



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8000532/2024 (V)

Held on 7 February 2025

Employment Judge J M Hendry

Mr S McGhie

**Claimant
In Person**

RHT Scotland Limited

**Respondent
Represented by,
Mr G Benjamin,
Counsel
Also present,
Mr T McLachlan,
RHT &
Rachel Kershaw,
RHT**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The amendment to the pleadings is allowed, subject to time bar, in relation to the addition of an alleged incident of harassment on the 29 or 30 November 2023 involving an employee of the respondent Mr A Russell.

E.T. Z4 (WR)

REASONS

1. A Preliminary Hearing took place on 7 February 2025. At the outset, of the hearing I explained to the claimant, who is a party litigant, what would happen and how the application to amend would be dealt with. I started by asking him to explain to me the background circumstances of his claims. I had noted that they generally related to incidents in October and November 2023. He had later raised proceedings on 24 April 2024 for discrimination on the grounds of sexual orientation. His claims arose out of his employment as a Fitter with the respondent company.
2. The claimant explained that his colleague had made a homophobic remark to him. He had not added the incident involving the colleague Aiden Russell which took place to his ET1. He had reported that incident along with others to the Police at the time. He then lodged an SAR in relation to his complaints and discovered in January 2024 (prior to raising his claim) that Brian Walter, a witness to the incident had refused to participate in the Police investigation Mr Aiden Russell the perpetrator of the homophobic abuse did not co-operate. There was therefore no criminal proceedings. This impacted on the claimant. He thought no one would believe him about the incident in November. He accordingly left it out of the ET1.
3. I asked the claimant how he had come to amend his claim to add this incident at this stage. He accepted that on the day of the incident in November he had reported it to his Manager Damian Lee. Mr Lee had told him rather than go through an HR process he had given Mr Russell a warning. He was unsure if it was a written or verbal warning. He wasn't sure what had been said. It was only in the course of preparing for this hearing when he had access to the respondent's draft Joint Bundle of Documents and in it he discovered that Mr Lee had obtained a statement from Brian Walter confirming that the abuse took place. In addition, Mr Russell had accepted that he had been abusive and had received a warning. This information became available to the claimant only recently and he then prepared an amendment to add this

incident into his pleadings. He confirmed that he had been aware of the position taken by Police in January of 2024. That had disappointed him. He didn't think he could add the incident without some sort of back-up which he had hoped to obtain through the Police involvement.

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4. Mr Benjamin set out the respondent's position. In essence the view was that the amendment referenced an incident which was clearly out of time. The hearing was due to start on Monday and gave them no proper time to reflect on what the company's position would be or respond to the matter. Aiden Russell had left the company and could not be interviewed. There might be a context or history which they might wish to refer. There was no good reason why the amendment was made at this stage. I confirmed however that Mr Lee was available as a witness on Tuesday and could be called about this matter.

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5. I suggested that the background was relatively straight forward in that the respondent company both knew about this incident at that time and had taken steps to deal with it (the signed statement from the witness, an admission from the perpetrator and a warning given by them). In these circumstances I struggled somewhat with the suggestion that the respondent was being put to any great disadvantage in the amendment being allowed. However, I indicated that if in the course of the hearing it became clear that they had been put to a disadvantage in some way that the Tribunal would be sympathetic to either a delay or postponement to allow them to address the particular matter. However, I was not convinced that at present there was any specific clear prejudice to them that had been demonstrated. Their position was that the additional incident was also out of time as were the other incidents in November 2023.

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6. I advised the claimant that I did not regard his reason for lodging the amendment at this stage was terribly persuasive. However, the amendment was limited. It related to one incident. That incident appears to be within the knowledge of the respondent. I did not think that the amendment if allowed

would lead to any significant complexity or indeed be likely to lengthen the hearing significantly.

7. I made reference to the various principles set out in the well known case of ***Selkent Bus Company v. Moore*** the requirement to make an overall assessment of the factors at play. I indicated that I had to consider the balance of hardship. It seemed to me that as indicated above there was little prejudice to the respondent in allowing the amendment and greater prejudice to the claimant in not being allowed to pursue this particular issue. I made reference to the case of ***Choudhry v. Cerberus Security & Monitoring Services Ltd*** and the helpful guidance given there. The starting point was the amendment itself and that amendment has been clarified. I addressed the balance of injustice/hardship in allowing or refusing the amendment and in that balancing exercise I had come to the view that the balance was just on the side of the claimant and although I expressed disappointment that the amendment had come to this stage and indicated that I thought the reasons for it coming at this point were weak but nevertheless the amendment should be allowed. Mr Benjamin indicated that he would not require to respond to the amendment.
8. We then discussed a potential timetable for the Hearing. The claimant will give evidence first. I suggested to him that it was important for him to know what he was going to say and perhaps take a note with him of the main points he wanted to address and the documents he wanted to refer the Tribunal to. I told the respondent's agent that the Tribunal would be flexible in allowing Mr Lee to give evidence somewhat "out of order" as he is only available on Tuesday. I cautioned the claimant that if at the end of the day the respondent had been put to some expense in relation to the late lodging of the amendment that this might be regarded as unreasonable behaviour in terms of the Employment Tribunal Rules and lead to an application for expenses. I

express no view on the merits of this at this stage.

Employment Judge: J M Hendry

Date of Judgment: 12 February 2025

Date Sent to Parties: 12 February 2025