



EMPLOYMENT TRIBUNALS

Claimant
Mr A Ahmed

v

Respondent
Galaxy Connect Ltd

RECORD OF AN OPEN PRELIMINARY HEARING

Heard at: Watford (by CVP)

On: 19 October 2021

Before: Employment Judge Alliott (sitting alone)

Appearances:

For the Claimant: In person
For the Respondents: Mr N Saunders (Solicitor)

JUDGMENT

The Judgment of the Tribunal is that:

1. The claimant is granted permission to amend his claim as set out in paragraph 13 of the Case Management Summary made by Employment Judge George on 11 August 2021.
2. The respondent's applications for a Strike Out Order and/or a Deposit Order are dismissed.

REASONS

1. This open preliminary hearing was ordered by Employment Judge George on 11 August 2021 to consider the following issues:
 - 1.1 Whether the claimant should have permission to amend his claim to allege that he was dismissed for the reason or principal reason that he made a protected disclosure or disclosures;
 - 1.2 Whether the claims or any of them (including any claims which may be added by amendment) should be struck out on the basis that they have no reasonable prospect of success;

- 1.3 Whether the claims or any particular allegation (including any claim or allegation which may be added by amendment) has little reasonable prospect of success and should be the subject of a Deposit Order as a condition of the claimant being permitted to continue to advance them.

The law on amendment

2. The key principle in the exercise of my discretion whether or not to allow an amendment is that I must have regard to all the circumstances, in particular any injustice or hardship which would result from the amendment or a refusal to make it.
3. As per the IDS Employment Law Handbook Practice and Procedure at paragraph 8.18:

“Balance of hardship and injustice

In determining whether to grant an application to amend, an Employment Tribunal must always carry out a careful balancing exercise of all the relevant factors, having regard to the interests of justice and to the relative hardship that would be caused to the parties by granting or refusing the amendment – Selkent Bus Co Ltd v Moore. In particular relevant factors include:

- The nature of the amendment
- The applicability of time limits
- The timing and manner of the application”

4. Dealing with new causes of action at paragraph 8.27:

“... Tribunals should, when considering applications to amend that arguably raise new causes of action, focus “not on questions of formal classification but on the extent to which the new pleading is likely to involve substantially different areas of enquiry than the old: the greater the difference between the factual and legal issues raised by the new claim and by the old, the less likely it is that they will be permitted.”

Circumstances of this case

5. The claimant is a litigant in person. The claimant was dismissed with effect on 28 October 2020. He presented his claim on 20 November 2020. The period of early conciliation was from 12 to 19 November which is a period of seven days. As such the primary three month limitation period would have expired on 27 January 2021, plus seven days, ie on 3 February 2021.
6. In his claim form the claimant has pleaded some of the facts that he relies upon in support of his claim of automatically unfair dismissal for making a protected disclosure claim. There is reference to illegal hiring and the fact that the claimant mentioned it. The two examples of individuals he says were working unlawfully are identified. The claimant refers to being penalised for finding out the truth and has ticked box 10.1 relating to protected disclosure cases.
7. Nevertheless, both Employment Judge Lewis and Employment Judge George have found that the claim when read as a whole does not include a complaint

about dismissal. Consequently, the application to amend does include a new cause of action.

8. Notwithstanding the content of the claim form, in its response the respondent has pleaded its case concerning protected disclosures regarding illegal hiring practices and that it understood the claimant was asserting that his dismissal was a result of the protected disclosures.
9. Thus it is clear to me, and I find, that the claimant was always intending to bring a claim for automatically unfair dismissal for making a protected disclosure and that the respondent understood that from the outset.
10. The new cause of action does raise different factual and legal issues from a simple unauthorised deduction of wages claim but, in my judgment, there is no additional injustice or hardship to the respondent in having to deal with such a claim. The respondent has already dealt with it.
11. Following the filing of the response, the claim was considered by Employment Judge Lewis on 2 February 2021. He directed that a letter be sent as follows:-

“The only claim identified on the ET1 is a claim for “other payments”. There is no claim before the Tribunal of any other type. The claimant is, within seven days, to inform the ET and the respondent of the net amount claimed, and how it is calculated. Both parties are reminded that communication with ACAS is confidential.”
12. Unfortunately, that letter was not sent out and the case was listed for a full merits hearing on 11 August 2021.
13. As set out in the case summary of Employment Judge George, there was a misunderstanding between the parties as to what was going to be dealt with on 11 August 2021 and consequently Employment Judge George converted the hearing into a case management hearing.
14. As Employment Judge George observed in paragraph 11 of the Case Management Summary:-

“Had the covering letter [referred to above] been sent as intended, the claimant would have had an opportunity to argue that the claim did, in fact, include the claim (which opportunity he has had before me today) and the opportunity to apply to amend the claim to add a complaint that his dismissal was automatically unfair because the reason or principal reason for it was that he made a protected disclosure.”
15. I agree. Hence, had it been made plain to the claimant that his claim was restricted to unauthorised deduction of wages then he could have made an application to amend at some time in February 2021. That would be within a month of the expiry of the primary limitation period. Thus, although the issue was only raised on 11 August 2021, I have decided that the timing and nature of the application to amend should be deemed to have been made promptly within a month of the expiry of the primary limitation period.
16. The applicability of time limits. The claim is out of time. As recited, the claimant always intended to bring such a claim and thought he had. In my judgment it

was not reasonably practicable for him to have brought his claim in time and I find that he has brought it within a reasonable time thereafter.

17. The respondent points to hardship and prejudice in having to prepare for a claim that is materially different from the one already made. Whilst that is correct, I find that the hardship to the claimant in being deprived of the opportunity to bring his claim for unfair dismissal outweighs any such hardship to the respondent. As recited above, the respondent has already investigated the case on the basis that such a claim was being brought.
18. Consequently, in the exercise of my discretion I find that it is in the interests of justice to allow the amendment.

Application for strike out order and/or deposit order

19. The respondent submits that the claimant's claims have no or little reasonable prospect of success. Mr Saunders submits that the claimant has no evidence of illegal hiring practice other than his own say so.
20. The fact that the claimant has no documentary evidence of unlawful employment practice is hardly surprising. The claimant's claim relies on him establishing that he made the disclosures alleged, that these constituted protected disclosures and that he was dismissed because he had made those disclosures. The nature of the disclosures alleged is that the information was imparted orally by the claimant to two named individuals. The claimant has given two work colleagues who he says were working whilst not authorised to do so. In my judgment it should be comparatively straightforward for the respondent to establish whether or not those individuals were working unlawfully.
21. In his witness statement prepared for the original hearing the claimant refers to being told on the date of his dismissal words to the effect: "We have also found out that you tried to expose the hiring processes managed by Wadood and his agency" and, in his email confirming the proposed amendment, the claimant states that at his dismissal meeting he was told: "You have told people about what is going on in the company so this is what you are going to get."
22. In my judgment, there is evidence which, if believed, supports the claimant's claim that he made protected disclosures and that he was dismissed because of that.
23. Consequently, in my judgment I cannot conclude that the claim has no or little reasonable prospect of success. Accordingly, the application for a Strike Out Order and/or Deposit Order is dismissed.

Employment Judge Alliott

Date: 4 November 2021

Sent to the parties on:

16 November 2021

For the Tribunal: