



EMPLOYMENT TRIBUNALS

Claimant: Miss N K Badhan

Respondent: UK Finance & Business Solutions Ltd

PRELIMINARY HEARING

Heard at: Midlands (West) (in private; by CVP)

On: 25 June 2021

Before: Employment Judge Camp

Appearances

For the claimant: in person

For the respondent: Mr A Korn, counsel

REASONS

1. This is the written version of the reasons given orally at the hearing for the decision to refuse the claimant permission to amend, written reasons having been requested by the claimant.
2. What I am dealing with at this hearing is an amendment application.
3. The claimant was employed or engaged by the respondent company from a date which is not specified in the claim form until her dismissal with effect on 21 November 2019. She went through ACAS early conciliation from 6 November 2019 to 12 December 2019 and submitted a claim form on the 21 January 2020.
4. By way of background there has been a deal of litigation between the claimant and various companies associated with the former director of the respondent company, now deceased: Mr Joga Singh Basra. In particular, there have been, and possibly there are still, High Court proceedings involving him, the respondent, and the claimant. I'll refer to him as Mr Basra Snr. He died in March this year. Mr Basra Jr is Akaal Singh Basra, who became a director of the respondent company in November 2020 and who is, I think Mr Basra Snr's son.
5. The claim form that was presented in the present case was purely for wages. As was said at the first case management hearing, which took place before Employment Judge Gaskell in June 2020, this was slightly curious, given all that was said in the narrative part of the claim form, but that is how it was.

6. From the outset, up to time of the hearing in front of Judge Gaskell, the claimant was represented by solicitors. She tells me that she had unequivocally instructed her solicitors to include claims for unfair dismissal and holiday pay in addition to the claim for wages, but that they did not do so. She says they did not do so due to their oversight, which could fairly be characterised as negligence.
7. The hearing before Judge Gaskell was by telephone, but the claimant did not listen in – apparently she put her trust in her solicitors. Judge Gaskell highlighted in his write-up of the hearing that there was no unfair dismissal claim and that the only claim that was before the Tribunal was for unauthorised deductions from wages. He didn't suggest that there was any application before him to add an unfair dismissal claim. He did, however, mention that "*recently*" (as I think he put it) a schedule of loss, including a claim for holiday pay, had been submitted and, essentially, that the claimant was looking to add a holiday pay claim.
8. Employment Judge Gaskell also mentioned in his write-up of the hearing that the proposed holiday pay claim might well be out of time. In the context, I take that to be code for "having looked at it, I think that claim is out of time; but I am not going to say so definitively, because that would not be an appropriate thing for me to say at a case management preliminary hearing". We don't know the date when the schedule of loss was submitted, but it seems to me it would not have been described as "recent" had it been submitted before the end of February 2020. The significance of the end of February is that to be in time, by my calculation, a holiday pay claim would have to be presented, or deemed presented, by 27 February 2020.
9. Judge Gaskell's order was sent out by the Tribunal on 18 June 2020. The claimant has explained to me that when she received it, she was horrified to realise that there was no unfair dismissal claim, because of the clear instructions she had previously given to her solicitors. If she did indeed give clear instructions to her solicitors – and she apparently dealt with a clerk rather than with the Mr Woodhouse, a solicitor, who represented her at the hearing – it is odd that there was no amendment application at the hearing. Even if Mr Woodhouse had not had significant previous involvement with the case before he attended the hearing, he would have been duty-bound to take some instructions from the claimant, directly or indirectly, and had he done so I would have expected some mention of an unfair dismissal claim to have been made. The unfair dismissal claim appears much more important to the claimant than the wages claim and to be, potentially, significantly more valuable in money terms.
10. However, Mr Woodhouse did not ask Judge Gaskell for permission to amend to add an unfair dismissal claim. If I assume everything the claimant has told me is accurate then this means her solicitors were doubly negligent, in that: they failed at the start to include the unfair dismissal and holiday pay claims in the claim form; they failed to pick up on their omission – so far as concerns unfair dismissal at least – prior to or at the hearing in June 2020.
11. I assume all this led to a falling out between the claimant and her solicitors because they ceased to act for her shortly after the hearing. Acting as a litigant in person, she made an application to amend on 28 July 2020. The application she made was rather broader than the application that I am dealing with, but it included

applications to amend to add holiday pay and unfair dismissal claims. An application to amend to add the holiday pay claim had, anyway, already effectively been made by the provision of the schedule of loss shortly before the June 2020 hearing.

12. Employment Judge Gaskell raised a res judicata / abuse of process issue with the claimant's wages claim. On the face of the claim form, the claimant was basing her claim on a High Court Order. If she was indeed doing so then there would be no proper basis for bringing a claim in the Employment Tribunal: apart from anything else, if the High Court had already decided that the respondent should pay the sum of money claimed, then what useful purpose would be served by getting a decision from the Tribunal – an inferior court – saying the same thing? The Judge ordered a preliminary hearing essentially to deal with whether the claim was an abuse of process as well as, potentially, with amendment applications.
13. That preliminary hearing took place on 8 March 2021 before Employment Judge Wilkinson. There are some idiosyncrasies to what Employment Judge Wilkinson did in relation to the abuse of process issue, but suffice it to say that he made a decision in the claimant's favour on the point and if the respondent wishes to challenge it, it will have to apply out of time for reconsideration or appeal. The other relevant thing Employment Judge Wilkinson did was to note that the claimant was not (as she had suggested she was when she applied to amend) seeking to pursue claims under the Equality Act 2010. For reasons that are unclear, he did not deal with the outstanding applications to amend to add the unfair dismissal and holiday pay claims and to add Mr Basra Snr as the second respondent. They were due to be heard on 5 May 2021 but on that occasion, for reasons she explained, Employment Judge Woffenden adjourned to today.
14. Before me today, the claimant has made yet another application to amend – an oral application to add Mr Basra Jr as a respondent. It should also be noted that given Mr Basra Snr's decease, it would necessarily be his estate that would be joined as a respondent if joinder were appropriate at all.
15. I start with the applications to add new parties.
16. First: the application to add Mr Basra Jr as a respondent. There does not seem to be any proper basis at all for this application. When I asked the claimant about it, the gist of what she said was that she wanted him added as a party because he wasn't dealing with these proceedings properly on behalf of the respondent company in his capacity as a director and she felt he might take things more seriously if he himself were a respondent. She also said that she is not making allegations against him personally and that she is not saying he did anything wrong in connection with her employment. She also accepts that her employer was the respondent and no one else. In addition, she has concerns about the respondent's solvency. None of that makes Mr Basra Jr a valid respondent. The application to amend to make him a respondent is rejected.
17. Secondly: the application to add the Estate of Mr Basra Snr as a respondent. It is a little difficult to discern the basis on which this application is made, but it appears to include: a concern that the company is short of cash; things that happened during the High Court proceedings; an alleged unlawful means conspiracy. The

conspiracy allegation seems to be that Mr Basra Snr was directing the respondent company not to pay the claimant money that was due to her. If that is what it is, it would not give rise to an unlawful means conspiracy claim as a matter of law. In any event, the Tribunal has no power to deal with an unlawful means conspiracy claim, nor do her allegations provide a proper basis for 'piercing the corporate veil' for the purposes of an unfair dismissal, wages or holiday pay claim in the Employment Tribunal. Without even needing to consider any other factors, I refuse this application because there is no discernible basis for making the Estate of Mr Basra Snr liable to the claimant in the Employment Tribunal.

18. Moving on to the other amendment applications – to add the unfair dismissal and holiday pay claims – I am afraid they are almost hopeless. The reason for this is time limits issues. In considering whether to allow an amendment, I have to take into account all the circumstances and do not have to make a final decision about time limits, but time limits are important and in the present case are in practice determinative of the application. In summary, were I to give the claimant the permission to amend that she seeks, the claims added by amendment would be bound to fail because of time limits and in those circumstances giving her permission to amend would be a waste of everyone's time.
19. In accordance with Galilee v The Commissioner of Police of The Metropolis [2017] UKEAT 0207_16_2211 and Sheikholeslami v University of Edinburgh [2018] UKEAT 0014_17_0510, if I were to give the claimant permission to amend to add claims, time limits would apply to those claims as if they had been presented to the Tribunal when the claimant applied to amend. I have already explained that the application to amend to add the holiday pay claim was made after the expiry of the primary time limit of 3 months (plus any early conciliation extension) and that the application relating to the unfair dismissal claim was made later still – 28 July 2020, which was more than 8 months after her dismissal date.
20. The relevant time limits in the Employment Rights Act 1996 and in the Working Time Regulations 1998 are relatively strict ones, where claims brought outside the primary time limit can only proceed where it was not reasonably practicable for them to be brought in time. Applying that to the present case, what I am looking at is whether it was reasonably practicable for unfair dismissal and holiday pay claims to be included in the claim form. The claimant's own case is that the reason they weren't included was her solicitors' negligence. In accordance with the so-called Dedman principle (see Dedman v British Building and Engineering Appliances Ltd [1973] IRLR 379), unfortunately for the claimant, that means it was reasonably practicable for those claims to be included in the claim form, which in turn means they are out of time.
21. For all those reasons, I refuse all of the claimant's applications to amend. That leaves the claimant just with her wages claim.

Employment Judge Camp

09/09/2021