



EMPLOYMENT TRIBUNALS

Claimant: Mrs S Daramy
Respondent: London Borough of Tower Hamlets and others
Heard at: East London Hearing Centre
On: 29 September 2022
Before: Employment Judge Jones

Representation

Claimant: in person
Respondent: Mr McCombie (Counsel)

JUDGMENT having been sent to the parties on 4 October 2022 and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013.

REASONS

1 The Claimant applied, by letter dated 30 May 2022 to add Denise Radley, Corporate Director as a named Respondent in this litigation or to substitute Denise Radley for Claudia Brown. The Claimant submitted a revised version of that application on 21 September. The Respondent opposed the entire application.

2 The Tribunal applied the following law to its consideration of the Claimant's application.

Law

3 In seeking to add Ms Radley as another Respondent in this claim, the Claimant was making an application to amend.

4 Rule 34 of the Employment Tribunal Rules of Procedure 2013 gives the Tribunal the power to add, substitute or remove parties to proceedings, if it appears that there are

issues between that person and any of the existing parties falling within the jurisdiction of the Tribunal which it is in the interest of justice to have determined in the proceedings.

5 In considering whether it is appropriate to allow the Claimant to add another named Respondent to this case, the Tribunal considered the guiding principles set out in the case of *Selkent Bus Company Ltd v Moore* 1996 ICR 836, which confirmed that in considering whether or not to grant amendments, a tribunal must consider the nature of the proposed amendment, the applicable to time limits, and the timing and manner of the application. The Tribunal also has to consider relevant time limits. I also considered the law as updated by the most recent case of *Vaughan v Modality Partnership* [2021] IRLR 97 as well as the Presidential Practice Directions and Guidance on amendments.

6 From those authorities, the Tribunal concluded that rather than using the principles in *Selkent* as a checklist, the core test in considering applications to amend is to conduct as assessment of the injustices and hardship likely to be caused to both parties in either, allowing or refusing the application and carrying out a balancing exercise to see where justice lies.

7 The Tribunal drew the following conclusions from the submissions of both parties and from the written application.

Findings

8 The complaints which the Claimant wanted to bring against Ms Radley were: complaints of Direct Discrimination on the grounds of race and/or sex and disability; Harassment based on race and/or sex; failure to investigate her grievances; failure to comply with the duty to make reasonable adjustments, detriment because of doing a protected act and victimisation. The Claimant alleged that these acts had occurred between July 2020 and June 2022 when her contract was terminated.

9 In the narrative of her application, the Claimant made allegations that Ms Radley had omitted to/failed to investigate her various complaints of bullying, harassment, victimisation and discrimination against Claudia Brown, Shaun Last, Aderonke Debiyi and Mohamed Maniruzzaman. She also alleged that Ms Radley failed to agree to her transfer request and did not act on the recommendations of her solicitor and that those were acts of discrimination. She was unhappy about Ms Radley's conduct of her grievance against Mags Groves and Marisa Bouman. She alleged that Ms Radley failed to investigate her grievances against the East London NHS Foundation Trust.

10 The allegations were all allegations of omissions by Ms Radley, which the Claimant considered to have been done on the grounds of her race and/or sex and her disability.

11 The Tribunal was aware that all complaints in Case Number 3200398/2021 had been struck out by EJ Russell at the preliminary hearing on 28 January 2022 as having no reasonable prospects of success. In addition, all claims against Ms Groves and Ms Bouman had also been struck out at the same time.

12 In today's hearing, the Respondent confirmed that Ms Radley will be a witness at the final hearing in July 2024 as both she and the corporate Respondent want to put her evidence before the Tribunal on these serious allegations. As corporate director, she is likely to be one of the main witnesses.

13 This application is made a considerable period of time after the issue of these proceedings and the Claimant has provided no reason for that delay. The Claimant confirmed that her complaint has been ongoing since May 2020.

14 Matters within the Claimant's application are already covered in the present case and no prejudice is being caused to the Claimant by not adding her as a party.

15 If Ms Radley is added as a named Respondent, she would firstly, have allegations made against her personally for decisions that she took as part of the performance of her duties. If she was added as a Respondent, the corporate Respondent, London Borough of Tower Hamlets would have to go through the process of assessing whether there is a conflict between her and the other individually named Respondents which would require her to be represented separately from the others: which would cause increased costs legal and otherwise, to the corporate Respondent. The corporate Respondent, as a public body, has a duty to be diligent with taxpayer's money.

16 The Respondent was not defending the Claimant's claim on the basis that Ms Radley had acted outside her duties as corporate director.

Decision

17 If Ms Radley is not added as a Respondent and the Tribunal, on hearing the case, concludes that Ms Radley was responsible for any act of discrimination against the Claimant, the corporate Respondent would be responsible for any remedy due to the Claimant. It is this Tribunal's judgment that it would add nothing to have Ms Radley as a named Respondent apart from the Claimant being satisfied that Ms Radley was a named Respondent.

18 The Tribunal conducted the exercise and concluded that the balance of injustice and hardship weighed against the Claimant for the following reasons: there would be little hardship or injustice to the Claimant in not allowing Ms Radley to be joined as a Respondent as all the issues that she wished to raise with or about Ms Radley are still part of the case, are included in the list of issues and will be raised in the hearing. Ms Radley will be in the hearing to answer the Claimant's questions about why she made the decisions/omissions that she did. On the other hand, the balance of injustice and hardship weighed against the corporate Respondent, which is also a public body. There will be increased costs incurred in defending the claim on behalf of another named Respondent. The corporate Respondent was also concerned that it would have to carry out an exercise to determine whether there were any conflicts of interest between any of the named Respondents that would mean that they would need to incur further expense in engaging separate legal representation. The case is presently already against two individual named Respondents, in addition to the corporate Respondent. The corporate Respondent accepted that it would be vicariously liable for any acts which the Tribunal found were discriminatory, in respect of any of the named Respondents. It was the corporate Respondent's case that Ms Radley was acting in accordance with her duties.

19 The Tribunal also considered the delay that had happened in the Claimant making this application and although she has stated that the reason for the delay was that she was waiting for Ms Radley to determine the grievance in the way that she wished her to, that was not be a good enough reason for the delay issuing the claim as it meant that the

application was now made many months after the claim had been issued in December 2021. The application was issued many years after some of the allegations against Ms Radley occurred. They mostly related to a period July – November 2020. The complaints that the Claimant wishes to bring against Ms Radley are therefore out of time.

20 It is not just and equitable to extend time to allow the Tribunal to consider them. The delay in the grievance outcome is not sufficient reason to delay bringing the claim. The Claimant did not submit that there was any continuing act to consider here.

21 After due consideration, it is this Tribunal's judgment that the Claimant has made allegations against Ms Radley which are to be determined at the final hearing in July 2024. The fact that Ms Radley is not a Respondent has not prevented her from making those allegations. I was assured that they are already part of the case against the corporate Respondent, on whose behalf she will attend the hearing as a witness.

22 It is this Tribunal's judgment that little or no prejudice would be caused to the Claimant by not adding Ms Radley as a party as all the issues that she wished to complain about were each already part of the case.

23 In the circumstances, it is this Tribunal's judgment that it was not in the interests of justice to add Ms Radley as a Respondent and the Claimant's application is refused.

**Employment Judge Jones
Date: 24 October 2022**