



EMPLOYMENT TRIBUNALS

Claimant: Miss N G Nyenke

Respondents: Kingsley Healthcare (Birmingham) Limited

RECORD OF AN OPEN PRELIMINARY HEARING

Heard at: Birmingham (CVP Video)

On: 07 November 2024

Before: Employment Judge Hena

Appearances

For the claimant: In Person

For the respondent: Mr Liberadzki, Counsel

JUDGMENT

The Tribunal makes the following decision in relation to the preliminary issues heard at the Preliminary Hearing held in public:

1. The claimant's application to amend her application, as per her further particulars of claim dated 30 August 2024, does not succeed in relation to numbers 3, 4, 7 and 9 of the claims. Having considered the *Selkent* Principles from the case of *Selkent Bus Co v Moore* it is found that the nature of the amendments are significant in relation to 3, 4 and 9, out of time and the evidence presented does not support that the claimant was unaware of acts of racial discrimination and constructive dismissal at that time. In relation to 7 I find that there is no prejudice in not allowing the amendment as the claimant has still not particularised it properly and

there are incidents that demonstrate the discrimination that will be going forward to final hearing.

- 2. The claimant's application to amend her claim in relation to 1 and 2 of her further particulars of claim succeeds to allow for the incidents to be include acts of racial discrimination in relation to her Italian heritage as well as her African background. The amendment was not contested by the respondent and the nature of the amendment is not significant.**
- 3. The claimant's application to amend her claim in relation to 5, 6, 8, 10, 11, 12 and 13 of her further particulars of claim succeeds to allow for the incidents to be better particularised. The amendment was not contested by the respondent and the nature of the amendments are not significant.**

ISSUES AND BACKGROUND

1. The issues in this matter are as follows:
 - 1.1. Should the claimant be permitted to amend her claim as per her updated particulars of claim submitted by 30 August 2024 and the respondent's response to those particulars.
 - 1.2. The consideration of Case Management Orders, and the listing of the Final Hearing if relevant.

Background

2. The claimant was employed by the respondent, Kingsley Healthcare (Birmingham) Limited, as a Senior Support Worker, from 12 September 2023 until 4 January 2024 when she resigned. The claim form was presented to the tribunal on 27 February 2024, the claimant brings claims for discrimination and harassment on the grounds of race.
3. The claim form details 5 separate incidents which the claimant confirmed at the previous case management hearing on 31 July 2024 as all being motivated by her race. The claimant's race is Black African with Italian heritage.
4. At the previous case management hearing the claimant confirmed that the list of issues prepared by the respondent was far from complete and there were other incidents which were not included on the list. The claimant said she had produced a further particulars of claim, which were not before the tribunal, as they were only submitted the morning of the hearing. It was decided that the claimant would require permission to amend her claim to include the further incidents.

5. The respondent's position was that either the incidents did not happen and if they did they were not related to the claimant's race.

Employment Judge A. Hera

09 November 2024

Sent to the parties on:

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For the Tribunal Office:

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