Case Number: 3306081/2024

EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Ms Nimata Jalloh	V	**Operose Health**

Heard at: **Reading (CVP)** **On: 6 June 2025**

Before: **Tribunal Judge G D Davison sitting as a Judge in the Employment Tribunal**

RECORD OF A PRELIMINARY HEARING

Appearances:
For the Claimant: **Ms F Hodge solicitor**
For the Respondents: **Ms L Evanson**

JUDGMENT

1. The Claimants application to amend her claim to include a claim of "Protected disclosure detriment" under the ERA 1996 is refused.

Reasons

1. In determining whether to grant an application to amend, an employment tribunal must always carry out a careful balancing exercise of all the relevant factors, having regard to the interests of justice and to the relative hardship that would be caused to the parties by granting or refusing the amendment

2. The hardship and injustice test is a balancing exercise. Lady Smith noted in *Trimble and anor v North Lanarkshire Council and anor EATS 0048/12* that it is inevitable that each party will point to there being a downside for them if the proposed amendment is allowed or not allowed.

3. In *Selkent Bus Co Ltd v Moore EAT 2 May 1996,* the then President of the EAT, Mr Justice Mummery, explained that relevant factors for consideration would include:

i) nature of the amendment —

4. I find the amendment sought is not a clerical or typo graphical error. It is a change of a head of claim to add public interest disclosure. Additional facts concerning events and purported disclosures made are being relied upon This does change the basis of the existing claim. The claimant was given a warning for conduct not due to a purported disclosure. I find the amendment is not therefore a minor change.

ii) applicability of time limits

5. On the undisputed chronology provided by the respondent the latest potential 'disclosure' would have been November 2023. The claim form was not submitted until June 2024 and the claimant resigned in the April 2024. No application / submission has been advanced as to why the claim was made out of time and time could justifiably be extended for it to be included.

iii) the timing and manner of the application

6. An application should not be refused solely because there has been a delay in making it as amendments may be made at any stage of the proceedings. Delay in making the application is, however, a discretionary factor. It is relevant to consider why the application was not made earlier and why it is now being made. The claimant's representative made clear that the sole basis for the late claim was that it was advanced in response to the respondent's ET3/ response to the claim. I do not find this to be a valid/ cogent basis to amend a claim. A respondent is entitled to respond to a claim made and this does not entitle a claimant to then seek to alter the basis of the claim purely because a response has been forthcoming. Further there is the nature of the claim advanced. Following a preliminary hearing the respondent second guessed the possible amendment to the claim that may be about to be advanced. The claimant then served an amended claim on the respondent which mirrored the respondent's guess as to the potential claim being advanced. I did not find the claim advanced to have been made independently on the evidence but rather made on the back of the respondent's basis for not accepting the same.

7. The Presidential Guidance on General Case Management for England and Wales notes the *Selkent* provisions are not intended to be an exhaustive list. There may thus be additional factors to consider in any particular case (*Conteh v First Security Guards Ltd EAT 0144/16*).

8. I have therefore considered all matters advanced including the *Selkent* provisions. As noted the claimant's sole ground for seeking an amendment was that the respondent had responded late to the initial ET1 and they wished to amend the claim in light of the response. The claimant has been legally

represented throughout her claim. No good reason has been advanced for either failing to properly plead her claims from the outset, make an application for an extension of time for the purported amended claims to be admitted, or why the claims simply mirror the respondent's best guess of the anticipated claim.

9. In *Vaughan v Modality Partnership 2021 ICR 535, EAT*, His Honour Judge James Tayler emphasised that the core test in considering applications to amend is the balance of injustice and hardship in allowing or refusing the application. The parties must therefore make submissions on the specific practical consequences of allowing or refusing the amendment. The claimant's representative stated that the appellant was "harassed" by her employer and does not feel she was "treated right". No specific practical consequences were listed. As noted in the CMOs already drafted the claimant has existing claims for direct race discrimination and constructive wrongful dismissal that will be considered by the Tribunal.

10. I finally note the timing of this application, it was not served on the respondent until 7 February 2025 when it ought to have been served in compliance with previous CMO by 31 January 2025. The hearing is listed for 4 days in August 2025. Whilst arguably the hearing could be delayed and costs awarded to the respondent for any inconvenience and delay caused, for the reason given above and in considering all matters in the overall balance, the *Selkent* factors and the others listed above, I refuse the application to amend.

11. The parties confirmed the CMO as previously issued address all further matters and so those CMO will stand for the listing and timetabling of the substantive issues now to be decided.

Approved By

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Tribunal Judge G D Davison sitting as a Judge in the Employment Tribunal

6 June 2025

Sent to the parties on

30/6/2025

For the Tribunal