EMPLOYMENT TRIBUNALS

Claimant: Mr D Cox

Respondent: (1) Adecco UK Limited
(2) Giant Group Limited
(3) London Borough of Croydon

Heard at: By CVP **On:** 24 November 2023

Before: Employment Judge Harrington

Appearances
For the Claimant: In person
For the First Respondent: Mr R Hayes, Solicitor
For the Second Respondent: Mr C McDevitt, Counsel
For the Third Respondent: Mr M Dannourah, Solicitor

JUDGMENT

(1) The Claimant's application for the Judge to recuse herself is refused.

(2) The Claimant's application to add four additional respondents is refused.

Employment Judge Harrington
19 January 2024

Sent to the parties on
23 January 2024
……..

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For the Tribunal Office

REASONS FOR JUDGMENT DATED 19.1.2024

Introduction

1 This case was listed before me for a three hour case management discussion to be conducted by CVP.

2 I previously considered this matter in a hearing on 27 June 2022 and 1 July 2022. At that stage I considered the Claimant's application to amend his claim. I allowed some of the amendments he sought and refused others. The Claimant appealed my decision to the EAT. The EAT allowed the Claimant's appeal in respect of two of the proposed amendments. The EAT dismissed the Claimant's appeal in respect of the proposed amendments 5, 7, 8 and 10.

3 The Claimant appealed the EAT's decision to the Court of Appeal.

4 In an Order from the Court of Appeal, sealed on 10 November 2023, the Court of Appeal dismissed the Claimant's application for permission to appeal. Lady Justice Laing confirmed that she could see no arguable error of approach in the decisions of the ET and of the EAT to allow some of the amendments and to refuse others.

5 During this hearing, the Claimant informed me that he has subsequently sought to make a further application to the Court of Appeal and that the outcome to this further application is pending. The Respondents were unaware of this further application until today.

6 In an email received from Mr Hayes, dated 22 November 2023 (and attaching a draft List of Issues, an agenda and the most recent Schedule of Loss), it was confirmed that the Tribunal was no longer required to consider the issues remitted by the EAT because the Respondents consented to the remitted proposed amendments being allowed. Accordingly the draft List of Issues in this case had been amended to include those matters.

7 It was submitted by Mr Hayes that the outstanding matters requiring further consideration were as follows:

7.1 the Claimant's application to amend to add additional respondents;

7.2 to determine the requests for further information made by the Claimant and the First Respondent;

7.3 to consider the Claimant's application to strike out the responses;

7.4 to finalise the List of Issues;

7.5 to make appropriate case management directions including listing the final hearing.

8 Ahead of the hearing, the Tribunal received three emails from the Claimant (two were received on 23 November 2023 and a further email on 24 November 2023). Five further emails were received from the First Respondent (three received on 23 November 2023 and two on 24 November 2023). The First Respondent's emails included a copy of a hearing bundle prepared for the purposes of this hearing and paginated 1 - 606 with one additional attachment. These materials had been shared with the Claimant.

9 Following a discussion with the parties about the factual background to this hearing, the Claimant made an application for me to recuse myself.

Application to recuse

10 The Claimant stated that I should recuse myself because my previous judgment had '*caused a problem'*. He referred to a particular amendment which I had refused and also referred to my refusal to reconsider my decision.

11 The Claimant submitted that he did not feel that his application to join additional Respondents would be heard fairly. He confirmed that he was not contending that I was incompetent but rather that the hearing would not be a fair hearing and the application would not be heard fairly.

12 All of the Respondents objected to the Claimant's application.

13 On behalf of the First Respondent Mr Hayes referred to the fact that the EAT had not required the remitted hearing to be conducted by another Judge, although in the event, the matters remitted no longer required consideration. Both Mr Hayes and Mr Dannourah submitted that there did not seem to be any reason for me to recuse myself.

14 Mr McDevitt submitted that the Claimant had not referred to me being bias or that there was an appearance of bias and so it appeared that the application was based upon my competency as a Judge. As stated above, this was refuted by the Claimant.

15 Every party coming to the Tribunal has the fundamental right to a fair hearing by an independent and impartial tribunal. The existence or appearance of bias on the part of any person sitting in a judicial capacity will ordinarily lead to the disqualification of that person from sitting. Although the parties did not refer me to any particular case law, I have noted and reminded myself of the leading cases on bias in judicial proceedings which include R v Gough [1993] AC 646, Porter v

Magill [2002] UKHL 67, R v Bow Street Metropolitan Stipendiary Magistrate ex p Pinochet Ugarte (No 2) [2000] 1 AC 119 and Locabail (UK) Ltd v Bayfield Properties Ltd [2000] IRLR 96.

16 In summary, there are three categories of bias which can undermine the impartiality of the tribunal: actual bias, situations where there is a real danger or possibility of bias and bias giving rise to automatic disqualification.

17 Instances of actual bias are rare and difficult to establish. This category refers to a situation in which a judicial decision maker allows their decision to be influenced by partiality or prejudice.

18 The test for a real possibility of bias is whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased.

19 In Ansar v Lloyds TSB Bank Plc [2006] EWCA Civ 1462, the Court of Appeal gave guidance on addressing allegations of a real risk of bias in the context of employment tribunals. The following summary of principles was approved:,

'2. If an objection of bias is made, it will be the duty of the chairman [employment judge] to consider the objection and exercise his judgment upon it. He would be as wrong to yield to a tenuous or frivolous objection as he would to ignore an objection of substance: Locabail at paragraph 21.

3. Although it is important that justice must be seen to be done, it is equally important that judicial officers discharge their duty to sit and do not, by acceding too readily to suggestions of appearance of bias, encourage parties to believe that by seeking the disqualification of a judge, they will have their case tried by someone thought to be more likely to decide the case in their favour: Re JRL ex parte CJL (1986) 161 CLR 342 at 352, per Mason J, High Court of Australia recited in Locabail at paragraph 22.

4. It is the duty of a judicial officer to hear and determine the cases allocated to him or her by their head of jurisdiction. Subject to certain limited exceptions, a judge should not accede to an unfounded disqualification application: Clenae Pty Ltd v Australia & New Zealand Banking Group Ltd [1991] VSCA 35 recited in Locabail at paragraph 24.

5. The EAT should test the employment tribunal's decision as to recusal and also consider the proceedings before the tribunal as a whole and decide whether a perception of bias had arisen: Pill LJ in Lodwick, at paragraph 18.

6. The mere fact that a judge, earlier in the same case or in a previous case, had commented adversely on a party or witness, or found the evidence of a party or witness to be unreliable, would not without something more found a sustainable objection: Locabail at paragraph 25.

7. Parties cannot assume or expect that findings adverse to a party in one case entitle that party to a different judge or tribunal in a later case. Something more must be shown: Pill LJ in Lodwick above, at paragraph 21,

recited by Cox J in Breeze Benton Solicitors (A Partnership) v Weddell [2004] All ER (D) 225 (Jul) at paragraph 41.

8. Courts and tribunals need to have broad backs, especially in a time when some litigants and their representatives are well aware that to provoke actual or ostensible bias against themselves can achieve what an application for adjournment (or stay) cannot: Sedley LJ in Bennett at paragraph 19.

9. There should be no underestimation of the value, both in the formal English judicial system as well as in the more informal employment tribunal hearings, of the dialogue which frequently takes place between the judge or tribunal and a party or representative. No doubt should be cast on the right of the tribunal, as master of its own procedure, to seek to control prolixity and irrelevancies: Peter Gibson J in Peter Simper & Co Ltd v Cooke [1986] IRLR 19 EAT at paragraph 17.

10. In any case where there is real ground for doubt, that doubt should be resolved in favour of recusal: Locabail at paragraph 25.'

11. Whilst recognising that each case must be carefully considered on its own facts, a real danger of bias might well be thought to arise (Locabail at paragraph 25) if:

(a) there were personal friendship or animosity between the judge and any member of the public involved in the case; or

(b) the judge were closely acquainted with any member of the public involved in the case, particularly if the credibility of that individual could be significant in the decision of the case; or

(c) in a case where the credibility of any individual were an issue to be decided by the judge, the judge had in a previous case rejected the evidence of that person in such outspoken terms as to throw doubt on his ability to approach such person's evidence with an open mind on any later occasion; or

(d) on any question at issue in the proceedings before him the judge had expressed views, particularly in the course of the hearing, in such extreme and unbalanced terms as to throw doubt on their ability to try the issue with an objective judicial mind; or

(e) for any other reason, there were real grounds for doubting the ability of the judge to ignore extraneous considerations, prejudices and predilections and bring an objective judgment to bear on the issues."

20 The third category of automatic disqualification refers to a situation in which the judge is shown to have an interest in the outcome of the case – this could include a pecuniary or proprietary interest in the outcome of the litigation. If such an interest exists, then the judge is improperly acting in their own cause.

21 Every application for recusal must, of course, be decided on the facts and the circumstances of the individual case.

22 In making his application, Mr Cox focused upon my decision on his earlier application to amend his claim. It was because of the decision I made in that application that he concluded that it was unlikely this hearing would be a fair hearing. Mr Cox did not make any reference to any alleged bias or the appearance of bias and he confirmed that he was not suggesting that I was incompetent.

23 Considering the entirety of the parties' submissions, I decided to refuse the Claimant's application for me to recuse myself. I was satisfied that there were no arguable grounds for recusal on the basis of bias, whether actual or perceived, and I did not accept that Mr Cox's complaint about my decision on his earlier application to amend, gave rise to a need for me to recuse myself. I was satisfied that any submissions about the prospects of this hearing not being heard fairly were baseless. No part of the EAT's determination required me to recuse myself and the case was listed before me today for further hearing.

24 There were no grounds for suggesting that a fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased. Taking into account the guidance given in Ansar, in particular that relating to earlier decisions in a case and the Tribunal having a 'broad back', it was appropriate for me to continue to hear this case.

Application to join further Respondents

25 In an email dated 13 November 2023, the Claimant refers to wanting to amend his claim to add four individuals as respondents to the claim [514].

26 This application was set out in an earlier email dated 9 May 2019 [156]. The Claimant refers to becoming aware of the case of Timis v Osipov [2019] IRLR 52 and asks for Ms Brand-Grant, Ms Pasby, Ms Ruiz and Ms Day to be added as Respondents.

27 Following this, preliminary hearings took place in July 2019 and October 2021 before Employment Judge Martin and Employment Judge Pritchard respectively [164, 266]. In his Case Management Order, Employment Judge Pritchard referred to the Claimant's application of May 2019 *'to add individuals as further Respondents to his claim'* and that it needed to be considered at the next Preliminary Hearing [266].

28 The Claimant made further reference to his outstanding application in an email dated 17 April 2022 [310].

29 At the hearing before me on 27 June and 1 July 2022, the Claimant was represented by Mr Devlin of Counsel. As set out in the relevant factual background of the Case Summary section of my Order, it was

agreed by the parties at that stage that the matters which continued to require consideration were those in paragraph 14 of the summary [373]. Those matters did not include any outstanding application to amend the claim to add additional respondents. Accordingly the Tribunal did not hear any such application at that time nor was it indicated to the Tribunal at any stage during those two days of hearings, that the application was still pursued by the Claimant and pending.

30 Prior to this hearing, the Claimant sent an email dated 13 November 2023 (14.15 hours) [514]. In that email, he states that he would like to '*amend his claim to add four individuals as respondents to the claim*.' and that the '*application has never been ruled on'* [514].

31 Also contained in the bundle are responses to the application by Mr Hayes on behalf of the First Respondent [515].

32 The detailed written submissions provided by the Claimant highlight that the individuals had been named in the original ET1 and further information provided and that there are EC certificates for each of the individuals [311-320].

33 It was in this context that I considered the application and that all parties made further oral submissions.

The Claimant's submissions

34 In his oral submissions, the Claimant referred to the case management guidance produced by the Tribunal (see further, legal summary below). He also referred to written communications from him setting out his application and relevant material [514, 310-320]. The Claimant also addressed each of the proposed respondents and their relevance to his claims. By way of summary,

Ms Paula Ruiz

35 Ms Ruiz is identified by the Claimant to have been an HR Advisor at the First Respondent at the material time, although she resigned later in 2018.

36 Detailed written submissions from the Claimant set out Ms Ruiz's involvement in this matter including receiving emails from the Claimant on 4 and 5 July 2018, undertaking an investigation into the Claimant's concerns and sending further emails on 6 and 13 July 2018 [312 – 314].

37 The Claimant refers to paragraphs 9, 10 and the entirety of the detriments, most particularly paragraph 12.3, in the Draft List of Issues as being relevant to Ms Ruiz.

Ms Sheryl Brand-Grant

38 Ms Brand-Grant is identified by the Claimant as being an employee of the Third Respondent. He has provided further information as to Ms Brand Grant's involvement in matters related to his claim [317 - 320]. In the latest Draft List of Issues, the Claimant referred to paragraphs 1 and 6, which refer to his case that he made qualifying disclosures to Ms Brand-Grant on or around 18 or 19 June 2018 and on 2 July 2018.

39 With regards to alleged detriments, the Claimant contends that Ms Brand-Grant is relevant to paragraphs 12,3, 12.6, 12.7, 12.10, 12.12 and 12.16 of the Draft List of Issues.

Ms Lisa Pasby

40 Ms Pasby is identified by the Claimant as being an employee of the First Respondent [315]. She sent an email to the Claimant dated 29 June 2018 in which she said a meeting would be arranged to discuss the Claimant's pay and other issues [315].

41 Ms Pasby attended a meeting on 2 July 2018 and was involved in communications after this point including an email to the Second Respondent informing them that the First Respondent had terminated the Claimant's Assignment and that the Third Respondent had wanted this.

42 In making his application, the Claimant acknowledged that the inclusion of Ms Pasby as a further respondent is problematic because at the moment the Draft List of Issues '*doesn't currently involve her*'. Whilst she is referenced at paragraph 12.7, there are no alleged disclosures which are relevant to her and paragraph 12.7 refers only to her carrying out a request made by Ms Brand-Grant.

Ms Laura Edwards

43 Ms Edwards is identified by the Claimant to have been an Executive Business Manager at the First Respondent (at the material time, working under her maiden name 'Day') [314].

44 The Claimant refers to Ms Edwards telephoning him on 6 July 2018 to say that his assignments had been terminated and that he was not to return to the London Borough of Croydon and that a courier would collect the laptop, pass and paperwork.

45 The Claimant contends that Ms Day's motivation for terminating his assignments was '*driven by the protected disclosures he had raised.'* which he submits Ms Day received from Ms Ruiz and others [314-315].

46 Similarly to Ms Pasby, the Claimant accepted that Ms Edwards is not mentioned in the draft List of Issues but the Claimant referred me to his original ET1 and the further information provided after this.

47 In his more general submissions concerning his application, and in particular the issue of delay, the Claimant referred to the early applications for strike out which he had to initially focus on after bringing his claim. He also referred to the fact that in 2021, his outstanding application was acknowledged by Regional Employment Judge Freer in a letter dated 8 June 2021.

The Respondent's submissions

48 All of the Respondents submit that the application should be refused.

49 On behalf of the First Respondent, Mr Hayes submitted that this was, at best, a resurrected application and that it could be seen as an abuse of process. He contended that the Claimant's submissions as to the balance of prejudice were wholly misplaced and were based upon a 'skewed analysis'. There would be great prejudice to the proposed individual respondents whilst there was no prejudice to the Claimant if the application was refused because any remedy would be met by the existing Respondents.

50 Mr Dannourah on behalf of the Third Respondent endorsed and adopted Mr Hayes' submissions. He referred to their being no real explanation for why the application had not been pursued at the previous hearing or why the individuals needed to be added, when taking into account the fact that none of the existing Respondents were seeking to pursue any defence which might require the individuals to also be included as parties.

51 Mr McDevitt on behalf of the Second Respondent made the following submissions:

51.1 That with regards to time limits, the ACAS certificates confirmed early conciliation began on 17 May 2019, with certificates being issued on 22 May 2019 [157]. Taking account of the time limits with regards to the claims brought by Mr Cox, any matters from 17 February 2019 and earlier would be out of time. Mr Cox's employment came to an end in July 2018.

51.2 The relevant decision in Timis v Osipov [2018] EWCA Civ 2321, [2019] IRLR 52 was handed down on 19 October 2018. There is therefore a period of several months between this and the Claimant making his application and commencing early conciliation against the individuals.

51.3 Accordingly, the claims against the individuals are out of time and there is no basis for extending time on the just and equitable basis.

51.4 When considering the broader merits of the application, it is relevant that the Claimant wants judgment against the individuals rather than needing them to be joined to meet any remedy. If the application is allowed, there will be significant delay to these proceedings as the new respondents would be required to respond to the claims with necessary case management following, whilst the EAT has commented that this is a case that should proceed promptly to a hearing. There will obviously be an added cost to having additional parties involved and the further delay does amount to a forensic prejudice as memories of relevant witnesses will continued to fade. It is also relevant to have in mind the overall resource of the tribunal and the factors set out in the overriding objective.

Legal Summary

52 The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 enable a Tribunal to add any person as a party if it appears that there are issues between that person and any of the existing parties falling within the jurisdiction of the tribunal which it is in the interests of justice to have determined in the proceedings (Rule 34).

53 The same principles apply to an application to add a party as to any other type of amendment.

54 General guidance on adding parties is contained in paragraphs 15 - 21 of the Presidential Guidance – Guidance on Case Management. The Guidance confirms that asking to add a party is a kind of amendment application to which the same considerations apply as to any other application to amend.

Adding a new party

15. The Tribunal may of its own initiative, or on the application of a party, or a person wishing to become a party, add any other person as a party by adding them or substituting them for another party. This can be done if it appears that there are issues between that person and any of the existing parties falling within the jurisdiction of the Tribunal and which it is in the interests of justice to have determined in the proceedings.

Adding or removing parties

16. These are some of the circumstances which give rise to addition of parties:

16.1 Where the claimant does not know, possibly by reason of a business transfer situation, who is the correct employer to be made respondent to the claim.

16.2 Where individual respondents, other than the employer, are named in discrimination cases on the grounds that they have discriminated against the claimant and an award is sought against them.

16.3 Where the respondent is a club or an unincorporated association and it is necessary to join members of the governing body.

16.4 Where it is necessary in order to decide a claim which involves a challenge to a decision of the relevant Secretary of State. The Secretary of State is responsible by statute for certain sums of money in different insolvency situations. The Tribunal decides if a refusal to pay is correct, provided conditions are met in relation to timing.

17. Asking to add a party is an application to amend the claim. The Tribunal will have to consider the type of amendment sought. The amendment may deal with a clerical error, add factual details to existing allegations, or add new labels to facts already set out in the claim. The amendment may, if allowed, make new factual allegations which change or add to an existing claim. The considerations set out above in relation to amendments generally apply to these applications.

18. When you apply to add a party you should do so promptly. You should set out clearly in your application the name and address of the party you wish to add and why you say they are liable for something you have claimed. You should further explain when you knew of the need to add the party and what action you have taken since that date.

19. The Tribunal may also remove any party apparently wrongly included. A party who has been added to the proceedings should apply promptly after the proceedings are served on them if they wish to be removed.

20. A party can also be removed from the proceedings if the Claimant has settled with them or no longer wishes to proceed against them.

21. The Tribunal may permit any person to participate in proceedings on such terms as may be specified in respect of any matter in which that person has a legitimate interest. This could involve where they will be liable for any remedy awarded, as well as other situations where the findings made may directly affect them.

55 In the case of Cocking v Sandhurst (Stationers) Ltd [1974] ICR 650, Sir John Donaldson set out the correct procedure for tribunals considering an application to add respondents,

"1. They should ask themselves whether the unamended originating application complied with [rule 8(1) of Schedule 1 to the 2013 Regulations]: see, in relation to home-made forms of complaint, Smith v Automobile Pty Ltd [1973] 2 All ER 1105, [1973] ICR 306.

2. If it did not, there is no power to amend and a new originating application must be presented.

3. If it did, the tribunal should ask themselves whether the unamended originating application was presented to the [tribunal] within the time limit appropriate to the type of claim being put forward in the amended application.

4. If it was not the tribunal have no power to allow the proposed amendment.

5. If it was the tribunal have a discretion whether or not to allow the amendment.

6. In deciding whether or not to exercise their discretion to allow an amendment which will add or substitute a new party, the tribunal should only do so if they are satisfied that the mistake sought to be corrected was a genuine mistake and was not misleading or such as to cause reasonable doubt as to the identity of the person intending to claim or, as the case may be, to be claimed against.

7. In deciding whether or not to exercise their discretion to allow an amendment, the tribunal should in every case have regard to all the circumstances of the case. In particular they should consider any injustice or hardship which may be caused to any of the parties, including those proposed to be added, if the proposed amendment were allowed or, as the case may be, refused."

56 In British Newspaper Printing Corpn (North) Ltd v Kelly [1989] IRLR 222, CA, the Court of Appeal held that as there are no statutory time limits for applying for leave to amend, tribunals ought not to refuse leave simply on grounds of delay.

57 The issue of time and the question of delay are matters to be taken into account by the tribunal in the exercise of its discretion (per Lord Coulsfield in Gillick v BP Chemicals Ltd [1993] IRLR 437). As endorsed again by the EAT in Drinkwater Sabey Ltd v Burnett [1995] IRLR 238, the tribunal's power to add a party is a power that is exercisable, in accordance with the principles in Cocking, at any time, even after the relevant time limits have expired. If the original claim was presented in time, then there is no time bar to be applied. Time is a factor to be considered in the balance of hardship.

58 In deciding whether to exercise its discretion to grant leave to amend, a Tribunal should take into account all the circumstances and should balance the injustice and hardship of allowing the amendment against the injustice and hardship of refusing it.

59 In Selkent Bus Co v Moore 1996 ICR 836, the Employment Appeal Tribunal stated that relevant circumstances include the nature of the amendment, the applicability of statutory time limits (unless the claimant seeks to add a respondent in which case the application to amend dates back to the original application (Cocking v Sandhurst (Stationers) Ltd 1974 ICR 650) and the timing and manner of the application. The main question is not whether the claimant's conduct as to when the application was made is reprehensible but whether

justice overall to both parties, balancing the hardship to each, requires that the amendment be granted.

60 The Tribunal will have regard to the overriding objective and the Tribunal will consider, for example, whether delay would ensue and whether unrecoverable additional costs might be incurred by reason of delay or a longer hearing.

61 Subsections 47B(1A) – (1E) of the Employment Rights Act 1996 were introduced by the ERRA 2013 to bring whistleblowing into line with discrimination law where there can be direct liability on a fellow employee (EqA 2010 s 110), and therefore vicarious liability on the employer.

62 Subsection (1A) provides that a worker has the right not to be subjected to a detriment on the ground of having made a protected disclosure either by a fellow worker (acting in the course of employment) or by an agent of the employer (acting with the employer's authority). Where this happens, the act or failure to act in question is treated as also done by the employer (sub-s (1B)). This is so whether or not the act or omission occurred with the employer's knowledge or approval (sub-s (1C)), though in the case of detriment by a fellow worker the employer is given a statutory defence if it can show that it took all reasonable steps to prevent that other worker from doing the thing in question or from doing anything of that description. This is similar to the statutory 'employer's defence' in discrimination law. The fellow worker or agent may be liable for the detriment as well as the employer (ERA 1996 s 48(5)(b)) but it is provided that such worker or agent is not to be liable if: (a) he or she did the thing in question in reliance on a statement by the employer that doing it did not contravene the Act; and (b) it was reasonable to rely on that statement (ERA 1996 s 47B(1E)).

63 The personal liability of a fellow worker (or agent) under ERA 1996 s 47A(1A) will normally follow the principles applying to the original action against the employer. However in Timis v Osipov [2019] IRLR 52 it was confirmed that a fellow worker's liability can be wider – unlike the employer, he or she can be liable for detriment consisting of the claimant's dismissal. At paragraph [91], the following summary is provided,

"(1) It is open to an employee to bring a claim under section 47B(1A) against an individual co-worker for subjecting him or her to the detriment of dismissal, i.e. for being a party to the decision to dismiss; and to bring a claim of vicarious liability for that act against the employer under section 47B(1B). All that section 47B(2) excludes is a claim against the employer in respect of its own act of dismissal.

(2) As regards a claim based on a distinct prior detrimental act done by a co-worker which results in the claimant's dismissal, section 47B(2) does not preclude recovery in respect of losses flowing from the dismissal, though the

usual rules about remoteness and the quantification of such losses will apply."

Tribunal's Conclusions

64 In deciding this application, I have considered the entirety of the documents I was referred to in the bundle, in addition to the recent correspondence and oral submissions of the parties.

65 With regards to Ms Pasby and Ms Edwards, the Claimant confirmed that, save for a minor reference to Ms Pasby, the latest Draft List of Issues does not identify either of them. In other words, from the Draft List of Issues, it was not apparent in what way the Claimant alleges that these individuals are liable for something claimed by him.

66 Rule 34 and paragraph 15 of the Chamber President's Guidance refers to adding a new party if it appears that there are issues between that person and any of the existing parties falling within the jurisdiction of the Tribunal. Again, with reference to the Draft List of Issues, I am not satisfied that this is the case. Currently, there are no issues in the draft List between the Claimant and Ms Pasby and the Claimant and Ms Edwards, which would require them to be added as individual respondents to the claim.

67 The Claimant told me that, whilst the current Respondents have all agreed the Draft List of Issues, he has not approved it. However I am satisfied that there was input into the Draft by Mr Devlin, when he was instructed by the Claimant, and that those representing the Respondents have all reviewed the document. With that knowledge and from my own consideration of the Draft, I am satisfied that it is a List of Issues arising in the claim as amended. The Claimant has not sought to introduce any further amendments at this hearing in conjunction with his application to add four respondents. Accordingly when considering his application to add Ms Pasby and Ms Edwards and whether there are issues arising between them and the Claimant, it is appropriate to consider the Draft List of Issues.

68 It is my conclusion that there are no issues between Ms Pasby and Ms Edwards, as individuals, and the Claimant, falling within the jurisdiction of the Tribunal. Accordingly I am not satisfied there are grounds for adding either of them as an individual respondent to the claims.

69 With regards to Ms Brand-Grant and Ms Ruiz, the Claimant has identified in the Draft List of Issues, some issues between the parties. I have therefore proceeded to have regard to all the circumstances of the case, with reference to the Guidance and the case law as summarised above. I need to consider any injustice or hardship which may be caused to any of the parties or proposed respondents if the proposed amendments were allowed or refused.

70 Paragraph 18 of the Guidance reminds a party that an application to add another party should be made promptly. An application is not to be refused because of delay but time is a factor to be taken into account. The Claimant's ET1 was received on 14 August 2018 and his application to amend was made in May 2019. Whilst it is noted that the decision in Osipov was handed down in October 2018, several further months passed until the Claimant made his application in May 2019.

71 If I allow the Claimant's application to add Ms Ruiz and Ms Brand-Grant, the Claimant would be able to pursue the additional individual respondents under the relevant whistleblowing provisions. The injustice or hardship caused to existing respondents would include additional costs which would inevitably be incurred by the need to retrace some of the necessary case management steps and, moving forward, the need to correspond with additional parties and have lengthier proceedings due to the greater number of parties involved. There would also be delay. It is likely that the new listing of the full merits hearing later this year would be delayed and, the consequence of this would include a further fading of memories of those witnesses to be called at that hearing. This is all in the context of a case in which the EAT have already encouraged the parties to work together to allow it to come on for hearing as soon as possible.

72 These matters of prejudice are also relevant to the proposed new respondents. There would necessarily be costs involved to any new party and obviously a need to engage with the legal process with potential consequences of costs and a judgment against them.

73 When considering the balance of hardship, I have also taken into account the overriding objective and the submission made by Mr McDevitt about the overall resource of the Tribunal.

74 I have concluded that the Claimant's application to join four individual respondents should be dismissed. I am not satisfied that, having considered the balance of hardship in allowing or refusing the application, that the application should be allowed. Currently, the Claimant is able to proceed with the entirety of his claims, as amended, with the named Respondents who will meet any remedy if one is awarded by the Tribunal.

75 Whilst the Claimant has identified four further individual respondents, as set out above, I am not satisfied that Ms Pasby and Ms Edwards should be added as respondents because there are no issues arising in the claim for which they are said to be liable.

76 Furthermore, looking at the entirety of the relevant circumstances and considering the injustice and hardship of allowing or refusing the application, I am satisfied that the application should be refused. With particular reference to the proposed amendment to add Ms Ruiz and Ms Brand-Grant, the weight of the prejudice of additional costs and

delay, taking into account the overall resource of the Tribunal, is greater than the prejudice to the Claimant of refusing his application, in circumstances in which his application was not made promptly and he can continue with the entirety of his claims against the current Respondents.

Case Management

77 Whilst judgment in the application was reserved, the parties did assist the Tribunal at the hearing with listing a further Preliminary Hearing to consider the Claimant's application to strike out the responses, to finalise the List of Issues and to consider further case management.

78 Dates for a final hearing were also agreed with the parties. The time estimate for the final hearing was based upon information from the parties that it was likely that there would be approximately 9 witnesses.

79 The dates for these further hearings are recorded in a Case Management Order.

Employment Judge Harrington
19 January 2022

Sent to the parties on
23 January 2024
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For the Tribunal Office

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.