



EMPLOYMENT TRIBUNALS

Claimant: Miss M Hyde

Respondent: Cera Care Limited

RECORD OF A PRELIMINARY HEARING

Heard at: Manchester by CVP

On: 29 April 2025

Before: Employment Judge Lloyd

Appearances

For the claimant: In person

For the respondent: Mr Cornforth, solicitor

JUDGEMENT ON CLAIMANT'S APPLICATION TO AMEND THE CLAIM

The judgement of the Tribunal is that the Claimant's application to amend the claim to add a new complaint of equal pay, sex discrimination and victimisation are refused. The Claimant is permitted to amend the claim to add further incidents of disability discrimination in which she says the respondent failed to make reasonable adjustments for her during the disciplinary procedure. These are set out in the table of complaints she produced on 4 February 2025.

Background

1. This hearing was listed to consider whether the Claimant should be permitted to amend her claim, and then to deal with further case management.
2. The Claimant submitted her claim form on 21 May 2024. She alleged that she had been discriminated against on grounds of disability, had been unfairly and wrongfully dismissed, and she is due outstanding holiday pay.

3. At a preliminary hearing on 10 December 2024, the Claimant said she wanted to add in a claim of equal pay, sex discrimination and victimisation. The Claimant pointed out at the hearing that she had made a statement in her ET1 which said *"May 23 raised grievance regarding pay as someone doing the same job was being paid more"*. The Claimant did not tick the box for sex discrimination/equal pay on the ET1 form.
4. The Tribunal ordered the Claimant to send to the Tribunal and the Respondent any application she wished to make, to amend her claim, to include claims for sex discrimination, victimisation and equal pay. This was to be produced by 25 February 2025.
5. On 4 February 2025, the Claimant produced a table setting out the new claims she wished to bring. In this table of complaints, the Claimant said she raised her pay with the Respondent on 9 May 2023. The Claimant said she wished to bring an equal pay claim in respect of a male comparator who did the same job as her. She was victimised after she complained about her pay, and was ultimately dismissed as a result of her bringing a complaint about her pay. The Claimant also added in some further complaints about her treatment which she said amounted to disability discrimination.
6. The Claimant sent a letter to the Tribunal and the Respondent on 25 March 2024. She said her male comparator was paid £24,000 per annum, whereas her pay was £22,575.
7. During her employment, the Claimant sent an email the Respondent on 9 May 2023 in which she said: *"It has come to my attention that I have been doing the same job as new coordinators. They have all been getting 24,000 pa. With on calls on top of their pay. I do believe there is also an increase due and this will be going higher. and they are getting paid more than me when in actual fact I have my level 2 and 3 nvq. As I have been doing this job longer and know the role and more experienced it is disconcerting and I feel the job I do is undervalued. My rate of pay is 22,575 please explain how this is justified doing the same job"*.
8. The Respondent objects to the Claimant's application to amend her claim. The Respondent says *"the Claimant is not simply seeking to relabel facts, but rather is seeking to introduce a new head of claim that is entirely distinct from her original claims. At all times, the Respondent had understood the Claimant's original ET1 to be claims relating to her misconduct dismissal, the process followed and the pay he received upon termination. This amendment, if granted, would fundamentally alter the nature of proceedings and extend the scope beyond what was originally pleaded. As the Tribunal will appreciate, an equal pay claim and a claim for unfair dismissal following a disciplinary are vastly different factual backgrounds and legal tests. The application to amend her claims has not been made promptly and this is highly prejudicial to the Respondent, with witness memories fading and the Respondent not previously having the opportunity to conciliate on this new issue. The Respondent may be deprived of a fair opportunity to defend itself against the new allegations, with at least one of the Respondent's witnesses having left the business since the Claimant's original ET1 was filed. In contrast, the Claimant would suffer little*

prejudice if the amendment was refused, as she has had ample opportunity to raise this claim at an earlier stage. The Claimant's ET1 was submitted on 21 May 2024, almost nine months prior to their application being made and in that time the Respondent's ET3 and grounds of resistance clearly needed to be filed. To allow the Claimant's application in response to the ET3, undermines the purpose of the claim form and response form. The Claimant's equal pay claim has also been brought outside of the ordinary time limits, with the last date she could have filed her claim in time being June 2024, six months from her last pay date".

9. The Claimant said she did not instruct a solicitor until December 2024, and that is when she received advice about amending her ET1 to include the new claims. The Claimant said she did not include the claims for equal pay, sex discrimination and victimisation on grounds of sex in her ET1 as she had a "lot going on". She "could not figure it out what was what" until she spoke to her solicitor. It took her a long time to sort things out after her dismissal in December 2023.
10. I gave oral reasons at the hearing, and explained I would provide written reasons. I have set out below my reasons for refusing the application to amend to include the complaint of equal pay, sex discrimination and victimisation. I have allowed the additional disability discrimination complaints to be included in the Claimant's claim.

Issue and the law

11. The issue for me to address was whether the Claimant should be allowed to amend her Claim in accordance with her application of 4 February 2025.
12. The Tribunal's power to consider amendments to a claim is set out in the Employment Tribunal Rules 2013 which are contained in Schedule 1 to the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013 ("the Rules"). The overriding objective of the Rules is set out as follows: "2. Overriding objective The overriding objective of these Rules is to enable Employment Tribunals to deal with cases fairly and justly. Dealing with a case fairly and justly includes, so far as practicable (a) ensuring that the parties are on an equal footing; (b) dealing with cases in ways which are proportionate to the complexity and importance of the issues; (c) avoiding unnecessary formality and seeking flexibility in the proceedings; (d) avoiding delay, so far as compatible with proper consideration of the issues; and (e) saving expense. A Tribunal shall seek to give effect to the overriding objective in interpreting, or exercising any power given to it by, these Rules. The parties and their representatives shall assist the Tribunal to further the overriding objective and in particular shall co-operate generally with each other and with the Tribunal."
13. The specific rules which contain the powers are Rule 30 which permits the Tribunal to make case management orders and Rule 41 which allows the Tribunal to regulate their own procedure in the manner they consider fair, having regard to the overriding objective set out above. Amendments are therefore a matter of judicial discretion.

14. Guidance given by Mummery J in *Selkent Bus Company Ltd v Moore* [1996] ICR 836 at the time when he was President of the EAT is frequently quoted as the key test for determining an application to amend a claim. The test involves the assessment of the balance of injustice and hardship of allowing or refusing the amendment (*Selkent Bus Co Limited v Moore* [1996] ICR 836). In *Selkent* the EAT set out a list of relevant circumstances which should be considered including the nature of the amendment, the applicability of time limits, and the timing and manner of the application to amend..
15. In *Vaughan v Modality Partnership* ([2021] ICR 535) the EAT explained that the factors in *Selkent* were not an exhaustive checklist to be followed. The Tribunal must focus on the balance of injustice and hardship in allowing or refusing the application, and on the real practical consequences of allowing or refusing the amendment.
16. With regard to time limits, *Selkent* suggested that if a Claimant intended to add a new complaint, it would be "essential" for the Tribunal to consider whether that complaint was out of time and, if so, whether the time limit should be extended. The Presidential Guidance repeats this point at paragraph 5.2. Amendment can, however, be granted with the issue of time limits being decided separately (*Galilee v The Commissioner of Police of the Metropolis* [2018] ICR 634).
17. In *Prakash v Wolverhampton City Council* (UKEAT/0140/06) the EAT held that there is no reason in principle why a cause of action that has accrued after the presentation of the Claim form should not be added by amendment if it is appropriate to do so. If a new claim could be brought within the relevant time limit, that is a matter to which the Tribunal should attach considerable weight (*Gillett v Bridge 86 Limited* EAT 0051/17).
18. The risk of the balance of hardship being in favour of refusing the amendment increases the later the application is made (*Martin v Microgeneration Wealth Management Systems Ltd* (UKEAT/05/006)). It is for the Claimant to show why an application was not made earlier (*Ladbroke Racing Ltd v Trainer* (UKEATS/0067/06)).

Conclusions

19. In reaching my conclusions, I focused on the balance of injustice and hardship and the real practical consequences of allowing or refusing the amendment.
20. I am mindful that the Claimant was a litigant in person when she filed her ET1. She is now assisted by a solicitor, and has been since December 2024.
21. The Claimant's application to amend her claim is about the fact she says she was paid less than a man doing the same job. When she complained about this, she was treated differently and disciplinary proceedings were brought against her which ultimately led to her dismissal.
22. The addition of the equal pay, sex discrimination and victimisation complaints were an entirely new cause of action. They are substantial amendments that were not raised until the earlier preliminary hearing in December 2024.

23. Details of the new application to amend was not made until February 2025, considerably outside of the statutory time limit for such claims. I do not consider that the Claimant has given a good reason for not seeking to add this earlier. She said the cost of a solicitor put her off obtaining legal advice earlier.
24. With regards the timing of the application, the allegation regarding sex discrimination, equal pay and victimisation could have been raised in the initial claim form. The Claimant was complaining about matters in the last 12 months which she was aware of. In the ET1, the Claimant gives an explanation of how she considered she had been unfairly dismissed and treated to unlawful disability discrimination. Although she explains she had complained about her pay in May 2023, she does not say she thought she was being paid less than a man. This is also not mentioned in her email to her employer when she raised the issue of her pay level. She says she considers she is being paid less than new starters. There is no mention of the pay differential being alleged to be due to the gender of the employees. Instead the Claimant says the pay differential is due to experience of her colleagues.
25. The Claimant was aware of the time limits to bring a Tribunal claim. In box 9.2 of the ET1 she says that compensation claimed is *"To be confirmed as well as solicitor full details as I realised the due date to apply is close"*.
26. I considered carefully whether the timing of the application put the Respondent to any particular prejudice. The Respondent has explained that the employee who the Claimant complained to about her pay in May 2023 has now left the Respondent's employment. There are difficulties in addressing complaints about pay due to her departure.
27. It would not in those circumstances be just and equitable to extend time to allow this part of the Claimant's claims to proceed. Part of my concerns here are that the Claimant is adding further matters which the Claimant, Respondent and the Tribunal will need to attend to and consider at additional time and expense.
28. I refuse the application to amend to add these matters as claims of equal pay, sex discrimination and victimisation. In my view the hardship and injustice to the Respondent in allowing those amendments exceeds the hardship and injustice to the Claimant in refusing those amendments in circumstances where the Claimant already has other claims against the Respondent which will proceed.
29. The Respondent has conceded that there would be little prejudice to them in adding in the new disability discrimination claims set out in the table of complaints the Claimant produced on 4 February 2025. This is the alleged PCP of applying the policy on disciplinary leading to dismissal. The Claimant could not respond due to her disability. It would have been a reasonable adjustment to allow her to bring a friend to the disciplinary hearing and to not have held the hearing on the afternoon of the Christmas party. I allow these amendments to the grounds on which the Claimant says she was subjected to unlawful disability discrimination.

Case Number: 2403094/2024

Judge Lloyd

29 April 2025

Sent to the parties on:

16 May 2025

For the Tribunal Office:

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