



# EMPLOYMENT TRIBUNAL

**Claimant:** Miss S. Goodlace  
**Respondent:** Chase Buchanan Ltd  
**Heard at:** London South Employment Tribunal (by CVP)  
**On:** 8 December 2022  
**Before:** Employment Judge A. Beale

**Representation**  
**Claimant:** Mr O.Dear (solicitor)  
**Respondent:** Ms J. Charalambous (litigation consultant)

## JUDGMENT

1. The Claimant's application to amend to include a complaint of indirect sex discrimination is allowed.

## REASONS

1. During the case management preliminary hearing on 8 December 2022, the Claimant made an oral application to amend her claim to include a claim of indirect sex discrimination. The allegation made is that the Respondent applied a PCP whereby, in the event of a relationship breakdown between two employees, the more junior employee would be dismissed. It is further alleged that such a PCP placed or would place female employees at a disadvantage when compared with males.
2. The Claimant's primary contention was that this did not constitute an application to amend at all, but was merely a proper characterisation of the claim originally submitted by the Claimant on her own behalf, in which she had stated:
  - 2.1 that she had been engaged to a Director of the Respondent;
  - 2.2 that the 9 year relationship began when the Claimant was 21 and the Director was 46;
  - 2.3 that three weeks after the relationship ended, the Claimant was dismissed for gross misconduct;
  - 2.4 that the Claimant was the only female sales manager and other male employees had not been dismissed for the conduct for which the Claimant was allegedly dismissed.

3. In the alternative, the Claimant's solicitor submitted that should I take the view that an application to amend was required, this was a mere relabelling rather than a pleading of new facts. The Claimant had issued her claim herself, and had not been in a position to label these elements of her grounds of claim. She had sought legal advice ahead of this hearing around a month ago, and was making this application at the first opportunity. There was no prejudice or disadvantage to the Respondent, with the exception of the need possibly to amend the ET3; the same evidence would need to be presented in respect of the indirect discrimination claim so it would not affect the directions or listing for the final hearing (which will take place from 24 – 26 April 2023).
4. The Respondent's representative opposed the application to amend on the basis that the Claimant had been on notice of the claim since September 2021, and there was no reason why the application was only being made at this stage. Further, she had been on notice of the PH since 3 October 2022, meaning that if she wanted to seek representation this should have been done earlier. She suggested that the delay was deliberate to give the Respondent less notice of this claim. She argued that this was not a mere relabelling as the initial ET1 contained no indication of an indirect discrimination claim. The Respondent would be significantly prejudiced by being left 4 – 5 months before the final hearing to suddenly deal with all these matters.
5. In considering this application, I took into account the principles set out in *Selkent Bus Co Ltd v Moore* [1996] ICR 836, and the recent guidance of the EAT in *Vaughan v Modality Partnership* [2021] ICR 535.
6. I do not agree with the Claimant's position that this claim is raised in the pleadings. Although I accept that the factual matters referred to by Mr Dear are raised in the pleadings, several important components of an indirect discrimination claim are not so raised. In particular, there is no reference to a PCP of dismissing junior employees involved in a relationship breakdown, or that such a PCP would disproportionately affect women. If the claim is to be pursued, an amendment is required.
7. Turning to the nature of that amendment, I do not accept that this is a pure "relabelling" amendment, for the reasons given at paragraph 6 above. There is no suggestion in the pleading of a "practice" of dismissing junior employees in circumstances of relationship breakdown. However, I do agree with Mr Dear that the principal facts that are to be relied upon by the Claimant in support of this claim are already set out in the pleadings, as identified at paragraph 2 above.
8. Whilst neither party has specifically referred to time limits, it is necessary for me to give consideration to them in exercising my discretion in relation to an application to amend. There can be no doubt that this amendment, raised for the first time today (8 December 2022), some 14.5 months after the Claimant's dismissal, has been raised out of time. As I have found that this is not a mere relabelling, the time limits are relevant and I must consider

whether there is a prima facie case for the extension of time. I address this having considered the other factors set out below.

9. There is an explanation for the delay in raising this claim. The Claimant presented her claim as an unrepresented litigant in person, and only sought legal advice last month ahead of this hearing. In the circumstances, it appears to me that the amendment application has been made in a timely manner, although it would have been helpful if it could have been raised in writing ahead of the hearing, rather than in the agenda as part of the list of issues, as has in fact been the case.
10. In terms of the balance of prejudice and hardship, points have been made on both sides. The Claimant, through her representatives, is trying to find a way of framing a claim arising (she alleges) from the breakdown of her relationship with a senior employee of the Respondent. Such claims are notoriously difficult to classify, and were the amendment to be refused, the Claimant would potentially be deprived of the appropriate legal avenue through which to make her complaints. By contrast, I did not consider that the points made by Ms Charalambous showed, in the circumstances, any prejudice beyond that which will necessarily arise from an amendment at this stage of proceedings, namely a need to amend the response and respond to the new claims. This is not a case where new facts are being pleaded which the Respondent could not previously have been aware would form part of the claim. It is a legal reworking of the same facts, which may require a small amount of additional evidence (namely what has occurred in relation to any previous relationship breakdown within the employer, and perhaps some statistical evidence about the make-up of the team, which has already been raised by the Claimant). However, the Respondent will already have to give evidence on the issue central to this claim, which is the reason why the Claimant was dismissed, and will thus suffer no prejudice in that respect.
11. I have reached the conclusion that the balance of prejudice and hardship favours the Claimant in this instance. Because there is an explanation for the delay in raising this claim, and because of the factors set out at paragraph 10 above, I also consider that there is a prima facie case for an extension of time, although I am not deciding that point today, and it will be open to the Respondent to raise the issue of time limits in respect of this claim again at the full hearing. I have therefore decided to allow the amendment. I will order the Claimant to set out the amendment in writing, and will allow time for the Respondent to provide an amended response.

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Employment Judge A Beale  
Date: 8 December 2022

Sent to the parties on  
Date: 14 December 2022