



EMPLOYMENT TRIBUNALS

Claimant: Mr Dariusz Mizera

Respondent: ALPLA UK Limited

RECORD OF A PRELIMINARY HEARING

Heard at: Watford (by CVP)

On: 19 November 2024

Before: Employment Judge D Wright

Appearances

For the claimant: In Person.

For the respondent: Ms Catherine Parkinson, Solicitor

WRITTEN REASONS

1. The claimant has requested written reasons following the hearing on 19 November 2024. I take this request to relate to my refusal of his application to add a new protected disclosure to his claim (as set out at 1.1D of his draft list of issues. The request was made in time.
2. This was an application by the claimant to amend his claim in order to bring in an additional allegation of making a protected disclosure. This is set out in detail in the claimants list of issues which was provided at the start of the hearing, at 1.1 D, and it relates to an incident at the end of March or beginning of April 2023, when the claimant's arm was trapped, or almost trapped, within a machine. His arm was stuck in a mould which should have activated the safety system. However, the Claimant says that this was not activated.
3. The claimant accepted that this allegation was not in his original claim.
4. This allegation dates back to March or April 2023, and I noted that the first three of his allegations and his list of issues run from November/December, 2022 through to mid-March 2023 and then the next one is 7 July 2023. As such there's already a good argument for a continuing course conduct there that is unlikely to be altered by the inclusion or exclusion of this new allegation.

5. When considering an application to amend I remind myself of the principles set down in *Selkent Bus Co Ltd v Moore* [1996] IRLR 661 by the EAT, which have now been affirmed by the Court of Appeal in a whole range of cases. I remind myself that those principles are not an exhaustive list, but they are a good indicator of what I should consider, the first being the nature of the amendment.
6. This is not a an entirely new head of claim, it is still a protected disclosure. The claimant isn't now seeking to amend to bring in a claim of discrimination on the grounds of race, for instance. But I find that it does not count simply as the addition of factual details to an existing allegation, because none of the allegations about this machine from March or April 2023 are before the Tribunal at present.
7. I find that this is application is making new factual allegations which change the basis of the existing claim. I've already dealt with time limits, and I find that, although this complaint, on its own, would be out of time today, it is certainly arguable that it would form part of the continuing course of action and be brought into time as a result of that. I find that that aspect is in the claimant's favour.
8. With respect to the So, timing and manner of the application. The application was made implicitly on the 9 November 2024 when it was included in the agenda that the claimant sent in. The claimant says that he was first aware of this issue on 4 November 2024. On this day he attended the respondent's premises to take some photographs. He was keen to emphasize that these were done from the public road, and I find that I do not need to look into the question of the legality of these photographs at present, but it was upon taking these photographs he saw at the machine and that jogged his memory of this event. So, this is not a case that he's making a new claim as a result of documents which the respondent has disclosed to him. It's simply that he has now remembered another incident. I find that this explanation is unsatisfactory.
9. The claimant has put together quite a substantial claim form. Whilst I take into account that he's a litigant in person and that English is not his first language, he has done a very comprehensive claim in the first instance (in many ways better than those we see from created by professionals in the Employment tribunals). I have not been given any real reason, other than memory, as to why this allegation was not included in the first place. I find that this counts against the claimant.
10. I also have to consider up the question of prejudice to the parties. If I allow this amendment, the respondent is going to have to go back and look over a range of documents from March and April 2023. There is no firm date in this allegation, so that the respondent is going to have to have to look at a number of instances. They are going to have to interview witnesses, and with the passage of time since the claim was initially brought those witnesses memories are likely to have faded further, particularly if they were not aware that the incident might be called into question in proceedings. I find that would be very prejudicial to the respondent, both in terms of the quality of evidence and the costs involved.
11. As to the prejudice to the claimant. If I don't allow this application, his claim might not be quite as strong, but I already find it doesn't really alter his time limits point for the earlier allegations, because there are other allegations around this same time which would which would help him bring the earlier allegations into time.

Refusing the application will not mean that his claim is likely to fail in its entirety as he has a number of other heads of claim on which he can rely.

12. When I weigh up all of the factors, particularly in light of the Selkent principles, I find that the balance here falls in favour of refusing the application to amend.

Approved by:

Employment Judge D Wright

24 January 2025

Sent to the parties on:

28 January 2025

For the Tribunal Office:

.....