



EMPLOYMENT TRIBUNALS

Claimant

Respondent

v

E Banevic

Orwell Housing Association

Heard at: Bury St Edmunds by CVP

On: 21 September 2022

Before: Employment Judge Anderson

Appearances

For the Claimant: S Aujla (union representative)

For the Respondent: A Scott (counsel)

JUDGMENT

1. The claimant's claim of unfair dismissal is dismissed on withdrawal.
2. The claimant's application to amend her claim from one of race discrimination to one of religion or belief discrimination is granted.
3. The claimant's application to amend her claim to include a claim of disability discrimination is refused.

REASONS

1. Ms Aujla confirmed at the outset of the hearing that the claimant withdraws her claim of unfair dismissal.

Application to amend claim from one of race discrimination to one of religion or belief discrimination.

2. Ms Aujla, for the claimant, said that having been asked to replace her colleague as the claimant's representative at the hearing today at the last minute, she took instructions from the claimant yesterday for the first time. She said that from that discussion she understood that when the claimant referred to race discrimination, which is still how she is describing the relevant events, she was in fact referring to her religion. The claimant is a

Roman Catholic. The particulars of claim set out in the ET1 at section 8.2 are very brief and with the exception of the final three sentences are clearly drafted by the claimant, who is a Lithuanian national. The claimant does not refer to either her nationality or her religion in the ET1. Nevertheless, it is clear from the words that the claimant seeks to bring a claim of discrimination in relation to acts by her employer in connection with her vaccine status during the pandemic. The claimant says she was told by her employer that because of the nature of her job as a healthcare assistant she would be dismissed if she could not provide evidence of being vaccinated. Ms Aujla said the claim is one of direct discrimination.

3. Mr Scott, for the respondent, said that the claimant had made the application without providing any evidence for the tribunal or the respondent to consider and that under the relevant emergency legislation at that time there was a requirement that some workers be vaccinated in order to do their jobs. This was a policy matter and not one that raised any issues of religious discrimination.
4. Whilst I have taken Mr Scott's comments into consideration, in my view that point is a matter relevant to whether the claim has any reasonable prospect of success, rather than whether an amendment should be allowed some seven months after the claim was issued, not having been raised by the claimant at a case management hearing in June and not presented or notified to the respondent before the hearing commenced this morning.
5. Notwithstanding the late hour of the application the application made is simply one of relabelling. Up until this point there has been no particularisation of the claim and the respondent, because it was unclear of the nature of the race discrimination claim, has simply set out a denial in its response. Disclosure has not yet commenced. I have considered the balance of injustice. The respondent will not suffer serious hardship if the amendment is allowed and will have an opportunity to amend its response after particularisation, which it would have been given in any event if the claim was particularised under the label of race. The prejudice to the claimant will be severe as Ms Aujla has clearly stated that the claim as expressed to her orally by the claimant is one about religion and not race. As the claimant has withdrawn her unfair dismissal claim this claim is the core of the claimant's case.
6. For these reasons I grant the claimant's application to amend the claim from race to religion or belief discrimination.

Application to amend claim to include a claim of discrimination on the grounds of disability.

7. At a preliminary hearing on 13 June 2022 the claimant's representative raised that she wished to amend the claim to include one of disability discrimination. An order was made that any such application be made by 27 June 2022 and the respondent given a right to object by 11 July 2022. An application and an objection were duly filed. The relevant parts of the application are as follows:

The claimant submitted the Employment Tribunal claim on their own, without the assistance of a Trade Union or other professional guidance.

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Disability Discrimination – In section 8.1 the claimant failed to tick ‘I was discriminated against on grounds of: Disability. The claimant makes reference to her mental health problems/depression in the details of the claim, and which refer to the period complained.

8. The respondent objected on the grounds that: the ET1 at 8.2 does not read as though a disability discrimination claim is pursued; the claimant’s union representatives are listed at s11 of the ET1 as her representatives; and, there was no attempt to amend the claim until four months after the claim was filed.
9. I noted that the amendment was lacking in any detail. Ms Aujla said it was a claim for direct disability discrimination but then went on to describe allegations of failures to make reasonable adjustments in connection with the claimant’s return to work after a period of absence through ill health from October 2021 to January 2022. I noted that the claimant had not referred to the alleged failures by the employer raised by Ms Aujla today in her ET1. Ms Aujla noted that the claimant was a litigant in person and had been unwell at the time she drafted the ET1. There was no evidence on that before the tribunal.
10. Neither party made submissions on the practical consequences of a decision by the tribunal on refusing or allowing the amendment. The claimant has a live claim of discrimination on the grounds of religion and belief. How that claim proceeds is unconnected to whether this amendment is allowed. There is no discernible claim of disability discrimination made out in the ET1 at paragraph 8.2. The case made is clearly one about the respondent’s actions in relation to the claimant’s vaccine status. References to her health are about how those actions made her feel mentally unwell and not set out as a cause of such actions. The amendment set out by Ms Aujla today was unconnected to vaccine status and was about failure by the employer to make adjustments on the claimant’s return from sick leave. The respondent, a housing association, would be put to considerable extra work to answer a claim of disability discrimination particularly where these are based on separate facts to the religion or belief discrimination claim and are not facts raised in the ET1.
11. The claimant’s union set out in in the application of 27 June 2022 that she did not have professional assistance in filing her claim. That is far from clear from the ET1, which has a section listing relevant statutes clearly not drafted by the claimant and which states that the union is representing her at the time of filing, but even if that was the case, the union has represented her since shortly after the ET1 was filed. As Mr Scott pointed out the union did not at any time contact the tribunal to say it was not representing the claimant. No attempt to amend the claim was made until it was raised at the

hearing on 13 June 2022. No explanation is given for the delay in the written application. Ms Aujla, who has only recently taken on conduct of the case, was not able to assist on this question. Whilst delay is not the deciding factor, I note that there is no explanation for the delay and even when raised in writing on 27 June 2022 the substance of the amendment was not set out and has only been ascertained today. That substance is not one where new facts or information have come to light which may explain a delay. If the application was granted the disability discrimination claim would be out of time and whilst I do not need to determine this point now, I note that I have heard no submissions today which would indicate that it would be just and equitable to extend time.

12. Having considered all relevant factors and the submissions of the parties I refuse the application to amend the claim to include a claim of disability discrimination as where the claimant has a live discrimination claim the greater injustice in granting it would be to the respondent.

Employment Judge Anderson

Date: 22 September 2022

10/10/2022

Sent to the parties on:

J Moossavi

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For the Tribunal Office