EMPLOYMENT TRIBUNALS

Claimant Mrs N Mann

Respondent DAPV Limited

WRITTEN REASONS FOR A CASE MANAGEMENT ORDER

Heard at: Midlands West, by video **On:** 17 July 2025

Before: Employment Judge Connolly (sitting alone)

Representation
For Claimant: Mr T Mann (Claimant's husband)
For Respondent: Mr I Aimufua (Litigation Consultant)

A case management order (annexed) was sent to the parties on 25 July 2025 which included a refusal of the respondent's application to amend its response. Reasons for refusing the application were given orally. Written reasons were requested in accordance with rule 60(4) of the Employment Tribunal Procedure Rules 2024. The following reasons are therefore provided

REASONS

INTRODUCTION

1. The claim was listed for final hearing to determine the claimant's complaints of unauthorised deduction from wages, breach of contract and unfair constructive dismissal.

2. In the week prior to final hearing, the respondent applied for permission "for admission of additional evidence and an amended defence / counterclaim". It erroneously applied under the 2013 Employment Tribunal Rules of Procedure. In the event, the application was treated as an application to amend the response to include an employer's contract claim.

3. Of necessity, this application was heard and determined before proceeding with the final hearing.

4. There was no dispute that the respondent required permission to amend. The clamant objected to permission being granted. In the circumstances, the only issue was whether it was appropriate to grant permission for the amendment.

THE EVIDENCE AND HEARING

5. The application to amend was not included in the documents provided by the parties but I obtained it from the Tribunal's electronic file. It comprised a 2-page email dated 11 July 2025 setting out the basis of the application. It attached:

   5.1 A revised statement from the respondent's witness Mr Portman (Managing Director) – the only witness whose evidence had previously been exchanged in defence of the claimant's claims
   5.2 4 witness statements from witnesses in support of the employer's contract claim from whom statements had not previously been exchanged
   5.3 64 additional pages of evidence including an Investigation report into the claimant's conduct dated 9 July 2025.

6. There was no draft of the terms of the proposed terms of the amendment.

7. In addition, I was provided with the following documents electronically:
   7.1 Bundle A – the claimant's Schedule of Loss – 17 pages
   7.2 Bundle B – the claimant's witness statements – 21 pages
   7.3 Bundle C – the respondent's witness statements – 17 pages
   7.4 Bundle D – a joint bundle of documents – 200 pages
   7.5 Bundle E – the respondent's disputed documents – 64 pages
   7.6 An opening statement by one of the respondent's witnesses, Mr Portman
   7.7 An opening statement by the claimant.

8. I invited the parties to identify what documents were directly relevant to the application to amend and which I should read prior to hearing the application. Through discussion and by agreement, I was referred to the following:
   8.1 The claim form and response

   8.2 on behalf of the respondent,
      8.2.1 the application to amend dated 11 July 2025 and the witness statements in support of the employer's contract claim
      8.2.2 the respondent's opening statement

   8.3 on behalf of the claimant, the respondent's Internal Investigation report contained in the disputed documents.

9. Both parties anticipated dealing with the application by submissions only. I explained to the parties that, where other documents were relevant, I would expect to be taken to them during submissions.

10. I read the above documents and noted that Mr Portman gave evidence as to why the application to amend was made at the time it was. When the hearing reconvened, I raised with the respondent the possibility that Mr Portman would give

evidence. Mr Aimufua, on behalf of the respondent did not think that would be necessary but asked for time to take instructions. Having done so, he stated he would like the opportunity to call Mr Portman to give evidence. I therefore heard evidence from Mr. Portman who was cross-examined by Mr Mann on behalf of the claimant.

THE NATURE OF THE CLAIMS AND THE APPLICATION TO AMEND

11. The claimant was employed by the respondent from 25 July 2019 until she resigned with effect from 30 August 2024. Latterly, she was employed as Head of Financial Planning and Analysis.

12. I noted in my reading that the respondent admitted at least some of the claimant's complaints. When the hearing reconvened, I therefore sought to establish the claims made and the extent of the dispute. I clarified that the claimant made the complaints set out below in respect of which the respondent adopted the position also below:
    - 12.1 unauthorised deduction from wages in the form of unpaid salary in the period 1 January 2024 – 30 August 2024 amounting to £16,473.88 – admitted
    - 12.2 unauthorised deduction from the claimant's wages by failing to pay the claimant for holidays accrued but not taken on the date the claimant's employment ended in the sum of £1,266.67 – admitted
    - 12.3 breach of contract in the form of unpaid employer pension contributions in the sum of £1,168.67 – admitted
    - 12.4 breach of contract in the form of a failure to pay the claimant a tax rebate received from HMRC – denied
    - 12.5 unfair constructive dismissal limited to a claim for a basic award – denied.

13. As is clear from the Issues set out in the Case Management Order the claimant alleged that the respondent's failure to pay her wages and/or the tax rebate constituted a fundamental breach of contract either of the express terms of her contract in relation to wages and/or a breach of the implied term of trust and confidence which entitled her to resign.

14. The thrust of the application to amend was that the claimant had been negligent or grossly negligent in the performance of her duties as Head of Finance in 4 respects
    - 14.1 failing to reconcile or record perishable stock losses causing losses exceeding £38,000.00
    - 14.2 failure to adequately manage supplier and courier accounts causing loss in the region of £10,000.00
    - 14.3 failing to provide critical cash flow forecasts for which there was no estimated loss
    - 14.4 mismanaging a claim for a research and development ('R&D') tax credit causing a shortfall of over £88,000.00

15. The respondent variously asserted the claimant's alleged conduct had caused losses exceeding £124,000.00 (Mr Portman's Opening Statement), £126,000 (the July 2025 Investigation report) and the above totals £136,000.00. The alleged failure in relation to the R&D tax credit was said to be the 'most significant' in Mr Portman's opening statement.

16. I explained that any employer's contract claim would be limited to £25,000.00 by virtue of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 regulation 10. The respondent, nonetheless, wished to apply to amend to include all the losses. The respondent's contract claim, capped at £25,000.00, would exceed the amount of the claimant's claim.

PROCEDURAL HISTORY

17. The claimant's employment ended on 30 August 2024. Early conciliation commenced on 21 October 2024 and ended on 23 October 2024. The Claim Form containing complaints of unauthorised deduction from wages, breach of contract and unfair dismissal was presented on 9 December 2024.

18. The Claim Form was sent to the respondents on 22 January 2025. On 23 January 2025 the parties were sent case management orders requiring disclosure of relevant documents by 18 March 2025 and exchange of witness statements by 15 April 2025. The final hearing was also listed to take place on 17 and 18 July 2025.

19. The respondent filed its response on 19 February 2025. At that time, the respondent was not represented. In the response, the respondent admitted what might be termed the 'money' claims made by the claimant (which at that stage did not particularise the claim for repayment of a tax rebate) but disputed the unfair dismissal claim.

20. The respondent stated that it was forced into 'deferment of pay' due to 'temporary cash flow issues'. The response also asserted that 'a large R&D payment was due from HMRC which was chased'. The respondent did not make any employer's contract claim in its response.

21. The respondent had access to legal advice from 10 March 2025.

22. The parties exchanged documents in March 2025 albeit there were issues as to whether all relevant documents had been disclosed. The respondent exchanged a single statement from Mr Portman dated 15 April 2025 in accordance with the case management orders.

23. On 11 July 2025, on a Friday before the hearing fixed for the following Thursday, the respondent made the application to amend already set out above.

IMPACT OF THE PROPOSED AMENDMENT

24. It is agreed that, were the respondent to be given permission to amend to include the employer's contract claim, this would require an expansion of evidence as set out below. The first 3 items were disclosed to the claimant for the first time on 11 July 2025:

24.1 a second statement from Mr Portman
24.2 4 additional witnesses on behalf of the respondent
24.3 additional documentary evidence running to 64 pages which included
a. emails and WhatsApp messages in relation to the respondent's cash flow and departmental responsibilities
b. documents analysing the R&D credit claim projections, outcome and communications with the claimant
c. supplier reconciliation data and expired stock logs
24.4 expanded evidence from the claimant
24.5 the possibility of further disclosure sought by the claimant flowing from the above evidence

25. All of the above would be required to support the necessary fair enquiry into new issues which were not part of the issues arising in the claimant's claims: whether each of the above failures occurred and, if they did, the extent to which the claimant had personally failed or was in some way responsible for any failures and whether this constituted negligence or gross negligence or a failure to perform her duties in the manner expected of a Head of Financial Planning and Analysis in the respondent's particular circumstances.

RELEVANT FACTS IN RELATION TO THE TIMING OF THE APPLICATION TO AMEND

26. The respondent asserted that the reason why the application to amend was not made until 11 July 2025 was as follows:
26.1 the claimant's potential failings only became apparent when a new Head of Finance was appointed in January 2025
26.2 the investigation commenced on 19 February 2025 and concluded in late June 2025
26.3 Between late June 2025 and 11 July 2025 the evidence from the investigation was collated and provided to their representative.

27. Mr Portman relied heavily on the fact that, as a result of financial difficulties, the respondent's staff numbers had reduced from 70 to 15 over the period January 2023 to December 2024. They remained at 15 or thereabouts from December 2024 to date.

28. Mr Mann cross-examined Mr Portman particularly on the alleged shortfall in respect of the R&D tax credit when compared to the projected claim. He asserted that Mr Portman was aware in July 2024 that the amount which was claimed from HMRC was less than that which had been projected or anticipated at an earlier stage. Further the respondent had recovered the amount claimed, in full, from HMRC in October 2024. He pressed Mr Portman as to why, given that this was said to be the most significant failure by the claimant, this could not have formed part of an employer's contract claim in February 2025 and/or more promptly thereafter.

29. Mr Portman did not dispute that the amount claimed was known in July 2024 nor that it was recovered in full in October 2024. He gave the following significant

evidence as to why no investigation into this was commenced earlier or was not completed earlier, once begun:

"Frankly we just did not have time. We were planning for quarter 4, we were having investor conversations and an investigation was not a business priority. It was not until we got a Head of Finance in January 2025 that we were well enough resourced to do that…."
"We had to prioritise tasks in order for the business to trade at an optimal level and reduce the financial issues we were facing. And we were negotiating and trying to settle this without escalation"

30. Mr Portman also accepted in evidence that, in September 2024, there was a hearing in another unauthorised deduction from wages claim brought against the respondent which they sought to extinguish by means of an employer's contract claim founded on that employee's alleged negligence. He and the respondent were therefore aware that such a claim was open to them, in principle, from that date, at the latest.

RELEVANT LAW

31. The Tribunal has power to grant a party permission to amend their claim by virtue of **The Employment Tribunal (Constitution and Rules of Procedure) Regulations 2024 rule 30** ('The Tribunal Rules'). The discretion contained within rule 30 must be exercised in in accordance with the overriding objective in **rule 2**.

32. The task for the Tribunal is to balance all relevant factors having regard to the interests of justice and, in particular, to consider the relative hardship, prejudice or injustice that will be caused to either party by granting or refusing permission to amend respectively (**Cocking v Sandhurst (Stationers) Ltd and Anor 1974 ICR 650** approved and restated in **Selkent Bus Co Ltd v Moore 1996 ICR 836** and further approved and restated in **Abercrombie v Aga Rangemaster plc [2013] EWCA 1148)**.

33. Commonly, when considering the balance of prejudice, hardship or injustice, the Tribunal looks at a number of factors:
    33.1 the nature, extent and impact of the proposed amendment including, as set out in **Abercrombie (above)** at paragraph 48**,** to what extent it might raise new or different legal and factual issues
    33.2 the applicability of time limits
    33.3 the timing and manner of the application to amend.

34. In relation to time limits,
    34.1 the **Employment Tribunals Extension of Jurisdiction Order 1994 Article 8(c)** materially provides that an employer's contract claim must be presented:
    " (i) within the period of six weeks beginning with the day, or if more than one the last of the days, on which the employer (or other person who is the respondent party to the employee's contract claim) received from the

tribunal a copy of an originating application in respect of a contract claim of that employee; or

(ii) where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented within that period, within such further period as the tribunal considers reasonable."

34.2 The task for me, therefore, is to identify what impeded the respondent from bringing its claim within the statutory time limit of 6 weeks and, after that, up until 11 July 2025. Then, I must consider whether the respondent has satisfied me that impediment meant that it was not reasonably practicable to present the claim within 6 weeks and that it was presented within a reasonable period thereafter.

34.3 It is not always useful to seek a synonym for a statutory test: it risks glossing and distorting the statutory language but, as 'practicable' is not an everyday word, on this occasion, it may assist the parties to understand that I think of it in terms of what is 'reasonably feasible'.

34.4 The fact a time limit has expired does not mean the amendment cannot be allowed (see **Transport and General Workers Union v Safeway Stores Ltd UKEAT/0092/07**), but it has been observed in many EAT cases that an amendment by way of re-labelling will more readily be permitted in such circumstances (see, for example, **Cox v Adecco UK Ltd & others [2023] EAT 105,** at paragraph 11, and **MacFarlane v Commissioner of Police for the Metropolis [2024] IRLR 34** at paragraph 52).

CONCLUSIONS

The nature, extent and impact of the proposed amendment

35. I considered the nature and impact of the amendment and weighed up the relative hardship to each party of permitting or refusing it:

35.1 If I permitted it, the claimant would face a claim which would extinguish her claim and face the risk of a finding which would reflect on her professional competence. If I refused it, the respondent would be unable to make a tribunal claim to recover losses it says it has suffered as a result of the claimant's negligence capped at £25,000.00 but which would extinguish the claimant's claim. The respondent would, however, be able to make a claim in the County Court for the full amount of the losses should it see it see fit. I acknowledge that a County Court claim does not provide the respondent with equivalent recourse to that provided by the tribunal in terms of delay, set off and cost risk. It is, however, a route open to it which would potentially yield higher damages.

35.2 If I allowed the amendment, it would affect the issues, the legal and factual enquiries to be undertaken and the final hearing as follows:

a. it would introduce an entirely new legal claim of negligence / professional negligence

b. this would give rise to new legal and factual issues which do not form part of the legal and factual issues in the claimant's current claim against the respondent: broadly, a determination of the scope of the claimant's duties, a detailed analysis of whether there had been failures in reconciling or recording perishable stock losses, managing supplier or courier accounts, a failure to provide cash flow forecasts and/or mismanagement of the HMRC R&D rebate claim, whether these failures were the claimant's responsibility (directly or indirectly); whether they amounted to negligence in the respondent's straitened circumstances where staff numbers had been significantly reduced and quantification of any losses caused (see the attached List of Issues and the issues set out in paragraphs 13, 14 and 25 above)
c. as set out in paragraph 24 above, this would require evidence from 4 new factual witnesses and expanded evidence from 2 existing witnesses to address these issues; analysis of emails and WhatsApp messages in relation to the respondent's cash flow and departmental responsibilities; analysing the R&D credit claim projections, outcome and communications with the claimant and supplier reconciliation data and expired stock logs
d. all of which would give rise to the distinct possibility that further disclosure would be required to ensure all relevant documents on these issues had been exchanged
e. it would inevitably require a postponement of the final hearing listed for today and a re-listing of the final hearing, likely for an extended period of 5 days.

36. If I do not allow the amendment, it is possible the final hearing could proceed today. Even if the final hearing ultimately is postponed, given the time spent dealing with this amendment application and irrespective of whether the amendment is permitted, re-listing for 5 days instead of somewhere in the region of 2 days is likely to cause hardship to the claimant in respect of the further preparation required and the delay caused by finding a convenient 5 day slot as opposed to a 2 day slot. There is also an adverse impact on other litigants and the Tribunal system caused by this hearing not being effective and being postponed to a further date for a longer period.

37. I find the expansion of the issues and adverse impact on timetabling of allowing such an amendment are properly described as significant.

38. Overall, I am of the view that the hardship to the claimant in terms of facing a negligence claim, with the additional legal and factual enquiries involved, the increased preparation and hearing time outweighs the hardship to the respondent who has the alternative option of pursuings this claim in the County Court.

Time Limits

39. The Claim Form was sent to the respondent on 22 January 2025. It likely would have been received within 2 days but, making a generous allowance for the weekend post, even if I calculate time limits from 27 January 2025, the employer's

claim ought to have been presented by 10 March 2025. The application to amend was made on 11 July 2025 and is, therefore, some 4 months out of time.

40. I find that it was reasonably practicable to have brought the claim within 6 weeks or, alternatively, that it was not presented within a reasonable period after the expiry of 6 weeks having regard to the following:

    40.1 The respondent was aware in July 2024 that the company had submitted a claim to HMRC for a R&D rebate in a sum lower than previously forecast / anticipated. Mr Portman was acutely aware in October 2024 that the respondent had received a rebate in the lower sum claimed and he had previously raised issues with the sum claimed. If it was thought that there had been failings by the claimant in this regard, Mr Portman could and reasonably should have investigated then or on receipt of the Tribunal claim whether using the services of the accountant who assisted in reviewing the HMRC claim or the new Head of Finance. It was worth a sizeable amount to the respondent and was, on their own account, the most significant single item in their contract claim.

    40.2 The reason why they did not do so in October or January was a matter of choice: the respondent did not regard this as a priority. I find that, if they wished to mount an employer's contract claim, they should have prioritized this. While I understand that, from Mr Portman's perspective, he wanted to run the company in a way to maximise its financial recovery or success, I have to consider what was reasonably practicable or feasible. I also have to consider a claimant's interest in having a claim against them identified in the statutory time period or a reasonable period thereafter.

    40.3 As Mr Portman said in evidence, the respondent had a Head of Finance in place in January 2025 and was then well-resourced enough to investigate this.

    40.4 The investigation was, apparently, underway by 19 February, prior to the expiry of the limitation period on 10 March, it could and reasonably should have been prioritised such that it could reasonably have been concluded by 10 March 2025, certainly in relation to the HMRC rebate and likely in relation to all matters. Again, this was a matter of choice, 'priorities' by the respondent.

    40.5 Even if it was not reasonably feasible to complete the investigation by 10 March 2025, I find it was not reasonable to present the claim by way of an application to amend as late as 11 July 2025. This is particularly so once the respondent had access to legal advice from 10 March 2025. They could and reasonably should have been aware of the limitation period. They could and reasonably should have prioritised sufficient investigation to permit them to raise a claim within a matter of weeks, even if some detailed gathering of witness statements took longer to complete.

    40.6 Mr Portman referred to the fact that there were some without prejudice negotiations during the period after presentation of the claim. I do not accept that this meant it was not reasonably practicable for the respondent to have presented a 'protective' claim while those negotiations continued.

41. I find therefore that this claim is presented some 4 months outside the statutory time limit. I find that this or, alternatively, the period of delay after expiry of the 6

week period is properly described as significant particularly when judged against a statutory period of 6 weeks. This is a matter which, in addition to that set out in the section above, weighs heavily against granting permission to the respondent to amend the claim.

Timing and manner of the application

42. My conclusions above are reinforced by the fact that the respondent made this application only 3 clear working days before the final hearing. Less significantly but still of relevance, they also failed to include a clear draft of the amendment which could be conveniently identified.

43. Such a late application inevitably jeopardised the conclusion of the case. It caused the unrepresented claimant to undertake a great deal of last minute, hurried preparation for the application and the new issues to which it gave rise. I have found there is no good reason why it was presented so late. The hardship to the claimant of permitting such an unjustifiably late application, in my view, outweighs the hardship to the respondent of permitting it.

Overall Conclusion

44. Having weighed the above factors, whether individually or cumulatively, I conclude that the hardship to the claimant of permitting such an extensive amendment, out of time and made unjustifiably late in the proceedings outweighs the hardship to the respondent of refusing it where the respondent has alternative recourse to the County Court. It is not, in my view, in the interests of justice that such an application be permitted.

Approved By: **Employment Judge Connolly**

On: 13 August 2025