EMPLOYMENT TRIBUNALS

Claimant: Ms A R Yamjom

Respondent: East London NHS Foundation Trust

Heard at: Bury St Edmunds Employment Tribunal (by telephone)

On: 28 March 2023

Before: Employment Judge K Welch (sitting alone)

Representation

Claimant: Mr C Price, Counsel
Respondent: Mr H Sheehan, Counsel

JUDGMENT

1. The claimant's claim form is not rejected under rule 12(1)(b) of the Employment Tribunal Rules of Procedure 2013.

2. A further Open Preliminary Hearing will take place on 28 April 2023.

REASONS

Background

1. This telephone preliminary hearing came before me on 28 March 2022. It had been listed in advance of an Open Preliminary Hearing (OPH) which is due to take place on 28 April 2023.

2. The hearing was listed to determine two issues:

a. Should the claimant's claim have been rejected by the Tribunal because it could not sensibly be responded to; and

b. Should the claimant's application to amend her claim made on 15 August 2020 be permitted?

3. I was provided with an agreed bundle of documents, being approximately 234 pages and references to page numbers within this Judgment refer to pages within that agreed bundle. I was also provided with two witness statements for the claimant. It was agreed that I would not hear any evidence and, as the second issue to be considered (the amendment application) potentially requires evidence from the claimant, I decided that this would be dealt with at the OPH already listed. After hearing from both parties, I considered this was in accordance with the overriding objective.

4. I therefore only considered the one issue, namely whether the claim presented on 9 August 2020 should have been rejected under rule 12(1)(b) of the Employment Tribunal Rules of Procedure 2013 (ET Rules).

5. I was provided with a skeleton argument from the respondent's Counsel and heard submissions from both parties. I reserved my decision, since I wished to consider the authorities I was referred to in greater detail.

6. The claimant presented a claim form on 9 August 2020. It complied, so far as necessary, with the relevant ET Rules in being on the prescribed form, having an Early Conciliation number quoted and having the minimum information required by rule 10.

7. The claimant at paragraph 8 of the ET1 claim form had ticked to show that she was bringing claims of unfair dismissal and disability discrimination. At paragraph 9 of the ET1 claim form, the claimant gave brief details of the respondent, her start date and the role she was in at, "the time of her constructive dismissal on 22nd January 2020". She then proceeded to list the claims she was bringing, which

included: detriment for making protected disclosures, constructive unfair dismissal, automatic unfair dismissal and disability discrimination. It then stated, "Grounds of complaint to follow". No further particulars were provided at this time.

8. On 15 August 2020, the claimant provided her Grounds of Complaint to the Tribunal by email [P33], although these were not copied to the respondent and the Tribunal failed to pass them on.

9. The Grounds of Complaint appeared at pages 34 to 50 and provided significant detail of the claimant's claims of detriment for making protected disclosures (s47B Employment Rights Act 1996), direct disability discrimination (s13 Equality Act 2010 (EQA)), discrimination arising from disability (s15 EQA), indirect disability discrimination (s19 EQA), failure to make reasonable adjustments (s20/21 EQA) and harassment (s26 EQA).

10. The pre-acceptance checklist completed by the Tribunal staff appeared at page 231. I am unsure how the parties came into possession of what is an internal Tribunal document. It asked, "*can we accept [public interest disclosure] claim due to additional info*". The Employment Judge's directions on 18 August 2020 were to "*accept the whole claim form*" and added, "*Yes, its [unfair dismissal], [public interest disclosure] and [disability discrimination]*" albeit the Judge used the abbreviations used internally by the Tribunal. It is not clear whether the Employment Judge at this time had sight of the Grounds of Complaint dated 15 August 2020, which had been sent in to the Tribunal 3 days earlier.

11. The claim was accepted by the Tribunal and the claimant was informed of this on 28 August 2020.

12. An initial consideration was carried out under rule 26 of the ET Rules. The rule 26 referral, which appeared in the bundle at pages 233-4 asked for the claimant's representative to be told, "*you have provided no particulars on the ET1 form merely stating they are "to follow". Please file these within 7 days of the date of this letter.*"

It was clear that the Employment Judge considering the rule 26 referral was not aware of the Grounds of Complaint provided by the claimant on 15 August 2020 at that time.

13. Following an extension of time being granted, the respondent filed its response [P21-31] on 2 November 2020. This raised issues of jurisdiction about the claims being presented out of time, and also that the claim should have been rejected under rule 12(1)(b) ET rules as it was in a form that could not sensibly be responded to. It went on to say, "*If the claim is allowed to proceed the Claimant shall be required to provide particulars of the claims and the Respondent shall thereafter make an application to amend its Response accordingly*."

14. The respondent contended that its Grounds of Resistance was a blanket denial of the claims. However, I found that the Grounds of Resistance annexed to the ET3 provided more than a mere blanket denial of the claims. The 4 pages of typed response included reference to the claimant's grievance containing, "*allegations of bullying and harassment, disability discrimination, failure to follow policy and procedures, breach of trust and confidence, sex discrimination and whistleblowing*."

15. The claimant made an application to amend her Grounds of Complaint on 20 November 2020 [P52-72]. The amendments were to the Grounds of Complaint sent on 15 August 2020, but which had not been sent to the respondent. The respondent objects to this amendment, which will be dealt with at the later OPH.

16. At a preliminary hearing on 4 May 2021, Employment Judge Kurrein confirmed that an OPH would be listed on a date to be fixed. Unfortunately, through no fault of the parties, this was not listed until 2 February 2023.

17. The OPH on 2 February 2023 was postponed following an application by the claimant. It listed the telephone case management hearing today and a further OPH on 28 April 2023. The parties have not received the Case Management

Order prepared by Employment Judge Armstrong, which I agreed would be sent out with this Judgment.

RELEVANT LAW

18. Rule 12(1)(b) provides:

"*12 Rejection: substantive defects*

(1) The staff of the tribunal office shall refer a claim form to an Employment Judge if they consider that the claim, or part of it, may be—

….

(b) in a form which cannot sensibly be responded to or is otherwise an abuse of the process;

(2) The claim, or part of it, shall be rejected if the Judge considers that the claim, or part of it, is of a kind described in sub-paragraphs (a), (b), (c) or (d) of paragraph (1)…

(3) If the claim is rejected, the form shall be returned to the claimant together with a notice of rejection giving the judge's reasons for rejecting the claim, or part of it. The notice shall contain information about how to apply for a reconsideration of the rejection."

19. I was referred to 2 main authorities by the respondent. The claimant appeared to also rely upon one of them.

20. In the Court of Appeal decision in <u>Trustee of the William Jones's Schools Foundation v Parry [2018] ICR 1807</u>, an ET1 claim form had been presented in which box 8.2 contained only the words "*please see attached*" but the document attached related to an entirely different case. The claim form was not rejected under Rule 12(1)(b). LJ Bean said at paragraph 31, "*Employment tribunals should do their best not to place artificial barriers in the way of genuine claims*." [paragraph 31].

21. In paragraph 32 of the Judgment, LJ Bean went on "*I should add that, in holding that a sensible response could have been given to this claim, I am not laying down a general rule that the respondent to a claim in an employment tribunal must always be treated, for the purposes of rule 12(1)(b), as having detailed knowledge of everything that has occurred between the parties. If, for example, a claimant brings a claim for sex or race or disability discrimination without giving any particulars at all, or attaching the particulars from someone else's case, that ET1 might well be held to be in a form to which the employer could not sensibly respond and thus properly rejected under rule 12(1)(b)*."

22. The second case to which I was taken was Birmingham City Council v Adams and ors (UKEAT/0048/17/LA), being a decision under the earlier Employment Tribunal Rules of Procedure 2004. This case referred to the decision in the Parry case, above. In Adams, an equal pay case, nine of the eleven claimants simply wrote, "*I rely on the particulars of claim attached to the ET1 of Kalaisho Devi submitted on 19 January 2011*". The claims were allowed to proceed. Judge Barklem, stated that "*the thread running through the cases is that a literal and restrictive interpretation of the Rules is not to be encouraged*" and endorsed the statement that "*a non-technical and liberal approach should be taken in this context*". He found that there was no error of law in the Employment Judge's decision to accept the claimants' ET1 documents.

23. I was also referred to cases about the purpose of the ET1 claim form, including the often-quoted paragraph for amendment applications from Chandhok v Tirkey [2015] ICR 527, where Langstaff J (as he then was) stated:

"*The claim, as set out in the ET1, is not something just to set the ball rolling, as an initial document necessary to comply with time limits but which is otherwise free to be augmented by whatever the parties choose to add or subtract merely on their say so. Instead, it serves not only a useful but a necessary function. It sets out the*

essential case. It is that to which a respondent is required to respond. A respondent is not required to answer a witness statement, nor a document, but the claims made meaning, under the Employment Tribunals Rules of Procedure 2013 (SI 2013/1237), the claim as set out in the ET1."

CONCLUSION

24. If the Employment Judge had seen the Grounds of Complaint provided by the claimant on 15 August 2020 together with the ET1 form, it is clear that it was rightly not rejected on 18 August 2020, since the claim form was clearly able to be sensibly responded to.

25. If the Employment Judge had not seen the additional Grounds of Complaint on that date, then I have to consider the claimant's ET1 claim form. I note that it includes the claims being brought, and therefore differs to some extent from the cases of Adams and Parry referred to above.

26. I accept the respondent's submission that the only question for me is: '*was the ET1 presented in a form that could sensibly be responded to*'. The Claimant's explanation as to why the Grounds of Complaint was filed late is not relevant to that consideration.

27. I further note that no additional details, other than the claims themselves, were provided at the time that the ET1 form was presented, on 9 August 2020. Instead, it stated that they would follow, which they did on 15 August 2020, although were not provided to the respondent at that time.

28. The respondent was, however, aware of the claimant's grievance which had provided further particulars, although the claims within it were not wholly mirrored by the Grounds of Complaint subsequently presented on 15 August 2020.

29. I therefore accept that the claimant's grievance did not fully particularise the claimant's claim, however, this, together with the claimant's letter of resignation as quoted in paragraph 77 of the Grounds of Complaint [P49], should have been

sufficient for the respondent to know the case it had to answer under the heads of claim identified in the ET1. I am mindful of LJ Bean's comments at paragraph 32 recited above, but consider in this case that the respondent was able to sensibly respond to the claim form, and in fact did so.

30. I therefore find that the Employment Judge was right not to reject the claim on 18 August 2020.

31. For completeness, had the claim been rejected under rule 12(1)(b) and the claimant applied for reconsideration under rule 13(1)(b) in that the notified defect had been rectified on 15 August 2020, I would have allowed the reconsideration.

32. The issues relating to the claim being out of time remain to be determined.

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Employment Judge Welch

Date 30 March 2023

JUDGMENT SENT TO THE PARTIES ON

31 March 2023

FOR THE TRIBUNAL OFFICE

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