



EMPLOYMENT TRIBUNALS

Claimant: Miss Clare Maguire

Respondent: Ministry of Justice

PRELIMINARY HEARING

Heard at: Birmingham (in private, by telephone) **On:** 24 October 2023

Before: Employment Judge C H O'Rourke

Appearances

For the Claimant: In person,
For the Respondent: Mr J Feeny - counsel

JUDGMENT ON APPLICATION TO AMEND CLAIM

1. The Claimant's application to amend her claim is partially granted, in respect of her proposed amendment to her claim of failure to make reasonable adjustments.
2. The balance of her application, in respect of proposed amendments to her claims of direct sex discrimination and harassment on grounds of sex is refused.

REASONS

Background

1. The Claimant applied on or about 24 June 2023 to amend her claim, the details of which were provided on 2 September 2023 [66].
2. The Respondent objected to that application.
3. There have been two previous case management hearings in this matter, on 20 March 2023 [113] and 9 August 2023 [120]. The latter hearing was listed

to deal with the Claimant's application, but the Claimant, who was represented by counsel at that Hearing, withdrew it. However, she subsequently renewed the application, hence today's hearing. The final hearing is already listed, to take place on 23 September 2024, for thirteen days.

4. I heard submissions from both parties.

The Law

5. In determining whether to grant an application to amend, an employment tribunal must always carry out a careful balancing exercise of all the relevant factors, having regard to the interests of justice and to the relative hardship that would be caused to the parties by granting or refusing the amendment — **Selkent Bus Co Ltd v Moore [1996] ICR 836, EAT**. In that case the then President of the EAT, Mr Justice Mummery, explained that relevant factors would include:

nature of the amendment —

applications to amend range, on the one hand, from the correction of clerical and typing errors, the addition of factual details to existing allegations and the addition or substitution of other labels for facts already pleaded to, on the other hand, the making of entirely new factual allegations that change the basis of the existing claim. The tribunal has to decide whether the amendment sought is one of the minor matters or a substantial alteration pleading a new cause of action;

applicability of time limits —

if a new claim or cause of action is proposed to be added by way of amendment, it is essential for the tribunal to consider whether that claim/cause of action is out of time and, if so, whether the time limit should be extended;

timing and manner of the application —

an application should not be refused solely because there has been a delay in making it as amendments may be made at any stage of the proceedings. Delay in making the application is, however, a discretionary factor. It is relevant to consider why the application was not made earlier and why it is now being made: for example, the identification of new facts or new information from documents disclosed on discovery.

6. In **Vaughan v Modality Partnership [2021] ICR 535, EAT**, the EAT gave detailed guidance on applications to amend tribunal pleadings. It confirmed that the core test in considering applications to amend is the balance of injustice and hardship in allowing or refusing the application. The parties must therefore make submissions on the specific practical consequences of allowing or refusing the amendment. The factors identified in **Selkent** should not be treated as a checklist to be ticked off to determine the application.

Conclusions

7. Application in respect of failure to make reasonable adjustments. I accepted the Claimant's submissions that without her proposed amendment (essentially that there be reference permitted to '*recourse to Band D staff*') that element of her claim might not make absolute sense, or somehow permit the Respondent to evade potential liability for it. Mr Feeney accepted that this was not a new claim, although he did consider that it added a new factual allegation. I considered that on balance it merely added a factual detail to an existing allegation, which would require only minor amendment by the Respondent of their Response and not greatly expand the evidential demands upon them. The balance of 'injustice and hardship' therefore clearly fell in the Claimant's favour in this respect.
8. Application in respect of claims of direct sex discrimination and harassment. I considered the following factors as relevant:
 - a. The application proposed entirely new allegations. The Claimant accepted that this was the case but said that at the point she brought her claim (in September 2022), she did not have legal advice and her medical condition was also a factor. She said also that her claim was rushed, as the disciplinary procedure taking place at the time was prolonged, delaying her submission of her claim and she also only belatedly becoming aware of the three-month time limit.
 - b. The application is considerably out of time – the new allegations of direct discrimination relate to incidents in June 2021 and those of harassment to March 2022.
 - c. The timing and manner of the application – it is being made approximately nine months into the life of the claim and a case management hearing was listed to consider it, on 9 August 2023, but the Claimant withdrew the application at that Hearing. The Claimant states that her counsel acted without instructions, although she was present at the Hearing.
 - d. Considerable amendment would be necessary to the Response.
 - e. The Respondent would be required to advance evidence, in the case of the direct discrimination claim, of alleged incidents pre-dating the final hearing by over three years.
 - f. The Claimant has existing claims of direct disability and sex discrimination, harassment related to sex, discrimination arising from disability and failure to make reasonable adjustments.
9. Conclusion on this part of the Application. I concluded that this part of the application should be refused, for the following reasons:
 - a. I didn't accept that the Claimant was unable, at the point she brought the claim, to include these allegations. The particulars of claim run to five closely typed pages, containing considerable detail and therefore

the consideration must be that if the Claimant was capable of producing that detail, at the time, despite her medical condition and any alleged time pressures, then she was capable also of including the claims now raised in her application.

- b. The application is considerably out of time and no explanation was offered as to why it was only being (partially) made in June 2023. I saw no reason to exercise discretion to extend time. Nor do I accept that the Claimant's previous counsel acted without instructions, but I consider it more likely that she has simply had second thoughts on this matter.
- c. There will be considerable prejudice to the Respondent, firstly, in terms of costs in having to further amend their claim and secondly, in respect of the 2021 allegations, in having to adduce evidence at the final hearing of events three years prior. In contrast, if the Claimant is not permitted to proceed with these allegations, the prejudice to her is minimal. As outlined above, she already has an existing extensive range of claims, to include direct sex discrimination and harassment in relation to sex and accordingly has multiple possibilities of recourse in law, if her claims succeed.
- d. Rule 2 (the Overriding Objective) states that dealing with cases fairly and justly includes dealing with cases in ways which are proportionate to the complexity and importance of the issues, also the avoidance of delay and the saving of expense. As indicated, in respect of proportionality, the Claimant already has, before the Tribunal, an extensive range of claims and adding more is disproportionate. Any delay caused and expense incurred, by both the Respondent and the Tribunal, is similarly disproportionate, in that context.

24 October 2023

Employment Judge O'Rourke