



EMPLOYMENT TRIBUNALS

Claimant: Sandra Messi

Respondent: Alvarez & Marsal Europe LLP

Heard by: CVP

On: 11 March 2024

Before: Employment Judge Adkin

Appearances

For the Claimant: Claimant in person
For the Respondent: Mr E Kemp, of Counsel

WRITTEN REASONS

Request for written reasons

1. The Claimant's emailed request for written reasons dated 20 March 2024 in relation to my refusal of her application to amend her claim were referred by the Tribunal administration to Employment Judge Adkin on 16 May 2024.
2. The case management order containing the refusal of the application to amend at the hearing on 11 March 2024 was dated 12 March 2024.

The hearing

3. The Claimant had some difficulty with the video aspect of the CVP and switched to participating by audio on her telephone. The audio was clear and Respondent's counsel and I were able to hear her. She was able to hear both myself and the representative for the Respondent.
4. As to documentation I had an electronic bundle of documents prepared by the Respondent, which is 288 pages in length. I have also received a first witness statement of Alex Parkes.

Application to amend

5. As part of today's case management hearing we considered the list of issues.
6. Each party prepared their own list of issues.
7. It became clear analysing those lists of issues that the Claimant was seeking to introduce some new allegations through her list of issues that were not contained within the claim form. I treated those new allegations in the list of issues that as an application to amend.

When to hear application

8. Dealing first with the principle of whether I should deal with the application to amend today.
9. It was identified at the hearing that there is likely to be a further hearing, specifically a preliminary hearing to deal with the Respondent's application for strike out and/or deposit of the claim.
10. The Claimant suggested that perhaps this application to amend should be dealt with at that hearing. That suggestion was opposed by the Respondent.
11. Ultimately I decided that I should deal with the application to amend today. There is a risk of the claim becoming complicated or difficult to understand. In my view what was going to be needed at the next hearing is a clear list of factual and legal issues, so that the Judge at that hearing can make sense of and deal with submissions from both parties as to whether or not to make a strike out order and/or whether to make a deposit order. For that reason went ahead and dealt with the application to amend.
12. I should note in doing so, although the Claimant has suggested she is inexperienced I have taken account of the fact that she has been involved in quite a large number of claims in the Employment Tribunal before, appended to the grounds of resistance there are some 27 different litigated disputes some of which contain multiple claim numbers. It is clear that the Claimant has some experience with Employment Tribunal litigation. I do obviously bear in mind that she is not a lawyer and does not have the experience that I would expect a lawyer to have. I am satisfied however that the Claimant would understand that she needs to amend her claim if she is going to bring new allegations as she has done in the list of issues. There is no need under the Employment Tribunal (Constitution & Rules of Procedure) Regulations 2013, Schedule 1 ("the Rules") to list a separate application to deal with amendments to claims. It is regarded as a case management matter that is routinely dealt with early stage in litigation. I note the direction in the standard agenda document at box 2.2 "Any amendment should be resolved at the PH, not later."
13. For those reasons I am going to deal with the application to amend.

Principles to be applied in dealing with application to amend

14. I have considered this application to amend applying the tests set out in **Selkent Bus Company Ltd (trading as Stagecoach Selkent) v Moore** [1996] IRLR 661 and the guidance in **Galilee v Commissioner of Police of the Metropolis** [2018] ICR 634 as well as the **Presidential Guidance on General Case Management** (2018) Guidance Note 1: Amendment of the Claim and Response.
15. When considering an application to amend, a tribunal must take into all the circumstances and should balance the injustice and hardship of allowing the amendment against the injustice and hardship of refusing it. The relevant circumstances include:
 - 15.1. The nature of amendment;
 - 15.2. The applicability of time limits;
 - 15.3. The timing and manner of the application.
16. In **Vaughan v Modality Partnership** [2021] IRLR 97 HHJ James Tayler suggested that a relevant question is "what will be the real practical consequences of allowing or refusing the amendment": [paragraph 21].

Nature of amendment

17. The nature of the amendment is not an application to add new heads of claims. The Claimant is not trying to introduce new heads of claim but she is trying to introduce new factual allegations that fall under the heads of claim that are already in the claim.

Time limits

18. Next I deal with applicability of time limits. It seems to me that is something that can be dealt with at a final hearing under the case of **Galilee** so I am not going to spend time considering that now although I do bear in mind that this preliminary hearing is March 2024 so there is some delay when these allegations are being brought forward, which I consider further below.

Timing/manner of application

19. Looking at the timing and the manner of the application at the moment we are still at the case management stage so it is not a situation where a final hearing date is going to be postponed or anything like which to some extent operates in the Claimant's favour.

Practical effect of amendment

20. Turning to the final aspect the **Vaughan v Modality Partnership** question, what is the real practicable consequence. I do take account of Mr Kemp's submission that this is a claim that is brought based on three day's of employment. At the moment based on what is currently pleaded this is a relatively straightforward claim which might realistically be expected to be listed towards the end of 2024. If I allow all of

the new elements that the Claimant is seeking to introduce it seems to me that inevitably there is going to be a longer hearing. There is going to be a longer delay because the Respondent is going to have to amend its response to provide further pleadings, the Respondent will be faced with further costs but there is likely to be a delay in listing this probably at a date in 2025.

- 21. My judgment is that that such a delay is unsatisfactory and it does prejudice the Respondent because the Respondent is going to face further delay. They are going to have to pay more to defend the claim. Furthermore they would be faced with responding to fresh allegations made in March 2024 which relate back to the short period 21-23 August 2023 when the Claimant was employed, i.e. between 6-7 months earlier. That delay is significant in the context of a three-month time limit prescribed by Parliament.
- 22. The quality of the evidence that is going to be heard is going to be slightly less good inevitably and for those reasons I am not going to allow the application to amend.

Employment Judge Adkin

21 May 2024

Sent to the parties on:

30 May 2024

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For the Tribunal Office:

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