



## **EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 4105580/2023**

**Held on 16 December 2024**

**Employment Judge J M Hendry**

**Miss D A Vaughan**

**Claimant  
In Person**

**EE Limited**

**Respondent  
Represented by,  
Miss R Page,  
BT**

## **JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

The Employment Tribunal allows the claimant to amend the pleadings by accepting the iteration of her claims contained in the application to amend meantime (1) reserving issues of time-bar to the Full Hearing and any application the claimant may seek to make under s.123 of the Equality Act 2010 if the Tribunal holds that claims are out of time and (2) that the incident referred to in paragraph 42 of the amendment in relation to alleged comments made to the claimant by colleagues is allowed as relevant background only.

## **REASONS**

1. The claimant in this case is a party litigant although she has been able to obtain some assistance from the Citizens Advice Bureau. She lodged an ET1

**E.T. Z4 (WR)**

on 3 October 2023 making claims for age and disability discrimination. The age discrimination claim seems to have fallen away but she continues to pursue claims for disability discrimination.

5     2.     A Final Hearing in November 2024 was postponed. The claimant had lodged an amendment on 30 October. Miss Page, on behalf of the respondent initially opposed the amendment in full although she was unable to take instructions because of a lack of notice. However, she later set out her position very fully on the 1 November 2024 by email. In the interim a fresh  
10     merits hearing has been arranged for May 2025.

3.     Prior to dictating this short Judgment the claimant withdrew her claim for unlawful deduction from wages. The claimant also responded to some of the comments made by the respondent's solicitor in a further e-mail dated 6  
15     November. Attached to this was an assessment from the claimant's Psychologist. This assessment gives some background to the claimant's mental health difficulties. That is to only a limited extent of assistance to the Tribunal at this stage. No doubt the document will be produced at the final hearing to show the impact any breach of the Equality Act might have had on  
20     the claimant's pre-existing mental health problems.

4.     The respondent's solicitor also helpfully set out her legal submissions in relation to the possible amendment referring the Tribunal both to the case of **Selkent (Selkent Bus Co. Ltd v. Moore** [1996] ICR 836) and to **Vaughan v. Modality Partnership UK** EAT/0147/20/BA summarising her position that  
25     the Tribunal should consider the balance of justice and hardship in deciding whether to allow the amendment.

5.     In this case the applicability of time limits and the timing and manner of the application were also live issues. In relation to the test for extending time she submitted that the just and equitable test should apply and that extending the time limit was the exception rather than the rule (**Department of Constitutional Affairs v. Jones** [2008] IRLR 128). She suggested that there  
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was no good reason advanced as to why the claimant was unable to lodge these new claims in time. The claimant was, she said, an intelligent young woman. She had presented disability discrimination claims timeously and had lodged a grievance detailing a number of disability claims. She has not passed the test set out in the case of **Ladbroke Racing Ltd v. Traynor** UKEAT/0067/06. In that case the EAT gave guidance as to how tribunals should deal with applications to amend. This case commented upon the form of the amendment which was said to lack sufficient notice of the case the respondent had to meet.

6. The claimant had previously lodged medical evidence about her conditions and it is clear from these papers that she has difficulties which make it difficult for her to manage in a wide sense her engagement with the Tribunal process without periodic support from the CAB. That seems to be a background factor here which may have had some impact but it is not a matter I put too much weight on as particular practical difficulties or problems have not been highlighted by her to allow the Tribunal to take these into account.

### Discussion and Decision

7. I should record at the outset that the respondent's solicitor has dealt with this case in as sympathetic and helpful way that she could giving full regard to the claimant being both a party litigant and someone with particular disabilities.
8. The law is well trodden but nonetheless it can sometimes be difficult to apply in practice. The common factors that a Tribunal has to deal with are set out in the case of **Selkent Bus Co Ltd v Moore** [1996] ICR 836. In **Selkent**, Mummery J stressed that this overall assessment involves consideration of all of the relevant factors and stated that it is impossible and undesirable to attempt to list them exhaustively. He noted a number of factors that will generally be relevant to the assessment: the nature of the amendment, the applicability of time limits and the timing and manner of the application. Those factors are not a checklist to be ticked off (**Abercrombie v Aga Rangemaster Ltd** [2014] ICR 209) The paramount importance of balancing the injustice

and/or hardship caused by allowing or refusing the amendment has been emphasised repeatedly (*Vaughan v Modality Partnership* [2021] ICR 535). It goes without saying that the Tribunal must be even handed in it's approach and consider both sides' positions.

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9. Accordingly, in deciding if an amendment should be granted the first task is to identify the amendment being sought and the second to consider all the factors when considering the balance of injustice or hardship caused in refusing or granting the amendment. It is important to bear in mind that an amendment can be refused or granted. If granted it can be allowed in whole or in part. The claimant in this case had help in setting out her position expressly in writing.
10. The starting point is the ET1 which the claimant completed herself. It should be noted that the claimant left the respondent's employment on the 22 July 2023 and raised proceedings on the 3 October 2023. She made complaints relating to her treatment at work "ticking" claims for race and disability discrimination and referring to a "hostile working environment".
11. In her amendment the claimant recasts her pleadings. It should be noted that the claimant realised the deficiencies in her ET1 at an early stage and attempted to amend prior to the first case management hearing and at later points.
12. In her letter dated 1 November Ms Paige addresses certain paragraphs in the proposed amendment. In relation to paragraph 29 the claimant makes a complaint regarding "upselling" This is not specifically referred to in the ET1 and requires amendment. My understanding was that paragraph 30 was not objected to as it expands on allegations already pled. I would have allowed this as being greater specification of the claims made. In paragraph 31 there are allegations against a Scott Farren who she explained had left the company making it difficult to get his position.

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13. I was not made aware if they had recent contact information for him or had tried to contact him. If reluctant he can be served a witness order. I noted that in from an early stage Mr Farren as the 'new' manager was mentioned by the claimant in her various amendment applications going back to December 2023 when Judge Hosie asked for the amendment to be recast following advice that he gave her in his Note. It must have been apparent to the respondent at an early stage therefore that he was part of the dramatis personae as it were although I accept that no claim specifically arising from his behaviour had been raised.
14. The main protagonist is the employee "Raymond". It also has to be borne in mind that the claim being put forward related to indirect discrimination which in turn relates to the way in which the working environment was managed. The references to Mr Farren (sub paragraphs 2 and 3) relate to his intervention into the claimant's performance and her lack of sales. These appear to be relevant background consistent with the claimant's position. In addition, I take it from the ET1 that the claimant is specifically referring to Mr Farren when she makes reference to the "new manager". While it may be that the respondents might find it hard to contact him, and as noted above I have no specific information about any failed attempts to do so, they can call other staff to give evidence about the general position even if those staff cannot comment on specific interactions with Mr Farren. I concluded that on balance it would prejudice the claimant unduly if she was not allowed to lead this evidence. I shall allow these paragraphs as part of the overall amendment.
15. Turning to paragraph 33 the respondent objects to the reference to PTSD pointing out that the claimant is not relying on it as a disability. That said it is part of the claimant's make up and reference to this is appropriate relevant background and will not constitute a separate claim. I would caution the claimant that she should bear in mind that her pled position is that her ADHD is the disability she relies on and the addition of another condition both complicates the matter and dilutes her position.

16. In relation to paragraphs 34, 35 and 36 these are background as Ms Paige observes. Paragraph 39 reiterates much of paragraph 14 as the respondent's agents point out and the observation that anyone, disabled or not, might struggle to sell to people who are disinterested is valid. However, it is background and no new claim arises from it and accordingly it will be allowed.
17. The respondent says that paragraph 41/42 contains new harassment claims. Paragraph 41 seems to contain nothing new but paragraph 42 contains a specific new incident of alleged harassment. I cannot find earlier reference to it although it is a theme of the claimant's case that she was humiliated because of her inability to sell services. This is objected to. Any claim arising from the incident is clearly out of time but it may be part of an ongoing state of affairs or continuing act. I can more readily foresee difficulties that the respondent would encounter at any hearing given the passage of time and the relatively transitory nature of the event. The original claim was raised in October of that year and makes no reference to this incident. On balance I am not prepared to allow this as a new claim. It will stand as background particularly given the suggestion by the claimant that she informed 'Raymond' but nothing was done.
18. Looking at the amendment in the round I am conscious that the claimant is a party litigant and that it seems that late in the day she was able to get assistance from the CAB in framing her position appropriately and categorising incidents under appropriate headings of claim. She did so at the very last minute and I can understand the frustration felt by the respondent's lawyers. However as noted earlier she has been trying to amend her claim since 2023 because of the deficiencies in the original ET1. Miss Paige is correct that the final attempt to amend which we are considering contains some new matters. In approaching this matter I am conscious that we are where we are in that the hearing last year was postponed and the respondent will have some months to consider the case before it before the adjourned hearing. That mitigates any prejudice but may not wholly remove it. I would

also observe that the respondent clearly had obligations towards the claimant both as an employee and a disabled person and had the opportunity when she lodged her grievance to carry out a more full investigation.

- 5     19.     My sympathy for such a large employer now experiencing difficulties in  
defending the claims is tempered somewhat by the fact that the claimant  
alleges that she raised her difficulties both within the workplace and when  
lodging a formal grievance. I am, therefore, of the view that the balance is in  
10     favour of the claimant being allowed to ventilate these serious issues at a  
hearing and that the amendment should be granted. The broad themes of her  
position have not changed throughout the case. However, as earlier stated  
no claim should arise from the incident on the 13 July which will be treated as  
background given the prejudice that the respondent would otherwise suffer.

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**Employment Judge: J M Hendry**

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**Date of Judgment: 16 January 2025**

**Date Sent to Parties: 16 January 2025**