



Case No. 2303042/2020, 2303465/2020 and 2304669/2020

EMPLOYMENT TRIBUNALS

Claimant: Mrs M Supersaud

Respondents: Gapuma (UK) Limited (1)
Mr J Badakjian (2)
Mr S Harris (3)

Considered By: London South (On Papers) **On:** 15 June 2022

By: Employment Judge Self

RECONSIDERATION JUDGMENT

Upon reconsideration of the previous Judgment no further amendments are permitted.

1. The Claimant applies for a reconsideration of my Judgment dated 9 February 2022 which was sent to the parties on 23 February 2022. That Judgment followed an Open Preliminary Hearing that took place on 8 December 2021. There was an initial delay in the application being laid before me and I have undertaken the reconsideration when time has allowed.
2. The need for a reconsideration, states the Claimant, flows from the fact that I:
 - a) Failed to consider the claimants application to add claims for race and sex harassment to claim number 2304669/2020 (Claim 3):
 - b) Failed to consider the Claimant's application to add R2 and R3 to Claim Number 2303042/2020 (Claim 1) and 2303465/2020 (Claim 2).

3. The Claimant's solicitors point to paragraphs 2.1.3 and 2.1.4 of a letter dated 14 October 2021 as their application. Those paragraphs provides information that R1 had transferred its trade and assets to its parent company and that in those circumstances she had no effective protection in relation to the race and sex harassment claims add R 2 and R3 and the Claimant sought to add R2 and R3 to the first claim.
4. In providing draft amended grounds of claim for Claim 3 it was sought to add to Claim 3 the sex and race claims at paragraphs 3 and 4 of Claim 2. The purpose of each of these claims was to ensure that the claim for sex and race harassment was against all three Respondents. The Claimant accepts that the two matters it seeks a determination on are alternatives with that purpose in mind i.e. either amending Claim 3 so as to add all permitted race and sex matters within with the result that all Claim 1 and 2 allegations are against all three Respondents. Alternatively, to add R2 and R3 to Claim numbers 1 and 2 to achieve the same thing.
5. The Claimant has had the ability to add R2 and R3 to any of the three claims made. It is very often the case that individuals are listed as Respondents. Early Conciliation was commenced on two occasions but not against R2 and R3. On the first occasion the Claim was brought against R1 only and on the second occasion R2 and R3 claims were rejected because of the lack of Early Conciliation leading to Claim 3 being brought against R2 and R3 following Early Conciliation against them. I can see no reason why claims of race and sex harassment were not added to Claim 3 when it was lodged.
6. I have already made the Judgment that the only claim against R2 and R3 is the third claim within the Judgment sent to the parties on 23 February. It seems to me that lodging a claim against R2 and R3 would have been within the reasonable contemplation of the Claimant or her advisors at the time they filed the first or second claim. They elected not to do so and for the second claim at least their failure was on account of not following the necessary steps for filing a claim after Early Conciliation.
7. I can see no reason for the Tribunal to make an order effectively circumventing the rejection of the Claim against R2 and R3 on the second claim and providing relief from what was an error by those who filed the claim. So far as the first claim is concerned it seems to me that the opportunity to add R2 and /or R3 would have been in the reasonable contemplation of the Claimant or her advisor at the time and the fact that it appears the wrong decision was made is not for the Tribunal to revisit.
8. The hardship on the two Respondents who are sought to be added is substantial especially after the time that has elapsed. They have traded under limited liability and are entitled to have that protection. There was a way for the Claimant to hold them personally responsible but that opportunity

was missed when it should have been in the Claimant's or her advisor's reasonable contemplation.

9. There has been no explanation why when Claim 3 was lodged it did not include the race and sex harassment claims. It was open to the Claimant to do so and she was represented at the time. Again, I consider the hardship to R2 and R3 far outweighs that caused by the failings when pleading Claim 3 when those claims were omitted.
10. The fact that any claim against R1 might be "pyrrhic" should have been in the contemplation when each claim was lodged and a belt and braces approach would have obviated all the issues that the Claimant now seeks to correct.
11. Having reconsidered the matter and applying the law as stated in my previous judgment I reject the remaining applications to amend.
12. The Agreed List of Issues should now be drawn up and sent to the Tribunal by no later than 28 days after receipt of this Order. There should also be an agreed timetable of directions and an agreed time estimate indicating the number of witnesses on each side. If the parties are able to agree these matters then they should mark them for the attention of EJ Self who will convert the same into an order and seek a listing of the case which will then be communicated to the parties. If the parties cannot agree within 28 days they should indicate that is the case and a Telephone case management hearing will be convened.

Employment Judge Self
15 June 2022