



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8001774/2024

Held in chambers on 8 April 2025

Employment Judge McFatridge

Dr L Abuhaloob

Claimant
Written representations

University of Dundee

Respondent
Written representations

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Tribunal is that the claimant's application to amend her claim dated 2 February 2025 is refused.

REASONS

1. The claimant submitted a claim to the tribunal in which she claimed that she had been unlawfully discriminated against by the respondent on grounds of race and age. Her original ET1 set out a claim of direct discrimination against the respondent (referred to as School of Dentistry – University of Dundee) relating to the claimant's allegation that having attended an interview for a Research Fellow position in Dental Public Health at the Dental School she was unsuccessful and her contention that

she was directly discriminated against on grounds of age and race. The respondent denied the claim.

2. In the claimant's Agenda the claimant noted that she was making a claim of victimisation as well as the claim of direct discrimination. The Agenda was submitted to the tribunal on or about 5 December 2024. The claimant also sought to add Dr Niall McGoldrick as a respondent to the claim. A preliminary hearing took place on 15 January 2025 and in the note issued following this hearing I noted that the claimant had initially sought to amend her application by adding Dr Niall McGoldrick as an additional respondent and also adding a claim of victimisation. The terms of her amendment were said to be:-

"Given my previous complaints against School of Dentistry at the University of Dundee regarding discrimination, I believe this history has led to a severe underestimation of my interview performance. Therefore, I request that a claim of victimisation be included, as I believe these prior complaints have resulted in less favourable treatment during this recruitment process."

The respondent indicated in a letter dated 16 December that they objected to this application to amend.

3. During the course of the discussion at the hearing the claimant dropped her application to add Dr McGoldrick as an additional respondent however she indicated she was insisting on her application to amend. I indicated to the claimant that as matters stood I considered that the application to amend which she had made could not be entertained since it simply did not provide sufficient information to allow the respondent to properly respond to it. If the claimant maintained the application then it would be refused. I therefore agreed that if the claimant did indeed wish to amend she should submit a further written amendment and this would be dealt with by the tribunal in due course. The claimant duly did this essentially providing a new ET1 document in an email sent to the tribunal on 2 February 2025. In this she set out the background as well as the detailed terms of the amendment. The respondent provided a detailed response in which they maintained their objection to the amendment on 11 February.

Both parties subsequently agreed that they were happy for the matter to be dealt with on the basis of written submissions. The respondent indicated that they rested on the basis of the submissions made in their letter of 11 February. The claimant submitted further detailed submissions dated 12 February.

4. Given that the parties have submitted their reasons in writing I do not feel it is appropriate to go through these in detail.

Existing claim

5. The existing claim as set out in the original ET1 is straightforward. The claimant provides a history of attending for interview on 23 August 2024 and being ultimately unsuccessful. She states she raised a complaint about feedback she received on 2 September requesting reconsideration because she suspected age and racial discrimination. She says that the resolution team declined to accept her complaint. She said that she met all of the criteria for the position and that her qualifications, skills and experience matched and in some cases exceeded those of the appointed candidate. She stated:-

"I believe age and racial discrimination may have played a role on this outcome, as younger candidates with less experience have been selected. Moreover, as a Palestinian, I have previously encountered obstacles at this institution. In one instance I was not allowed to continue a project and employment due to funding limitations, while the university supported Chinese and Indian staff for comparable projects prioritizing their work."

- 25 The claimant goes on to note what she considers to be discrepancies in the feedback she received. Finally she stated:-

"Therefore, I am filing a complaint regarding the persistent age and racial discrimination I have experienced at the University of Dundee School of Dentistry, which has not only impacted this particular employment opportunity but has also seriously harmed my career development in dental public health."

6. I would observe that whilst the claimant refers to previous difficulties at the university the difficulties she refers to are that she believes she was discriminated against, she does not make any mention of having made a complaint of discrimination or carried out any other protected act. I would agree with the respondent that, as stated at the case management preliminary hearing, the existing case is purely a claim of direct discrimination. There is a case to be tried and indeed dates have been set aside for the hearing to take place in May 2025.

The amendment

7. The amendment takes the form of a completely new claim which appears to subsume the existing claim of direct discrimination with a new claim of victimisation. A number of additional facts are pled giving more detail of the process of interview. The claimant also sets out her difficulties with the interview feedback in more detail. Essentially, the claimant sets out her criticisms of the feedback and, given that the case is set down for a hearing where the claimant will have the opportunity of cross examining the interview panel on their reasoning this additional information, while no doubt helpful, does not really add anything to the existing claim. The claimant then has a new section entitled *“previous employment tribunal claim and history of hiring in the School of Dentistry, Dundee University for Dundee public health posts.”* She advises that in 2021 she filed a claim of age and race discrimination against the School of Dentistry relating to the failure by the university to provide a reference. She stated that following the provision of a reference she agreed to withdraw her claim. She then makes various other complaints such as that in 2020 the School of Dentistry refused to redeploy her to continue with a teaching project idea. Given that this clearly pre-dates the alleged protected act this cannot amount to any claim of victimisation but appears simply to be further background already referred to in her ET1. She sets out various other difficulties which she had and also makes reference to the low quality of refugee research supervised by the Chinese staff who she says were employed instead of her. She then goes on to specify in particular that she was directly discriminated against in 2020 and that she was not allowed to apply for funds and there were no funds allocated for such

posts. She says that in the meantime the university prioritised implementing similar projects in the Chinese and Indian regions because the permanent staff are from these two regions. She said that currently the university continues prioritising in employing staff from China and India regions in dental public health posts. She noted that the candidate appointed was from Sri Lanka which is geographically closer to the Indian region. She goes on to say that her experience in skills are more relevant and better suited for the position. She then goes on to provide further specification of her claim of age discrimination on the basis that one of the panel members mentioned that she was over-qualified and should be considered for a higher level role and confirming that the appointed candidate was younger than her. She said that the three employed Research Fellows in the same department were also younger than her. All of this appears to relate to her existing claim of direct discrimination. She then again sets out her victimisation claim stating:-

“Given my previous complaints against the School of Dentistry at the University of Dundee regarding age and race discrimination I believe this history has led to a severe underestimation of my interview performance to reduce the chance of my employment in the post. Therefore, I request that a claim of victimisation should be included, as I believe these prior complaints have resulted in less favourable treatment during this recruitment process.”

She then goes on to set out various points of comparison.

Relevant law

8. As advised to the claimant at the preliminary hearing the question of whether or not the tribunal accepts an application to amend is a matter of discretion. The tribunal's general approach to such claims has been set out in the case of **Selkent Bus Company Ltd v Moore** [1996] ICR 836. Whilst this sets out a number of factors which ought normally to be taken into consideration the main point is that the tribunal requires to apply the overriding objective which is to do justice between the parties.
9. With regard to the nature of the amendment the respondent makes points regarding the nature of the amendment sought which I have to say I agree

with. The proposed amendment does not really add anything of substance to the existing claims of race and age discrimination. Instead it appears to muddy the waters by referring to events which took place in 2020. I do not have access to the terms of the claim made by the claimant in 2021 however the claimant's own document says that this claim was about the failure to provide a reference and not about the events which had taken place in 2020. The 2020 events cannot be the subject of the present proceedings since either they were referred to in the 2021 proceedings which were subsequently dismissed or they were not in which case they are most certainly time barred. With regard to her victimisation claim the claimant has not in any way specified what she sees as the link between the protected act and the recent decision she complains of other than that some of the same personnel were involved. I have to say that I would agree with the respondent's position that the application as it stands does not give the respondent fair notice of what the respondent would be required to defend. I also agree with the respondent that I endeavoured to provide guidance to the claimant at the case management preliminary hearing on 15 January as to what was required.

10. Addressing the other **Selkent** points bearing this in mind it is clear that the victimisation claim is a new cause of action. If the amendment were allowed it would extend the matters to be dealt with at the final hearing. It will certainly result in the respondent having to carry out some additional investigation and it may be that other witness evidence will be required. The respondent's investigation will be hampered by the fact that the claimant has not entirely clarified what her victimisation claim is about. As well as the 2021 proceedings the claimant also makes reference to a grievance. It is unclear if this is being referred to as a protected act or not.

11. With regard to time limits I have assumed that the claimant's claim is entirely about the respondent's refusal to employ her and I note the respondent's position is that the claimant was advised that she was unsuccessful on 26 August. The claimant herself does not provide a date but states that the interview was on 23 August and that by 2 September she had not only been told she was unsuccessful but had received feedback. I agree with the respondent that the limitation period expired

on 28 December 2024 or at latest a few days after that if the claimant was not told prior to 1 or 2 September. I note that the claimant did raise the issue of amendment with the respondent during the months of December and indeed referred to this in her Agenda document. I also note that at that stage, as advised at the preliminary hearing, the claimant's application to amend was not in terms which could properly be responded to and the claimant was asked to re-submit her amendment which she duly did on 2 February.

12. It is the amendment submitted on 2 February that I am currently dealing with albeit that, as amendment is a matter of discretion I am entitled to take into account the history of the matter which does indicate that the claimant at least raised the issue in principle before the limitation period expired. For this reason, in my view, the timing issue is essentially neutral. The amendment application I am dealing with was out of time when it was made on 2 February but the claimant had given earlier indications that she intended to amend.

13. With regard to the timing in general I do agree with the respondent that there has been no explanation from the claimant as to why she did not include a victimisation claim initially when she submitted her ET1. It is clear that although the claimant is not legally qualified she does have some experience of tribunals having previously raised a claim. She was clearly aware of the previous claim she had made. She appears to have decided at the time that the reason for the respondent failing to offer her the job was due to age or race discrimination. No doubt in due course the tribunal will hear evidence in relation to this. It does seem somewhat extraordinary that if she believed that she was being victimised as a result of having made previous complaints she did not raise this at the time. Although she does not expand on this the claimant at one point appears to say that she was not aware the respondent would deny discrimination until she received the ET3 but I consider this to be disingenuous.

14. At the end of the day I believed that my decision in the matter has to turn on the balance of prejudice to each party. If the amendment is not permitted then the claimant will certainly suffer the prejudice of not being able to pursue a claim which she now wishes to make. On the other hand,

the claimant does have the opportunity to pursue her claim of age and race discrimination and given that a wide latitude is usually given to claimants in discrimination cases to lead background evidence it is not clear exactly what relevant evidence is going to be excluded. I consider that the prejudice to the claimant will be relatively slight. On the other hand the prejudice to the respondent if the amendment is permitted will be severe. As noted above, I agree with the respondent that as currently drawn the amendment confuses the claim rather than clarifies it. It is likely further orders will require to be made to clarify the amended claim. There is no doubt the respondent will require to carry out further investigation and it is likely that the final hearing will be extended. It may also be the case that given we are now in April the dates fixed for the hearing will require to be put back. The respondent have set out what they consider the likely future course of events will be if the application is accepted and I have to say that I do not disagree with them. I have taken into account the various points made by the claimant but have to say that many of the points made by her simply do not address the issue. She does set out her claim with a bit more brevity and clarity but at the end of the day the claimant has not provided any explanation as to why if she considers that her previous claim was relevant she did not refer to this at all in her ET1. I also note that the claimant has provided a copy of the letter she received on 3 September following her complaint about the feedback she had been given. I note that in this letter it is confirmed that neither the writer of that letter nor the interview panel had any knowledge of the previous grievance. In all of the circumstances my view is that applying the **Selkent** principles and on the basis of the overriding objective the appropriate course of action is to refuse the claimant's application to amend. The hearing will proceed on the dates fixed and will deal with the claimant's current claims of direct, age and race discrimination.

Date sent to parties 11 April 2025