



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

and

Respondent

Mrs I Parkes

Vigilant Security (Scotland) Ltd
t/a Croma Vigilant

JUDGMENT AND ORDER ON PRELIMINARY HEARING

HELD AT: London Central

ON: 19 April 2023

BEFORE: Employment Judge A M Snelson (sitting alone)

On hearing the Claimant in person and Mr T Fuller, legal representative, on behalf of the Respondent, the Tribunal determines and orders as follows.

JUDGMENT

The claims identified in sub-paras (1)-(7) inclusive of para 7 of the document prepared by EJ Khan following the preliminary hearing held on 18 October 2022 (all relating to events which occurred in the period between 2010 and 2012) are struck out as having, on time grounds, no reasonable prospect of success.

ORDER

- (1) The Claimant has permission to amend the claim form to add the complaints listed in her undated Further and Better Particulars document (bundle, pp 64-79) paras 25, 26, 27, 30, 32, 33, 34, 36, 39, 40, 41, 53, 54, 55, 56, 57, 58, 59, 60 and 71. For the avoidance of doubt, permission to amend is given without prejudice to the right of the Respondent to resist any new claim not only on its merit but also (if so advised) on the ground that it is outside the Tribunal's jurisdiction on time grounds.
- (2) No later than 19 May 2023, the Respondent shall deliver to the Tribunal and copy to the Claimant an amended response form incorporating all grounds on which the claims, as narrowed pursuant to the above Judgment and as amplified by para (1) of this Order, will be resisted.
- (3) No later than 19 May 2023 the Respondent shall deliver to the Claimant a draft list of issues and invite her comments thereon.

- (4) Time for the Claimant to deliver to the Tribunal and copy to the Respondent's representative a schedule of the remedies claimed (money losses and compensation claimed for injury to feelings and/or personal injury as applicable), which expired on 15 March 2023,¹ is extended to 19 May 2023.
- (5) No later than 9 June 2023 the Claimant shall return the draft list of issues to the Respondent's representative together with her comments thereon.
- (6) On or before 23 June 2023 the parties shall deliver to the Tribunal a final, agreed list of issues.
- (7) On or before 30 June 2023 the parties shall exchange:
 - (a) lists of all documents which are, or have been, in their possession or control and which are, or may be, relevant to any issue in the proceedings including, for the avoidance of doubt, any document which may not assist the disclosing party's case and/or may assist the opposing party's case; and
 - (b) copies of all listed documents.
- (8) The parties shall cooperate to agree a common bundle of documents for use at the final hearing already listed to commence on 10 October 2023 ('the hearing'), primary responsibility for its preparation resting with the Respondent. The form of the bundle shall be finalised no later than 11 August 2023 and one copy supplied at once to the Claimant for her own use. At the hearing, the Respondent shall produce five paper copies of the bundle for the Tribunal's use.
- (9) On or before 8 September 2023 the parties shall exchange witness statements in the names of all witnesses (including the Claimant) whom they intend to call to give evidence at the hearing. Every witness statement shall:
 - (a) be typed in double line spacing;
 - (b) be laid out in short, numbered paragraphs;
 - (c) set out the relevant events in chronological order, with dates;
 - (d) contain all the evidence which the witness is called to give;
 - (e) exclude any matter not relevant to the issues to be determined;
 - (f) state the source of any information not acquired at first hand;
 - (g) be signed and dated.

Except with the special permission of the Tribunal, no witness may be called at the hearing unless a statement in his/her name has been prepared and delivered to the opposing party in accordance with this direction. At the hearing the parties shall produce five paper copies of every witness statement to be relied upon.

- (10) No later than 16 June 2023 the Respondents shall send by email to

¹ Order of EJ Christensen made on 1 February 2023, para 8.

londoncentralet@justice.gov.uk electronic copies of the papers to be presented at the hearing, including the trial bundle, the witness statements, skeleton arguments or written openings and any chronology or other relevant document, or a link to a website from which they can be downloaded. The following points should be carefully noted:

- (a) all documents should be sent in pdf format;
 - (b) the index to the trial bundle should be sent as a separate document, so that the page numbers of the hearing bundle align with the thumbnail page numbers of the pdf;
 - (c) any late additions to the trial bundle must be inserted at the end, not in the middle;
 - (d) witness statements should be contained in a separate pdf bundle;
 - (e) chronologies, skeleton arguments and other sundry documents should be contained in a further, separate pdf bundle.
- (11) The parties shall agree and produce to the Tribunal no later than 10 October 2023 three paper copies of:
- (a) a chronology;
 - (b) a 'cast list';
 - (c) a pre-reading list; and
 - (d) a proposed trial timetable.
- (12) The restricted reporting order made at the preliminary hearing on 18 October 2022 and extended on 1 February 2023 is further extended to 10 October 2023.

NOTES:

- (1) Any person who without reasonable excuse fails to comply with an Order to which section 7(4) of the Employment Tribunals Act 1996 applies shall be liable on summary conviction to a fine of £1,000.00.
- (2) The Employment Tribunals Rules of Procedure 2013 (to which any reference below to a rule refers) provide by rule 6 that if an Order is not complied with, the Tribunal may take such action as it considers just, which may include waiving or varying the requirement, striking out the claim or response (in whole or in part), barring or restricting a party's participation in the proceedings and/or awarding costs.
- (3) You may apply under rule 29 for this Order to be varied, suspended or set aside.
- (4) Where reasons have been given orally on any disputed issue, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

COMMENTARY

- 1. Pursuant to directions given by EJ Christensen at the case management hearing on 1 February 2023, the dispute came before me in the form of a

public preliminary hearing to deal with four matters: (a) the Respondent's applications for striking-out or deposit orders in respect of the Claimant's seven oldest claims, which date from 2020 to 2012; (b) any application the Claimant might pursue for permission to introduce fresh claims by amendment; (c) clarification of the issues in the case following stages (a) and (b); (d) such case management directions as were required for the preparation of the final hearing already listed to commence on 10 October 2023.

2. This commentary, which should be read with the documents generated by the hearing before EJ Christensen and the first preliminary hearing, held by EJ Khan on 18 October 2022, seeks to summarise the main points which arose. I gave oral reasons for my decision on the striking-out application and for the various adjudications and directions referred to in my Order.
3. The hearing was set up as a video conference call but the Claimant experienced connection problems and so, to ensure equal treatment of all, we converted it to an audio hearing. The Claimant, who attended with the valuable assistance of a mental health support worker, made a very helpful contribution to the hearing, as did Mr Fuller on behalf of the Respondent. Time was limited: the original listing had been for a day but the Claimant's request for the start to be put back to 12.00 had been granted as an adjustment to cater for her vulnerable mental health condition. There was a lot of detail to get through and I apologised to the Claimant for the fact that it was necessary to proceed at a brisk pace.
4. Before turning to the four agenda items, I drew attention to para 7.1 to 7.4 of EJ Christensen's Order, which had required the Claimant to clarify several matters.
5. As to para 7.1, we were agreed that the Claimant had supplied the necessary information in para 15 of her undated 'FBP' document (hereafter, the 'F&BPs'), delivered pursuant to EJ Christensen's order, and no further clarification was required.
6. As to paras 7.2 and 7.3, it was agreed after discussion that the Claimant had not (in the F&BPs or otherwise) identified any proposed claim under the Equality Act 2010² s15 (discrimination arising from disability) or ss20-21 (failure to make reasonable adjustments). I explained that, although conscious of the Claimant's disadvantage as an unrepresented litigant with a mental health condition I was not willing to sanction continuing uncertainty as to the scope (or proposed scope) of the case. It would not be fair to leave the Respondent and the human beings through which it conducted its business at continuing risk of facing fresh claims. The Claimant had had ample time to formulate s15 and/or ss20-21 claims and had had the benefit of careful guidance from EJ Christensen. Moreover, this was the third interim hearing. Holding open the prospect of the case changing shape again after 19 April would not be in keeping with the overriding objective of

² To which all section numbers hereafter will refer

doing justice in a fair, proportionate and cost-efficient way and would put the October hearing at severe risk. Accordingly, the litigation would now proceed on the footing that no claim under s15 or ss20-21 would run.

7. As to para 7.4, we agreed after discussion that the Claimant's letter of 30 November 2022 was not intended to raise any proposed additional claim, but only to present evidential support for the claims already identified.
8. I granted the application to strike out the first seven claims identified by EJ Khan on the basis that they had, on time grounds, no reasonable prospect of success. In short, they were, on their face, hopelessly out of time and there was no realistic basis for arguing that they (or any of them) could properly seen with later events as together constituting conduct extending over a period (s123(3)).
9. I next turned to the Claimant's application to amend the claim form. As I understood her, she sought to add as claims all matters in the F&BPs which were not already part of her pleaded case. I was against her in so far as this would add claims which were a long way out of time. That would not be in keeping with my Judgment striking out the first seven claims or, more generally, the overriding objective³ or the *Selkent* principles⁴. By contrast, I considered that it would be just and in line with the guidance of the higher courts to permit amendment to add a number of more recent complaints (some based on events postdating the claim form), provided that it was clearly understood that this would be without prejudice to the right of the Respondent to run all available defences to the new claims, including jurisdictional defences to the effect that they were brought (by amendment) out of time. Although the Claimant was inclined to argue that time should be no obstacle to her complaints, she was good enough to accept that the law might be against her on that. She also took on board the point I made repeatedly that we were debating the *claims* to be run, and that the *evidence* would be permitted to range more widely: in short, time restrictions on the claims⁵ would not preclude her from telling her story from the beginning (although the Tribunal's main focus, of course, would be on the claims themselves and the evidence relating directly to them). Mr Fuller helpfully did not oppose my broad approach, accepting that it would leave a dispute which was within manageable bounds and in a form which would enable both parties to engage with.
10. We went through the F&BPs together, with care. The effect of my Order, para (1) is to add the following:

³ See the Employment Tribunals Rules of Procedure 2013, rule 2.

⁴ *Selkent Bus Co v Moore* [1996] ICR 836 EAT

⁵ A claim is an allegation of an act or omission which, if proved, entitles the complainant to a legal remedy. Witness testimony and documents form the evidentiary fabric against which the claims are judged.

<u>Para of F&BPs</u>	<u>Nature of new claim⁶</u>
25	SXD; H(S); H(S-R)
26	SXD
27	RRD
30	SXD; RRD
32	SXD
33	SXD
34	SXD
36	SXD
39	SXD; RRD
40	H(D-R) ⁷
41	SXD; RRD
53	H(D-R)
54	H(D-R)
55	H(D-R)
56	H(D-R)
57	H(D-R)
58	H(D-R)
59	H(D-R)
60	H(D-R)
71	H(D-R)

Some amendments for which the Claimant contended were refused because they related to matters which occurred too long ago (see above). In the cases of some others, the application to amend failed because it was superfluous, the relevant allegation already featuring in the claim form, or because the para of the F&BPs under consideration was found not to contain a proposed *claim* but rather a mere comment or piece of narrative or background evidence.

11. If either party contends that the 'Nature of new claim' column is in any respect wrong or incomplete (claims can have alternative labels attached to them) the proper course is to consult the other party and then, if need be, asks the Tribunal to correct the record. Subject to that, the claims for which permission to amend has been granted are to be added to those identified by EJs Khan and Christensen. It follows that there will be six classes of claims to be decided at the final hearing: direct sex discrimination; sexual harassment; sex-related harassment; direct race discrimination; race-related harassment; and disability-related harassment.
12. All surviving claims must be fully and clearly addressed in the amended grounds of resistance (Order, para (2)).
13. From the original claim form, the paras of the F&BPs admitted by

⁶ The following abbreviations will be used: SXD: direct sex discrimination; RRD: direct race discrimination; H(S): sexual harassment; H(S-R): sex-related harassment; H(D-R): disability-related harassment.

⁷ This allegation is wrongly dated as 15 January 2022 rather than 15 January 2023.

amendment, the amended grounds of resistance and the documents generated by the hearings before EJ Khan, EJ Christensen and me, the list of issues ('LOI') must be drawn (Order, paras (2), (3), (5) and (6)). The LOI is a key document. It needs to identify concisely in respect of every *claim*, in bare outline (a few words) the act or event complained of, the relevant para in the claim form or (if added by amendment) the F&BPs; the legal character of the claim; and the questions the Tribunal will have to ask in order to decide it. The LOI will also have to spell out the questions to be addressed in deciding whether any claim is outside the Tribunal's jurisdiction on time grounds. The LOI will not dwell on the background history, important as it is. That is because the LOI is concerned only with the *claims*. To repeat, the evidence *will* extend to the background history to the extent that it is relevant to the claims and puts them in their proper context.

14. We discussed the issue of disability. Although no claim under s15 or ss20-21 will be pursued, the Tribunal will consider nine disability-related harassment claims (based on F&BPs, paras 53-60 and 71). Of these, all but one rely on the alleged disability of depression. The exception (that resting on F&BPs, para 57) cites the alleged disability of lymphoedema.
15. As the Claimant accepted, no claim based on, or related to, the alleged disability of dyslexia is identified in the claim form or the F&BPs. As I have said, the case will not be permitted to change shape in any material way from now on, and it follows that no dyslexia-based or dyslexia-related claim will be entertained and no such claim could properly feature in the LOI.
16. It is for the Claimant to prove both disabilities relied on (depression and lymphoedema), unless the Respondent makes a formal concession on either. As I explained, it is for her to decide what information and/or evidence to disclose. It is understandable that she feels that disclosure on medical matters compromises her right to privacy. But I did make the point that the better the disclosure, the stronger is the prospect of the disability being conceded. In so far as any live issue on disability remains when the October hearing commences, the Tribunal will decide the point on whatever evidence the Claimant has put before it, in the form of her own personal evidence and whatever medical notes and records she has elected to disclose.
17. The witness statements (Order, para (9)) are key documents. They do not argue the case. They recount the central facts. They must contain all the information which the witnesses are called to give, in relation to all areas of dispute. They require careful drafting, which is time-consuming. The work should begin many weeks before the deadline for exchange (8 September 2023). Fortunately for the Claimant, she has already laid much of the ground for her witness statement in preparing her claim form, impact statement and F&BPs. She should not hesitate to draw freely on these sources. There is no shame in resorting to cutting and pasting.
18. My directions timetable was fully discussed and explained. The parties are reminded that the various steps to be taken are not optional. They *must* be

followed to ensure that the Tribunal is helped to do justice to this serious dispute. The 'Notes' at the foot of the Order mean what they say. The duty on both sides is to work together to implement the Order. If either side has a difficulty with complying with any step by the specified date, the proper course is to approach the opposing party and propose a small adjustment to the timetable.

19. In the absence of a prompt resolution of any procedural disagreement, an application should be sent to the Tribunal without delay, copied to the other party. But that should not be necessary. Case management by the Tribunal should now be at an end. The parties have used up much more of the Tribunal's hard-pressed resources than is reasonable. They should be able to do all that remains to be done without further intervention by the Tribunal.
20. The October hearing should take place face-to-face, if at all possible. In my view, it is very doubtful whether the Tribunal would be able to do full justice to the case through a 'remote' hearing. I have asked the Tribunal administration to make a 'face-to-face' hearing a high priority.
21. Two further points. First, this case cries out to be settled. The employment contract between the parties remains on foot and no outcome after days of bitter, stressful adversarial hearing will leave the problem of their fractured relationship any closer to a solution. Quite to the contrary. So both sides should be looking urgently for a means of resolving the dispute and making a fresh start. I greatly hope that, once the schedule of remedies (Order, para (4)) has been served, the parties will communicate with one another privately to at least explore the possibility of settlement.⁸ But they must both do so in a realistic way and with a spirit of compromise. As I stressed, any communication about settlement is strictly confidential and the Tribunal must not be told anything about it.
22. Secondly, the Claimant would benefit from independent advice in completing the tasks set for her by my Order. In particular, I hope that she will get independent advice before submitting her schedule of remedies and before finalising her witness statement. These will be key documents. Free assistance may be available from her local CAB or law centre. It is advisable to book appointments early.

EMPLOYMENT JUDGE – Snelson
22/04/2023

Judgment entered in the Register and copies sent to the parties on : 22/04/2023

..... for Office of the Tribunals

⁸ The October hearing is limited to liability, but it was agreed that the schedule should be served so that the parties can gauge what sort of remedies are being contemplated.