



EMPLOYMENT TRIBUNALS

Claimant

Mr C Mosudisa

Respondent

SDL Surveying Ltd

v

Heard at: Bury St Edmunds

On: 27 March 2025

Before: Employment Judge S Moore

Appearances

For the Claimant:

Ms L Simpson, Counsel

For the Respondent:

Mr O Holloway, Counsel

JUDGMENT

The Claimant's application to amend is refused.

REASONS

Background

1. The background to this matter is set out in a Record of a Preliminary hearing of 5 December 2024.
2. Essentially the Claimant was employed as a surveyor from 11 March 2013 until 9 January 2024 when he was dismissed, the Respondent says, on grounds of redundancy.
3. By a Claim Form lodged at the Tribunal on 26 April 2024 he brought complaints of unfair dismissal, automatic unfair dismissal, detriment on the

grounds of making protected disclosures, direct disability discrimination, indirect disability discrimination, and discrimination arising from a disability.

4. The complaints of automatic unfair dismissal and for detriment for making protected disclosures are for the most part based on allegations he made disclosures that he was being asked to do things in breach of the RICS rules, including working outside his area of geographical competence.
5. The disability discrimination complaints arise out of the fact the Claimant has been treated for lymphoma since 2011. There appear to be issues between the parties as regards whether and when, having been in remission, the Claimant told the Respondent that he had begun to receive more cancer treatment but, in any event, as stated by Judge Housego in the Preliminary Hearing on 5 December 2024 (see paragraph 60 thereof), the issue about the Claimant's lymphoma, as originally pleaded in his Claim Form, was whether it was the cause of his absences from work. As a result, the issues arising in respect of the complaints of indirect disability discrimination and discrimination arising from disability were identified, broadly speaking, as being whether the Claimant's sickness absence arose in consequence of his disability and whether his sickness absence put him at a particular disadvantage for the purposes of the selection criteria and scoring criteria used by the Respondent in the redundancy process.
6. At paragraph 8 of the record of the Preliminary Hearing of 5 December 2024 Judge Housego recorded that the Claim Form referred to the Claimant as having memory loss and fatigue but that nothing flowed from that in the Claim Form and there was no application to amend". Judge Housego directed that if the Claimant considered this relevant as "something arising" from his disability, such that he wanted to make a claim under s.15 of the Equality Act 2010, he must make an application to amend within 7 days of receiving the record of the Preliminary Hearing.
7. On 22 January 2025 the Claimant's solicitors wrote "requesting leave to amend the claim in order to particularise in more detail the symptoms that arose as a result of his disability, how this had an impact on his performance and as a result his ultimate dismissal." The application stated "This is not a new claim but simply a further particularisation and clarification of existing claims".
8. The attached amended Particulars of Claim, plead, amongst other things, that the Claimant's fatigue, memory loss, insomnia and anxiety, had an impact on the quality and timeliness of his valuation reports. In summary the amendments plead that the Claimant informed the Respondent of this in May 2017, that as a result it was agreed he would do fewer valuations and his postcode coverage would be reduced. The amendments further plead that in January 2021 and June 2021 the Claimant informed the Respondent that he was continuing to suffer from anxiety, panic attacks and insomnia, that this was affecting his ability to drive, to carry out physical property inspections and meet clients, and was affecting his performance, time management and volume of work. As a result, he says,

his working hours were reduced. In May 2022 an Occupational Health referral form stated that fatigue and mental health may have affected the Claimant's performance. Further in November 2022 the Claimant informed the Respondent that his mental health was deteriorating and he was continuing to suffer from insomnia, anxiety and panic attacks and this was having an impact on his performance. Finally at a meeting on 2 October 2023 to discuss his performance the Claimant again informed the Respondent that his mental health was causing him to struggle to complete valuations in a timely manner.

9. In the light of these pleaded facts the amended Particulars of Claim allege that the Claimant was subject to unfavourable treatment in that he was selected for redundancy because he scored less than his colleagues in respect of the selection criterion of report turn around and that this arose in consequence of his disability, namely his memory loss, anxiety, insomnia and fatigue.
10. The Respondent responded to the application by letter of 12 February 2025, stating that the Claimant was not seeking to provide further and better particulars of his existing claim but to amend to bring a new claim, to which amendment the Respondent objected.
11. At the hearing, I heard submissions from both counsel.

Conclusions

12. The fundamental exercise before me is that of balancing the injustice or hardship of allowing or refusing an amendment; (*Vaughan v Modality Partnership UK* [2021] ICR 535; *Selkent Bus Company Ltd v Moore* [1996] ICR 826).
13. First, considering the nature of the amendment sought, I consider this is not merely the provision of further details to existing allegations or the addition of new labels to facts already pleaded, but rather the making of new factual allegations which seek to add an entirely new claim of discrimination arising from disability. While the Claimant is still saying that the unfavourable treatment of being selected for redundancy was because of something arising in consequence of his disability the something is now said to be his score in respect of the selection criterion of report turn around rather than his scoring in respect of the criterion of his sickness record.
14. Furthermore, it is plain from the proposed amendments that this new claim would require substantial new factual enquiries into matters going back as far as 2017 (as set out above at paragraph 8). Ms Simpson submitted that the redundancy exercise would in any event be the subject of evidence at the hearing, but while that is true the proposed amendments would require consideration of a different aspect of it, as well as consideration of the impact of the Claimant's mental health on his ability to work and meet clients over a number of years and the adjustments it is said the

Respondent made at different points to accommodate that. That appears to me to be a very significant widening of the case.

15. Further, given that the Claimant was dismissed on 9 January 2024, the claim form was lodged on 26 April 2024 and the amendment application was not made until 22 January 2025, the proposed new claim is very much out of time. This of course is not determinative of the issue but is a factor to take into account. I also take account of the fact that the Claimant has been legally represented since he lodged his claim and no explanation has been provided as to why the amendment sought was not included in the original claim form or the amendment not made at an earlier time.
16. In terms of prejudice to the parties, if the amendment is allowed I note that the hearing is not listed until November 2026 and the Respondent has not suggested that a longer listing would be required, there is therefore no question of the amendment derailing the hearing. The Respondent would, however, have to amend its response substantially and respond to a large array of new factual allegations and medical evidence. Furthermore, its witnesses would have to give evidence in respect of factual matters not previously relied upon by the Claimant that by the date of hearing will have occurred up to nine years earlier.
17. If the amendment is refused, plainly the Claimant suffers the prejudice of not being able to pursue a new head of claim, which of course is a highly significant matter. However, the Particulars of Claim are already extensive with seven separate heads of claim and, particularly given that the Claimant has been legally represented throughout, it is to be expected that the most compelling parts of his claim are already included within those existing complaints.
18. I therefore conclude, after balancing the injustice or hardship of allowing or refusing an amendment, that the balance falls in favour of refusing the amendment.
19. The application to amend is therefore refused.

Approved By:

Employment Judge S Moore

Date: 27 March 2025

Sent to the parties on:

30 April 2025

For the Tribunal: