



EMPLOYMENT TRIBUNALS

Claimant: Mr M Ahmed

Respondent: Buckinghamshire Council

Heard at: Watford (By CVP)

On: 26 February 2025

Before: Employment Judge Bansal

Representation:

Claimant: In person

Respondent: Mr K Ali (Counsel)

JUDGMENT ON APPLICATION TO AMEND

The claimant's application to amend his claim to add a complaint of victimisation is refused.

REASONS

Introduction

1. This case came before me to determine the claimant's application for amendment made on 30 September 2024 to add a complaint of victimisation. I gave my oral reasons for this judgment at the hearing.
2. The claimant attended in person. Mr K Ali of Counsel represented the respondent.
3. For this hearing, the Tribunal was provided with a bundle of documents of 155 pages prepared by the respondent.

Background to Claimant's claim

4. By a Claim Form presented on 19 January 2024, the claimant brought complaints of discrimination on the grounds of race, sex, age and religion or belief against the respondent, and Rebecca Smith.
5. At a preliminary hearing for case management held on 19 August 2024 before Employment Judge Douse, the claim against Rebecca Smith was withdrawn and she was removed as a named respondent; the claims were clarified and

case management orders were made including fixing the final hearing for 18 to 26 May 2026.

6. In addition the claimant was ordered to submit a written amendment application by 16 September 2024.

The Claimant's amendment application

7. The claimant submitted his application on 30 September 2024. In summary, the application is in the following terms,
“ I wish to request leave to amend my claim by adding an additional claim for victimisation after the respondent contacted my ex-partner who is on maternity leave 4 weeks after giving birth to advise her I had taken them to employment tribunal.It is my firm belief the respondents contacted my ex partner (who is an employee of the respondent) in an attempt to get me to retract my discrimination claim. This has caused serious issues in my relationship...”
8. The claimant explained that he had not informed his now ex-partner (Ms Skeggs) about this claim, and that on 12 February 2024, when at home with his ex-partner, she received a telephone call from Juliet Williams, Senior HR Consultant of the respondent. He claimed that Juliet Williams told Ms Skeggs about this tribunal claim. Subsequently, this call led to the breakdown of his relationship and him having to move out and find new accommodation. As a consequence he has suffered emotional and financial hardship.
9. The claimant contended the amendment should be allowed for the following reasons namely; (i) this is not a new claim as it is a new label to facts already pleaded; the claim is at an early stage and the respondent would have ample time to address the complaint; a fair trial of the claim is possible and it is in the interests of justice to allow the amendment.

Submissions on behalf of the respondent

10. The respondent opposed the application by written submissions made on 1 October 2024. These submissions were repeated and elaborated orally by Mr Ali. In summary the respondent opposed the application on the following grounds, namely; (i) the proposed complaint is a significant amendment adding a new claim and is not a relabelling exercise; (ii) the claimant has delayed by some 7 months in making this amendment, if you calculate the the time from the date of the telephone call or by some 4 months if you calculate the primary statutory time limit of 3 months from the date of the telephone call; (iii) the prejudice to the respondent in not being able to effectively challenge the allegation in the absence of Ms Skeggs should she not attend to give evidence; (iv) the merits of this complaint is weak with no prospects of success on the facts and the alleged detriment suffered is far-fetched and fanciful; and (v) by adding this new complaint the respondent will be put to further expense in having to investigate a new complaint and to call Juliet Williams and Ms Skeggs as additional witnesses, and that this will increase the length of the hearing, with a risk the hearing will go part heard which is not in the best interests of the parties or in accordance with the overriding objective.

11. Mr Ali referred me to the contemporaneous note made by Juliet Williams of her telephone conversation with Ms Skeggs, which she made after the call at 11.39. The note has recorded the reason for the telephone call, namely to ascertain why Ms Skeggs as an employee of the respondent did not inform the Consultancy & Advisory Management team that the claimant was her partner, when she was aware he was under a HR process at that time. The issue was one of conflict of interest and the concern about access to the claimant's file. There is no reference of any conversation or disclosure made about this tribunal claim.

The legal framework

12. The Tribunal has a general power to make case management orders which includes the power to allow amendments to a claim or response in terms of Rule 30 of the Employment Tribunal Procedure Rules 2024.
13. The leading case of **Selkent Bus Company Ltd v Moore [1996] IRLR 836** confirms the Tribunals power to amend is a matter of judicial discretion. Mummery J said;
"Whenever the discretion to grant an amendment is invoked, the 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."
14. The guidance in **Selkent** provides for consideration of the nature of the amendment, the timing and manner of it and the applicability of time limits. The key question a Tribunal is asked to determine is where does the balance of injustice/prejudice lie if an application to amend is granted or refused. This is reflected in the Presidential Guidance on Case Management and was recently confirmed by the EAT in **Vaughan v Modality Partnership 2021 IRLR 97.**
15. In **Ladbroke's racing Ltd v Traynor EAT/0067/06** the EAT gave guidance on how to take into account the timing and manner of the application in the balancing exercise. The Tribunal will it need to consider; (i) why the application is made at the stage at which it is made, and why it was not made earlier; (ii) whether if the amendment is allowed, delay will ensue and whether there are likely to be additional costs because of the delay or because of the extent to which the hearing will be lengthened if the new issue is allowed to be raised, particularly if these are unlikely to be recovered by the party that incurs them; and (iii) whether delay may have put the other party in a position where evidence relevant to the new issue is no longer available or is rendered of lesser quality than it would have been earlier.
16. Where an application raises arguably new causes of action a Tribunal should consider the extent to which the new complaints are likely to involve substantially different areas of enquiry and the greater the differences between the factual and legal issues raised the less likely it will be permitted (**Abercrombie Yeah v Aqa Rangemaster Ltd [2013] EWCA Civ 1148, CA**)
17. In **Kumari v Greater Manchester Mental Health NHS Foundation Trust (2022) EAT 132,** the EAT emphasised (at [88]) the need for a tribunal

to proceed with care and caution if it seeks to rely on its general view of the strength of a proposed complaint as a point against granting an amendment. It was though entitled to do so providing it identified a reasoned basis for doing so, having regard to the need to avoid conducting a mini-trial and having regard to the fact that at a preliminary stage it did not have all of the evidence available to it that might be deployed at a full hearing. At [96] HHJ Auerbach summarised that, on an amendment application, a tribunal may have regard to the pleadings and other material before it and:

'be properly in a position to consider that material, possibly to identify a particular weakness or gap in it, and invite the claimant to address it, and/or consider for itself whether there appears to be any obvious answer to it. Even if the case falls short of one in which the tribunal could properly strike out, it may nevertheless have properly and fairly identified a real problem or source of weakness with the claim. If so, it may be entitled to have regard to it, so long as it does not then go on to give it excessive weight to the point of reaching a perverse decision'.

Conclusion

18. In reaching my decision I took into account the parties submissions, the cases and legal principles referred to above, and in particular, focused on the balance of injustice and hardship and the real practical consequences of allowing the amendments.
 - a. The nature of the amendment.
19. This proposed amendment is a new cause of action and different in nature to the existing complaints. This arises from entirely new facts, namely a telephone call held on 12 February 2024 between Juliet Williams and Ms Skeggs. Therefore this cause of action will require the respondent to investigate a new area of enquiry including interviewing Juliet Williams and Ms Skeggs.
20. I noted that on 19 February 2024, the claimant wrote to the Tribunal enquiring about amending or adding further allegations to his claim. On 4 March 2024, the claimant submitted an "addendum to his claim", in which he wrote, "*Following my submission of my ET1 Form a data breach has taken place where Buckinghamshire Council contacted my now ex-partner advising her I had submitted a tribunal claim against her employer. This took place on the 12/02/24 when her line manager called her to discuss my grievance and claim which she was not aware of. There was no reason for Buckinghamshire Council to contact her apart from causing me further financial and emotional distress. This has further exacerbated my mental health which is in serious decline. I would like this added to my claim as this has caused me further upset and detriment and it is linked to my original claim. I have evidence of this data breach and can happily provide this.*"
21. I noted the addendum submitted on 4 March 2024 referred to a complaint about there being a data breach, whereas the nature of the pleaded complaint in the amendment application is about the purpose or intention behind the telephone call from Juliet Williams was an attempt to get the claimant to retract his discrimination claim.

b. The applicability of time limits and manner of application.

22. For the avoidance of doubt, the correct date of this application is 30 September 2024, and not 4 March 2024. At the preliminary hearing on 19 August 2024 before Employment Judge Douse, the claimant was ordered to send a written amendment application by 16 September 2024, Even then, this application was not submitted until 30 September 2024, some 13 days late.
23. The claimant has delayed in making this application, whether you calculate the time to run from the date of the telephone call (i.e 12 February 2024) or from the end of primary statutory 3 months' time limit (i.e 12 May 2023) to issue a new Claim Form.
24. The claimant provided no plausible explanation for this delay. I found the claimant to be an articulate individual, who to date, has pursued this case reasonably well as a litigant in person. I was not made aware of any reason which prevented him from making his own enquiries and undertaking his own research about the time limits and procedures to make applications of this kind.

c. The balance of injustice and hardship.

25. I took into consideration all of the relevant circumstances and was satisfied that there would be injustice and hardship to the respondent in allowing the amendment, for the following reasons;
 - (i) Notwithstanding the time issue and the delay in making this application, which is not a determinative factor, I considered the guidance given by Underhill LJ in the case of **Abercrombie v Aqa Rangemaster Ltd (2014)ICR 20** . The complaint is an entirely new complaint from a new set of facts, which will require a separate investigation and legal consideration.
 - (ii) This additional complaint would have added to the expense to the respondent in having to investigate the complaint; to prepare and submit an amended response; provide additional disclosure of documents, and produce witness statements for Juliet Williams and Ms Skeggs and any other relevant witnesses to be called. This would have impacted the preparation of this case, which is listed for final hearing on 18-26 May 2026. I was informed that the case management orders have already been varied once, and that the preparation of this case is progressing to the final hearing. Hence, any further variation would jeopardise the final hearing date, as well as increase the risk of the hearing going part heard. There must be finality in this case.
 - (iii) I also considered the merits of the complaint, noting the guidance in the case of **Kumari v Greater Manchester Mental Health NHS Foundation Trust (2022)** The contemporaneous telephone note prepared by Juliet Williams is consistent with the explanation given by the respondent about the reason for the telephone call and the discussion held. The claimant

provided no note from Ms Skeggs which challenged or contradicted the note, or any evidence to support the assertion that the purpose of the call was to put pressure on the claimant to withdraw his tribunal claim. The other issue I considered, which Mr Ali raised that the claimant would find it difficult to show that the telephone call was the cause of the breakdown of his relationship with Ms Skeggs and the emotional and financial hardship he has since suffered. On a preliminary assessment, it appeared this complaint lacked merit.

- (iv) There is no disadvantage or hardship to the claimant in refusing this amendment as he is still able to pursue his existing complaints without any prejudice to him.

26. Accordingly, for the reasons stated, I refused the claimant's application to amend.

Case Management Discussion

27. At the end of the hearing, I asked the parties if any further orders were required. Both parties confirmed none were required.

28. In terms of the List of Issues the claimant confirmed his approval to a draft which had been prepared by the respondent. Mr Ali agreed to send to the claimant and a copy to the Tribunal the final agreed List of Issues by 5 March 2025.

**Approved By
Employment Judge Bansal
Date 11 March 2025**

SENT TO THE PARTIES ON
18 March 2025

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