



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8000133/2023

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**Preliminary hearing
Held in Edinburgh on 26 October 2023**

Employment Judge A Jones

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Mr R Adewusi

**Claimant
In person**

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Ark Housing Association Ltd

**Respondent
Represented by:
Mr Leonhardt
Counsel**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

1. The claimant's application of 27 June 2023 to amend his claim is refused and his claim is therefore dismissed.

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REASONS

Introduction

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1. The claimant presented a claim to the Tribunal on 22 March 2023. He complained of unfair dismissal and race discrimination. His claims related to employment which had terminated on 14 November 2022. A preliminary hearing on whether the Tribunal had jurisdiction to consider the claimant's claims on the basis that they had not been lodged within the statutory time limits took place on 9 June 2023. A judgment was promulgated on 30 June which held that the Tribunal did not have jurisdiction to consider the

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claimant's claims.

2. As the claimant had made reference to other potential claims in an Agenda which was completed on 17 April, the claim was not at that stage dismissed. The Employment Judge informed the claimant that should he wish to pursue such claims he would be required to make an application to amend his claim. The claimant then submitted an application to amend his claim and a hearing was listed to consider whether the application should be granted.
3. The respondent also submitted an application for strike out of the claimant's claim and parties were informed that this would be considered at the same time as the claimant's application to amend.
4. However, in discussion with the respondent's counsel, it was agreed that an application for strike out was likely to be addressed in the context of the application to amend. If the application to amend was granted, then an application for strike out was not likely to succeed, and if it was not granted then such an application would not be necessary. Therefore, it was agreed that the hearing would only address the claimant's application to amend.

Discussion and decision

5. In the first instance I sought to understand from the claimant the actual claims he was seeking to introduce, I then heard from him as to why he said his application should be granted. Counsel for the respondent made submissions and the claimant was given an opportunity to respond to those submissions.
6. It is well accepted that in exercising its discretion as to whether to grant an application to amend a claim a Tribunal should have regard to the principles set out in the case of **Selkent Bus Co Ltd v Moore 1996 ICR 836**. Consideration should be given to the question of prejudice to the parties. In addition, a Tribunal should consider the nature of the proposed amendment, the relevance of time limits and the timing and manner of the application for amendment.
7. The first stage of the exercise should be to identify the amendment sought. In the present case the application was made by way of a long narrative which

repeated the terms of the claimant's original claim and then set out purported allegations of:

- i. Discrimination arising from disability
- ii. Failure to make reasonable adjustments
- 5 iii. Indirect discrimination (sections 13 and 19)
- iv. Victimisation
- v. Health and Safety at Work Act 1974.

8. As none of the purported claims made any reference to dates and the narrative in relation to each allegation did not on the face of it disclose a stateable claim in relation to the statutory provisions being relied upon, I
10 sought to understand from the claimant what he had intended to put forward.

9. Unfortunately, my concerns that the claimant was not advancing any stateable claims were not addressed by what the claimant had to say. I could not understand on what basis he was alleging that he had been subjected to unfavourable treatment which arose from his disability or when this was said
15 to have occurred.

10. In terms of reasonable adjustments, the claimant appeared to suggest that he ought to have been provided with training on how to use the tablet he was required to use for work before March 2020 but he then went on to say that
20 he had been shown how to use it by a manager.

11. I asked the claimant to say on what basis he said he had been subjected to indirect discrimination, but he was unable to do so. Instead he said that his treatment was direct discrimination. In the allegation he made reference to circumstances of other staff who had not been suspended which did not on
25 the face of it appear to be materially the same as the claimant's circumstances.

12. In terms of a claim of victimisation, I asked the claimant to explain what protected act he was relying upon but he could only refer to the claim which was subsequently made to the Tribunal.
13. Finally, I asked him to explain on what basis he said the Tribunal had jurisdiction to consider a claim under the Health and Safety at Work Act 1974 but he was unable to do so.
14. The claimant did not provide dates in relation to any of these matters in his proposed amendment, but as he was dismissed on 11 November 2022 they must all have occurred prior to that date. They were therefore all out of time. The Tribunal had previously heard evidence from the claimant on the question of time bar and had made findings in fact. The claimant sought to challenge those findings, and I explained to him that had he wished to challenge these findings, he ought to have made an application to have the judgment reconsidered or submitted an appeal to the Employment Appeal Tribunal.
15. 15. The proposed amendment was clearly a new claim. The claimant had not ticked the box of disability discrimination, and had not made any of the allegations set out in his application to amend in his original claim form. The claims were all out of time. The claimant indicated that he had not had support in completing his original claim, was ignorant of the law and that he would suffer an injustice if the Tribunal did not allow his claim to proceed.
16. The claims which the claimant now sought to advance were all significantly out of the time and the respondent would be required to submit an entirely new defence to the claims. It was not at all clear to the Tribunal why if the claimant had been of the view that he had been subjected to the treatment alleged in his amendment application he did not raise these matters in his original form.
17. The claimant's position was that Tribunal process was complicated and he did not understand what was required. However, a claimant is obliged to take some steps in order to determine what is required before lodging a claim. The claimant is clearly an intelligent man and it is not at all clear why, if he felt he had been treated in the way now alleged, he did not raise these matters

previously. He only raised the matters having been informed by an Employment Judge that he would require to make an amendment to his claim if he wished to raise matters set out in his agenda document.

- 5 18. Moreover, the claims he now seeks to advance are lacking in specification, and appear even taken at their highest to have no reasonable prospects of success.
- 10 19. While the claimant will no doubt be prejudiced by not being able to advance these claims in the Tribunal, the respondent will also suffer prejudice by having to investigate the allegations now being made and submit a defence to the claims, all of which are out of time.
20. In all of these circumstances, the claimant's application to amend his claim is refused. Therefore, his claim now falls to be dismissed.

Employment Judge: A Jones
Date of Judgment: 25 October 2023
Entered in register: 26 October 2023
and copied to parties