



EMPLOYMENT TRIBUNALS

Claimant: Dr VB Gaikwad

Respondent: Mersey Care NHS Foundation Trust

PRELIMINARY HEARING

Heard at: Liverpool (remote public hearing by CVP)

On: 11 July 2022

Before: Judge Brian Doyle

Appearances

For the claimant: In person

For the respondent: Ms B Worthington, solicitor

JUDGMENT

1. The claimant's application to amend the claim in respect of 3 complaints of public interest disclosure detriment is refused, applying the principles derived from the relevant case law in and following *Selkent Bus Co Ltd v Moore* [1996] ICR 836 EAT.
2. Alternatively, the claim in respect of complaints of public interest disclosure detriment (as amended or otherwise) is struck out as having no reasonable prospect of success.
3. The claimant's application to amend the claim in respect of 10 complaints of race (or sex) discrimination is allowed, applying the principles derived from the relevant case law in and following *Selkent Bus Co Ltd v Moore* [1996] ICR 836 EAT.
4. The respondent's application to strike out the claim in respect of 10 complaints of race (or sex) discrimination (as amended or otherwise) as having no reasonable prospect of success is refused.

5. However, the Tribunal considers that those complaints have little reasonable prospect of success, and it has issued a separate deposit order in respect of those complaints.
6. Subject to the decisions above, any questions of time limitation that might otherwise arise from the claim (as amended or otherwise) in general remain to be decided at the final hearing, having heard evidence and argument.
7. To the extent that the claim survives this preliminary hearing, it shall now proceed to a final hearing in accordance with the case management orders below.

CASE MANAGEMENT ORDERS

Final hearing

1. All issues in the case, including remedy, will be determined at a **final hearing** before an Employment Judge sitting with members on **31 October 2022 and 1-2 November 2022** starting at 10.00am or as soon as possible afterwards. The parties and their representatives, but not necessarily any other witnesses, must attend by 9.30am on the first day.
2. The hearing will be at **Liverpool**. The time estimate for the hearing is **3 days**.
3. Both sides **must** inform the Tribunal as soon as possible if they think there is a significant risk of the time estimate being insufficient and/or of the case not being ready for the final hearing.
4. Any application to change the dates of the final hearing because one or more witnesses are unavailable for good reason must be made as soon as possible. Any such application should include dates of availability within the following 6 months and must be copied to the other party. Upon receipt of any such application the other party must immediately provide its own availability details for the same period and confirm whether or not the application is resisted.
5. The Tribunal proposes that this hearing be held **in person**. Any representations about this should be made promptly.

Disclosure

6. By 4.00pm on **31 August 2022** each party must have provided to the other a list of all the documents it already has or can reasonably obtain relevant to the issues in the case together with copies of the documents listed. Electronic copies may be provided at this stage.
7. This includes documents that are relevant to compensation only. A document must be included whether it supports or hinders a party's case. A party must make a reasonable search for documents not immediately to hand. Documents possibly relevant to the case must not be destroyed. Further information can be found in

Guidance Note 2 attached to the Presidential Guidance on General Case Management.

8. Any audio recordings (or video recordings with audio) held by either side which are relevant must be disclosed as a “document” at the same time. The person disclosing the recording should prepare a typed transcript of the recording and provide that to the other side with a copy of the recording itself. The parties should agree the transcript and that can be included in the bundle if it is relevant. Where any part of the recording is disputed the alternative versions shall be included and highlighted for ease of reference in the transcript. In general terms the Tribunal will only view and/or listen to the recording itself (or the relevant part of it) if the parties have been unable to agree in the transcript what words were actually used, or if the tone of voice is thought to be significant. It is up to the party asking the Tribunal to view and/or listen to the recording to bring the equipment (e.g. a laptop) so it can be played during the hearing if the Tribunal agrees.

Final hearing bundle

9. The respondent is responsible for putting together a file containing those documents disclosed by the parties and required at the final hearing (the “hearing bundle”). The parties must cooperate with each other in assembling and agreeing the hearing bundle contents and index to the bundle.
10. By 4.00pm on **16 September 2022** the respondent must have provided to the claimant a draft index to the hearing bundle. That hearing bundle must be agreed, and one hard (paper) copy supplied by the respondent to the claimant by 4.00pm on **that date**.
11. The respondent must also ensure that the claimant and the Tribunal have an electronic version of the hearing bundle in a form which complies with paragraph 24 of the Presidential Guidance on Remote and In-Person Hearings issued on 14 September 2020.
12. The hearing bundle should only include documents relevant to any disputed issue in the case and should only include the following documents:
 - the Claim Form, the Response Form, any amendments to the grounds of complaint or response, any additional / further information and/or further particulars of the claim or of the response, this written record of a preliminary hearing and any other case management orders that are relevant. These must be put at the start of the bundle, in chronological order, with all the other documents after them;
 - documents that will be referred to at the final hearing and/or that the Tribunal will be asked to take into account.
13. In preparing the hearing bundle the following rules must be observed:
 - unless there is good reason to do so (e.g. there are different versions of one document in existence and the difference is relevant to the case or

authenticity is disputed) only one copy of each document (including documents in email streams) is to be included in the bundle

- the documents in the bundle must follow a logical sequence which should normally be simple date order
- handwritten documents which are not easily legible (such as notes of meetings) should be transcribed into typed format by the party producing the document, and an agreed typed version included in the bundle. Only if the parties are unable to agree the accuracy of the typed version should the handwritten version be included too.

Witness statements

14. By 4.00pm on **30 September 2022** each party must have provided to the other a written statement from every person that it is proposed will give evidence at the final hearing. This includes anyone who is also a claimant or a respondent.
15. The witness statements must be typed in numbered paragraphs and signed by the witness. They should set out in logical order the facts about which the witness wishes to tell the Tribunal. Legal arguments or submissions to the Tribunal should not be included. There should be no reference to “without prejudice” discussions or exchanges without the agreement of the other side. Where reference is made to a document the page number from the hearing bundle must be included. There is no need to reproduce lengthy passages from documents in the bundle which the Tribunal will read.
16. The claimant’s witness statement must address remedy by including a statement of the amount of compensation or damages claimed, together with an explanation of how it has been calculated.
17. Unless the Tribunal hearing the case directs otherwise, the witness statements will be read by the Tribunal and stand as the evidence of each witness before that witness is questioned by the other parties. It is important that the statements contain all the facts which the witness can provide which are relevant to the case.
18. For the avoidance of doubt this order does not require simultaneous exchange of witness statements, but the parties are free to proceed on that basis if they so wish. However, any witness statements disclosed after this date may not be relied upon at the final hearing without permission from the Tribunal.
19. Further information about witness statements can be found in Guidance Note 3 attached to the Presidential Guidance on General Case Management.

Judge Brian Doyle
Date: 15 July 2022

Sent to the parties on:

19 July 2022
For the Tribunal Office: