hearing for the first time the claimant advanced a further contention. This was that she was also disabled by the mental impairment of post traumatic stress disorder ("PTSD"). Her case is that she was disabled with this impairment from the end of October 2019."

12. Employment Judge Horne went on to say:

"The respondent will indicate whether or not it has any objection to the claimant amending her claim in order to contend that she has this additional disability. The parties will also take further steps to clarify whether or not (if the amendment is granted) there is any dispute about whether the claimant's PTSD satisfied the legal definition of disability in section 6 of the Equality Act. Such a dispute if there is one can be conveniently labelled the mental health disability issue."

13. I have no doubt that at this point in time Employment Judge Horne was referring to PTSD alone. The claimant says that when he refers in the judgment to mental health conditions the claimant thought he was referring to all her conditions and so she did not need to do any thing further however Judge Horne did not know about those mental health conditions, certainly not that the claimant wished to rely on them for her claim.

14. The claimant was advised that she had to, by 4.00pm on 12 October, inform the Tribunal and the respondent if she did not agree the judge's descriptions of all her claims advise the tribunal of that and orders were made for further information regarding who she made disclosures to at Manchester City Council and on what basis they were compliant with sections 43C-H of the Employment Rights Act 1996.

15. Directions were also given regarding the mental health disability issue irrespective of whether or not the matter was allowed as an amendment. These all concentrated on PTSD and no other mental health conditions were mentioned.

16. Amendment disputes were to be decided at the next preliminary hearing. Orders were given in extensive detail regarding preparation for the main hearing which was set down for 31 January 2022 for seven days.

17. On 8 January 2021 the claimant provided a statement of mental health disability which included further disabilities in addition to PTSD and also provided a DWP workplace assessment. The claimant provided letters from her doctor in addition setting out her history of consultations with him in the recent past. The claimant provided details of her disclosures.

18. On 11 February 2021 the respondent wrote to the Tribunal stating that the claimant had failed to comply with some of the orders of the Tribunal i.e. that she had not provided the name of the person at Manchester City Council to whom she had spoken to, and that she did not state how the disclosure to Manchester City Council was made in accordance with sections 43C-43H, and neither had she

provided a signed statement setting out the effects of her PTSD on her ability to carry out normal day-to-day activities (i.e. a disability impact statement), which she had been required to do by 12 October 2020. The claimant had not provided this but had requested extensions totalling 11 weeks which had been granted, and the respondent had drafted an amended timetable to fit in with the extensions to providing the information.

19. The respondent pointed out that they had no medical evidence supporting a diagnosis of PTSD in the information provided by the claimant, and therefore they were not in a position to decide whether or not they could concede this, and whether they needed independent medical evidence as they required the claimant's medical notes. In respect of amendments to the claim, the respondent took the following view:

(1) Public Interest Disclosure

- (a) Initially the claimant had relied on a disclosure in November 2019. On 14 September she referred to two disclosures to Manchester City Council – one via the online form on the council's website and the second in a telephone conversation. It is not clear which one she had referred to in her claim form. The claimant indicated both disclosures were made to a Mr Sean Bleasdale, and she had indicated that they were made under section 43C(b)(ii) of the Public Interest Disclosure Act 1998. The respondent said further and better particulars were required in order to establish how Manchester City Council had a legal responsibility for the alleged issues reported.
- (b) The claimant further asserted she had made additional disclosures including a formal complaint during 2020. The claimant confirmed it was not her case that these disclosures were the reason for her dismissal. In her email to the Tribunal of 11 January the claimant seeks to reference disclosures in October 2019 and early 2020. The respondent stated that if she intends to rely on alleged disclosures in October 2019 and/or early 2020 she needed to provide full details of what those disclosures were.

(2) Disability and knowledge of disability

- (a) The respondent objected to a claim relating to PTSD. The claimant had not raised this in her original or amended ET1 and therefore the claimant needed to apply to amend. The respondent did not have sufficient evidence at present to make a decision whether it would concede it if an amendment was allowed.
- (b) The respondent also referred to the fact that the claimant's disability impact statement referenced a number of additional mental health conditions which the claimant had not mentioned at the hearing in September but that now she referred to work-related stress, anxiety, low mood and schizotypal disorder. If the claimant sought to rely on a mental health condition other than PTSD as a disability she needed to apply to amend in respect of that also.

(3) Discrimination arising from disability

- (a) Again the respondent says that at the preliminary hearing on 14 September the claimant asserted for the first time that her absence in October 2020 and onwards was in consequence of PTSD. The respondent at this point stated the claimant's case was that she was diagnosed with PTSD in November 2019, which post-dated her October absence, and the respondent was not aware of this until a fit note mentioned it covering the period 24 January to 19 February. Again, the claimant needed to amend if she wished to rely on this as a discrimination arising from disability claim.

20. In relation to harassment, the respondent cited seven matters, and four matters under victimisation, which they say should all have been included in the claimant's amended particulars as they referred to matters arising between the submission of her claim and her dismissal.

21. In addition, the respondent was concerned that some of the matters predated 9 October, however they have not been identified to me today. The respondent's case was that the claimant had provided no explanation for why pre 9 October matters had not been included in her original claim form, and that further issues raised after the presentation of her amended particulars of claim should have been included in those amended particulars of claim and the claimant had not provided any explanation for why they were not so included.

22. At this stage the claimant had not submitted to the respondent her list of documents and accordingly disclosure had stalled.

23. A preliminary hearing was listed for 1 June 2021 to consider all these matters but unfortunately the claimant did not attend for 45 minutes and there was insufficient time to consider the matters which had been delineated to be decided that that preliminary hearing, that is:

- (1) to decide any amendment disputes;
- (2) to check whether the parties had complied with Case Management Orders and were ready for the final hearing;
- (3) to consider whether or not to make any orders for expert medical evidence;
- (4) to consider whether or not, if the claimant succeeded, the claimant's remedy should be determined at the final hearing or a separate hearing; and
- (5) to review the time allocation timetable for the final hearing.

24. When the claimant did attend the hearing she agreed she had failed to comply with directions but stated this was because her mental health issues and COVID restrictions. The Judge explained to the claimant that she needed to comply in order that the hearing could go ahead, and the claimant said that she understood. The claimant confirmed she had received a copy of the letter of 11 February which the Judge said clearly and concisely set out the current position.

25. The claimant also raised a further impairment of anxiety and depression and said that she had sick notes that had been sent to the respondent to prove this. The claimant was unclear when she was diagnosed and suggested it was not until after her employment, and she confirmed she had not disclosed to the respondent she had PTSD but it was now anxiety, stress and depression in any event. The claimant did not appear to remember that she had not raised this at the previous case management hearing and suggested she had. The Judge explained to her that she had not.

26. The claimant also agreed she had raised a number of complaints and allegations in her emails in January which had not been previously pleaded and it was agreed she would need to make an application to amend her claim to be determined at the preliminary hearing in August. Accordingly, these were referred to in the respondent's letter in addition to the matters raised in the September preliminary hearing.

27. The claimant agreed that these were matters she wanted the Tribunal to consider as an amendment application. The claimant was required to set out her amendment application by 27 July 2021. In respect of the disability issue, she was required to provide a signed disability witness statement in relation to stress, anxiety and depression by 29 June, and also the medical records relating to the alleged disability by the same date.

28. Further details were given then regarding disclosure and the final hearing bundle.

29. The respondent stated at the hearing today that they had not heard from the claimant since 1 June. They wrote to the Tribunal on 7 July 2021. The respondent had sent the claimant their list of documents and had contacted the claimant on 8 April to ask for her list, and they then asked for an Unless Order in respect of a list of documents. The claimant had requested a further extension and then it was advised this would be dealt with on 1 June. However, there was insufficient time to do this on 1 June.

30. The respondent pointed out the claimant was in breach of Case Management Orders made on 1 June also, and therefore they were unable to respond to the claimant's application to amend her claim or respond to the further disabilities cited, nor could they prepare a joint bundle. They requested that the claimant's claim be struck out, and it was decided that that would be considered at the hearing today.

31. The weekend prior to this hearing the claimant provided the respondent with further documentation which they then sent to the Tribunal on Monday. This included a disability impact statement in relation to anxiety, low mood and depression and some further medical records.

32. The claimant responded to the letter of 11 February with a document sent to the respondent over the weekend. She commented about mental health disability issues that she was confused, wrongly understanding that mental health was:

“...my disability issue”, so all mental health conditions were relevant, including PTSD and anything else. My doctor, Dr Frame, appears to have understood the matter better as he focussed on anxiety, low mood and depression as did

Occupational Health. In addition mental health support was agreed as a reasonable adjustment by Nacro at my return to work. After further discussion at the last preliminary hearing I realised my disability is anxiety and low mood/depression and I will write my disability impact accordingly.

Amendments to Claim

Public Interest/Further Information

Nacro obtained funding from Manchester City Council in March 2019, therefore MCC have a vested interest that residents placed at LH receive the 24 hour supported housing agreed upon and good quality care with the focus on the resident's health and safety and members of the public. The process of making a disclosure is to go online and fill in a form and then a Supported Housing Manager calls you back. Sean Bleasdale meets regularly with Nacro and other organisations. Also, Manchester City Council funded to discuss any issue with the service. SB is the manager that called me back on both occasions.

PD1

After discussion with Sean Bleasdale I decided not to pursue the disclosure and give Nacro more time to deal with the issues internally.

PD2

After discussion with Sean I made the disclosure. I stated my view on my amended ET1 regarding how I believed the disclosure relates to my dismissal and also at my appeal hearing regarding my fixed term contract.

I am bringing a claim of continuing acts of disability discrimination, failure to make reasonable adjustments, harassment and victimisation. At the time of writing my ET1 initially these events had not happened. I was ordered to amend my claim to the last incident. I was not aware I could amend my claim at an earlier date, not being legally trained. I did however contact ACAS on November 3rd and it became apparent to me that the disability discrimination and harassment had not ended.

On reflection I do not agree that events prior to 2 June 2019 should be discounted. I believe the Tribunal should establish when the discrimination began and ended. These issues were on my written grievance re bullying and harassment submitted on 6 June 2020. The reason for not submitting my ET1 was because I was expecting the matter to be dealt with following the procedures and timetable set out in Nacro policies. This did not happen and was stalled and drawn out. It was only when I received my response from my reasonable adjustment grievance. The delays in procedure prejudiced a fair hearing. I believed Nacro was responsible for an ongoing situation or state of affairs in relation to the acts of discrimination which began when I was requested to list my medical conditions prior to interview and ended with the way my employment was terminated.

I believe that the working practices and failure to follow policies and procedures at Nacro led to discrimination against myself as a disabled worker.

I believe for the above reasons it would be just and equitable to consider all discriminatory acts, including those that are out of time.

In respect of the above and Nacro's claim that 16 months is too long and personnel have left, I ask you to consider reference to the principles set out in **Hendricks v The Commission of Police for the Metropolis [2003]**. In any case the hearing is not until January 2020 and myself and Nacro will be required to remember the events that happened over 16 months ago."

Other Issues

Breach of Contract Claim

33. The claimant said she was not bringing a breach of contract claim. She also commented that the respondent appeared to be changing the grounds for dismissal and set out further detail of how she thought the respondent had behaved badly in relation to her termination.

Other Matters

34. The claimant raised this morning that she was not happy her confidential medical records had been sent to the tribunal as they were for the respondent only and she objected to the clerk and the judge reading them. However, the respondent pointed out the claimant herself had copied them to the tribunal. I advised the claimant if she was concerned about medical records becoming public she should consider applying for an anonymisation order. I also reassured her that the clerk would not have read the documents submitted on Monday being described as part of the bundle generally clerks would only read correspondence which came in and required action.

35. The claimant also raised another matter which she wished to add to her claim concerning the appeal.

36. In respect of the additional documents submitted over the weekend these contained consultations and evaluations regarding the claimant's mental health and latterly recorded positive views from those caring for her.

Submissions

Respondent's Submissions

37. The respondent submitted that the claimant had a history of not complying with Case Management Orders which had made it difficult for the respondent to progress with any disclosure and move the case forward in preparation for the hearing early next year. The respondent was not now pursuing a strike out claim as the claimant had provided a list of documents and a disability impact statement.

38. However, the respondent objected to some of the claimant's matters raised as amendments either via emails or at the hearing in September with Employment Judge Horne. These were set out in the letter of 11 February and are cited above. It is the respondent's case that these were all matters that fell within Judge Batten's Order and should have been included in the particulars of claim. The respondent submitted they were not included in the particulars of claim.

39. In respect of the one matter I identified which had been referred to, the respondent said it had been referred to as part of the factual narrative but there was no allegation in relation to this, whereas now the claimant says that the light switches were interfered with deliberately to get her into trouble, which is quite different from simply describing there were problems with the lights. Indeed the claimant's complaint in respect of that is about being required to undertake a check and being told off for not doing the lights check.

40. The fact that the claimant raised a further issue today in respect of her appeal is further evidence that the claimant will constantly expand on her claim as she has done to date, and there will be no point where the respondent can say that "that is the totality of the claims we have to meet and now we can properly prepare for the hearing".

41. In addition, the claimant had mentioned her mental state in respect of complying with orders, however she has not stated that that was the reason for not providing fully comprehensive amended particulars of claim on 3 June. There was no sick note stating that she was unwell and unable to engage around this time, and indeed the claimant did engage by complying with that particular order at length.

42. In respect of disability, the claimant first raised PTSD on 14 September. While she had referred in her amended particulars of claim to her mental health condition, it was clear she was not relying on it as a disability but as a consequence of the respondent's failure to implement reasonable adjustments for her asthma. In addition, now she has moved the goalposts again and is relying on anxiety, low mood and depression. The claimant should not be allowed to pursue this as there has been no explanation of why she did not include it in her amended particulars of claim, as on her case the matters arose from October onwards, the area the amendment was permitted to deal with.

43. In relation to the protected disclosure, the claimant has provided additional details not put in her amended particulars of claim, however she has still not fully explained how this claim is put.

44. The respondent stated that there was prejudice to the respondent who could not complete their witness statements or consider their list of witnesses complete until the claimant had ended a series of additions to her original claim although at present they did not envisage additional witnesses. In relation to adding a new disability at this stage, this would add considerably to the matters the respondent had to consider and relatively late in the day given that the hearing is at the end of January 2022. The hearing may well be jeopardised in these circumstances, although the respondent realised the Tribunal may decide that this issue has to be decided at the Tribunal itself.

Factual amendments in relation to victimisation and harassment and section 15

45. The claimant has offered no reason why these matters were not included in her amended particulars of claim and they all relate to the "permitted period".

Claimant's Submissions

46. The claimant submitted that many of the matters were contained in her amended pleadings (however the claimant could not point to them in the amended

particulars of claim even though I gave her additional time to do so). Further, the claimant claims that she needed documentation in order to jog her memory in respect of these other matters).

47. The claimant also stated she did not know she could amend and therefore and did not apply to do so earlier.

The Law

48. Guidance as to whether or not to allow an application to amend is given in the case of **Selkent Bus Company -v- Moore 1996 EAT**, the overarching principle was stated by Mummery J to be “whenever the discretion to grant an amendment is invoked the Tribunal should take into account all the circumstances and should balance the injustice and hardship of allowing the amendment against the injustice and hardship of refusing it”.

49. Mummery J went on to set out a non-exhaustive list of factors relevant to the exercise of discretion.

- A. The nature of the amendment;
- B. The applicability of time limits;
- C. The timing and manner of the application.

50. It was stressed however that the paramount consideration remains that of comparative disadvantage, the Tribunal must balance the disadvantage to the claimant caused by refusing the amendment against the disadvantage to the respondent caused by allowing it. In respect of the nature of the amendment it was said in **Selkent** “applications to amend are many different kinds ranging on the one hand from the correction of clerical and typing errors to addition of factual details to existing claims and the additional substitution of other labels for facts already pleaded to on the other hand the make of an entirely new factual allegation which change the basis of the existing claim. The Tribunal has to decide whether the amendments sought is one of the minor matters or is a substantial alteration pleading a new course of action. Where an amendment merely involves relabelling facts that were fully set out in the claim form the amendment will in most circumstances be very readily permitted **TGWU -v- Safeway Stores Limited EAT 2007**. If, on the other hand, it introduces a whole new claim it is important to consider time limits as part of the overall balancing exercise.

51. In respect of time limits Mummery J observed that of a new complaint or cause of action is proposed to be added by way of amendment it is essential for the Tribunal to consider whether that complaint is out of time and if so, whether the time limits should be extended under the applicable statutory provisions. It is not an absolute bar however that a claim is out of time. The Tribunal has to consider whether the claim would have been out of time even if included in the original claim form. In terms of comparative hardship, the claimant suffers no disadvantage by the refusal of the amendments as the newly introduced claim would inevitably fail on the time limit grounds.

52. In respect of the timing and manner of the application the guidance in

Selkent was “an application should not be refused solely because there has been a delay in making it there are no time limits laid down in the regulations for the making of amendments, the amendments may be made at any time – before, at, even after the hearing of the case, a delay in making the application is, however, discretionary factor. It is relevant to consider why the application was not made earlier and why it is now being made – for example the discovery of new facts or new information appearing from documents disclosed on discovery.

53. Part of the **Selkent** balancing exercise may involve examining the proposed amendment claim on its merits, the weaker the allegations the less disadvantage there will be to the claimant in refusing to allow the claimant to introduce it. However, it has to be a clear-cut case.

Conclusions

Selkent Considerations

Time Points

54. Whilst this is not the only factor and is not determinative, it is a relevant factor. Accordingly, it will be seen that the claimant issued her claim on 9 October. She was given carte blanche to amend this in respect of the period post 9 October until her dismissal and possibly even to include post dismissal matters. She provided this, as required, by 3 June. It would be expected at that point that that was the end of the matter, however on 14 September 2020 at a further preliminary hearing the claimant raised numerous other matters, not all of which the respondent states an amendment is required, however they have detailed the matters in respect of which amendments are required.

55. The claimant also raised matters in correspondence in January 2021, however I have not been advised as to what matters were raised in January 2021 and what matters were raised in September 2020. Nevertheless, of course, September 2020 is nearly 12 months after the claimant provided her claim form. Accordingly, it is clear that by the time the claimant raised these additional issues the claim was significantly out of time.

Nature of the Amendment

56. Some of the amendments are not significant: they are adding further incidents to a list of incidents already pleaded, however nevertheless they will involve the respondent in further proofing witnesses and digging back into memory. In addition some of them, in my opinion, would require further and better particulars, such as for example one of the victimisation claims that the claimant was excluded from meetings.

57. The amendment in respect of adding mental health issues is a very substantial amendment and will require considerable work on the side of both parties, and will add to the time at Tribunal, meaning that it is possible the evidence will not finish in the five days allocated for the evidence and may then move into the period allocated for Tribunal deliberations, which of course means that even if the matter does not go part-heard the Tribunal will have to meet on a different day and make a decision some time after the ending of the evidence, which makes matters

more difficult, and there would then be the potential of a considerable delay before the parties would receive a Judgment.

Timing and manner of the application

58. The claimant suggested] that one of the reasons she did not cite the matters under harassment and victimisation identified by the respondent (if she did not, as she did not accept that she had not raised these matters in her amended particulars of claim), it was because she did not have access to the documents. The claimant then explained at length that she did not have the documents, however she appeared to have forgotten the reason she did not have any documents was because she had not provided the respondent with her list of documents in order that the next stage of disclosure could be proceeded to. In any event the claimant did not explain which documents she required to complete her claim details, did not raise this at the time, and the nature of the matters were clearly from her own memory and documents would only have assisted in providing more detail of the matters which she was raising.

59. Nevertheless, the claimant had managed to relate these additional matters to the Tribunal in the absence of the documentation, therefore that argument did not appear to be a matter which influenced anything.

60. She also said that she did not know she could amend however this had been discussed in Judge Batten's hearing.

Comparative prejudice

61. At the end of the day the main issue was the comparative prejudice to the parties. The claimant has a substantial claim relating to her asthma. All her earlier pleadings concentrated on the asthma and any reference to her mental health was in terms of "this has led to a deterioration of my mental health", but until 14 September there was no reference to that being a disability she relied on. Further, the prospect of it actually relating to anxiety and depression did not arise until the preliminary hearing case management on 1 June 2021. Although the PTSD was raised almost a year ago, due to the failure of the claimant to attend on time in June this matter could not be dealt with then and has been further delayed. Nevertheless, the claimant does not rely on PTSD anymore, and instead relies on a different disability which she first raised on at the hearing 1 June 2021. Obviously this is a considerable period after she first put in her claim and was allowed to amend her particulars of claim, and although it might have been anticipated she would add a further disability at that stage she might well have done, particularly as this disability arose, she says, post putting in her claim form so firmly falling into the permitted period. However, she did not.

62. The claimant has also said that she was confused because she thought Employment Judge Horne, when he referred to mental health conditions, was accepting all of her mental health conditions. It is not possible to read Employment Judge Horne's case management minute in that way at all, and further Employment Judge Horne had no knowledge of any other mental health conditions other than what the claimant had put in her amended particular, which I have said to the informed observer appears to relate to how her mental health had deteriorated as a

result of the respondent's failure to implement reasonable adjustments in respect of her asthma and not as a disability in itself leading to any disability claim.

63. In respect of the protected disclosures, the matters added are relatively insignificant although the claim is still not completely clear.

Final Decision

64. I have decided that in respect of everything, apart from the claimant's protected disclosure claim where the amendments are minor, and points 64.9 and 64.11 (as referred to in the respondent's letter of 11 February 2021), I reject the claimant's amendments.

65. In particular, the addition of the disability claim will cause significant disruption to the preparation for the hearing and will severely prejudice the respondent who may well not be able to organise their position in respect of the disability in a reasonable amount of time before the hearing. Indeed, if independent evidence is needed it is clear that the hearing next year would not take place. At this stage the respondent do not know that as they do not have sufficient evidence from the claimant to make that decision, the claimant having only provided more detailed evidence on Sunday and the respondent to date not having sufficient time to evaluate that evidence.

66. In respect of the additional matters, the claimant already has a substantial disability discrimination claim. I have allowed 2 matters which I consider were already sufficiently pleaded in either the claim form or the amended particulars of claim. The claimant had absolutely no explanation as to why these were not included in the amended particulars of claim other than the documents issue which I have found not credible and there will be prejudice to the respondent if they have to now delve into these new matters. In a balancing exercise the prejudice to the claimant is minimal compared to the prejudice to the respondent and accordingly I do not allow these amendments.

Summary

67. The claimant is allowed to proceed with her additional protected disclosure facts and if the respondent require further detail, they must serve a request for further and better particulars within 14 days, and the claimant must answer that 14 days thereafter.

68. In respect of anxiety, low mood and depression, and PTSD the claimant is not allowed to amend her claim to include this as a disability she relies on.

69. In respect of the matters identified on page 4 of the letter of 11 February in relation to harassment and victimisation, the claimant is not allowed to amend to include these matters save for 64.9 and 64.11.

Unless order

70. Given the history of the claimant's failure to comply with orders, I explained to the claimant the nature of an Unless Order and I stated that it was likely Unless Orders would be made at this point going forward if the claimant failed to comply with any orders made today in view of the proximity of the hearing and the history of non

compliance. Whilst the claimant had said in the past she was too ill to comply all the medical evidence she supplied over the weekend showed that latterly the professionals thought she was stable so it is to be hoped the claimant manages to comply with the new case management orders I have given separately today

Employment Judge Feeney

25 August 2021

RESERVED JUDGMENT AND REASONS
SENT TO THE PARTIES ON
23 September 2021

FOR THE TRIBUNAL OFFICE

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