



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant: Denise Francis and **Respondent:** Asda Stores Limited

HELD AT Birmingham (by video) **ON** 27 October 2025

EMPLOYMENT JUDGE Choudry

Representation:

For the claimant: In person

For the respondent: Mr A Adamou (counsel)

JUDGMENT ON PRELIMINARY HEARING

- (1) The claimant's application for permission to amend her claim so as to add claims for failure to make reasonable adjustments, direct disability discrimination, discrimination arising out of disability and one act of victimisation as set out in paragraphs 4.1 to 4.3 (inclusive) below and paragraph 4.4.2 below is allowed.
- (2) The claimant's application for permission to amend her claim so as to add an allegation of victimisation as set out in paragraph 4.4.1 below is refused.

REASONS

1. By a claim form dated 7 February 2025 the claimant, acting on her own, submitted a claim for age discrimination. She also ticked the box to say she was owed "*other payments*" and indicated that, in addition, she was bringing claims for "*breach of duty of care*", "*not following the Advisory Conciliation and Arbitration Service ACAS Code of Practice on Disciplinary and Grievance Procedures*".

2. By a letter dated 11 June 2025 the claimant made an application to amend her claim to include claims for disability discrimination (direct discrimination and discrimination arising) and victimisation. The respondent objected to the application to amend.
3. Following a preliminary hearing (case management) on 10 July 2025 before Employment Judge Harding the case was listed for an open preliminary hearing to consider (subject to the discretion of the judge with conduct of the hearing) the claimant's application to amend and for the issuing of further case management orders.
4. The amendments sought were to bring a claim for disability discrimination on the grounds set out below. The disabilities relied on are degenerative disc disease and bulging discs. The amendments sought are:

4.1 Failure to make reasonable adjustments:

- 4.1.1 It is the claimant's case that the respondent applied a PCP, namely a requirement that Night Replenishment Colleagues are required to carry out heavy lifting as part of their role. The substantial disadvantage this is said to have caused the claimant is that heavy lifting exacerbated her back conditions and caused pain and also caused a trapped nerve. The reasonable adjustment contended for is that the claimant should have been paired up with another colleague to help with the lifting.
- 4.1.2 It is the claimant's case that the respondent applied a PCP, namely a requirement that Night Replenishment Colleagues carry out duties on their own. The substantial disadvantage contended for is that the volume of work, and in particular the volume of work that required lifting and bending, aggravated her back conditions and caused pain. The reasonable adjustment contended for is that the claimant should have been paired up with a colleague.

4.2 Discrimination arising:

- 4.2.1 The asserted unfavourable treatment is that whilst the claimant was off sick between 10 June 2024 and 25 January 2025 and again between 29 January 2025 and 7 February 2025 the respondent failed to make contact with her. It is the claimant's case the respondent failed to make contact with the because she had been on sick leave for a long time and that this sickness absence was caused by her back conditions.
- 4.3 **Direct discrimination:** in the alternative the claimant alleges that the matters she relies on for her claim for discrimination arising from disability also amount to less favourable treatment.
- 4.4 **Victimisation:** The claimant relies on two protected acts in the form of grievances raised in July 2023 and January 2025.

4.4.1 There is one asserted detriment in respect of the July 2023 protected act, which is that when the claimant returned to work on 20 July 2023 Craig Bayliss removed the three people who have been working on her aisle and left her working on her own.

4.4.2 There is one asserted detriment namely that the respondent failed to investigate her grievance and/or provide her with an outcome.

Submissions on behalf of the Claimant

5. The claimant indicated that she had not been aware that she had a potential claim for disability discrimination until she sought pro bono advice from ELIPs in May 2025 who informed her that her medical conditions could amount to a disability under the Equality Act 2010. She did not make an application to amend her claim until 11 June 2025 as she was checking whether her back condition could amount to a disability, she was unsure and had contradictory views from friends and did not want to waste the Tribunal's time. She had wanted to speak to ELIPs again but there was a long wait before she could speak to them again so she made her application. The claimant indicated that she would not have made an application to amend her claim had the respondent engaged with her properly and helped her. She indicated that she had had a welfare meeting with the respondent on 29 January 2025 and had been pleased with how things had gone and had anticipated that the respondent would now engage with her and resolve her holiday pay and sick pay queries. However, the respondent failed to engage properly with the claimant following this meeting. The claimant felt aggrieved by this. These same points were repeated by the claimant when I gave her the opportunity to respond to submissions made by Mr Adamou on behalf of the respondent.

Submissions by the respondent

6. Mr Adamou indicated that the claimant's motivation for making the amendment would need to be considered by the Tribunal when examining the reasons for the delay and in assessing the balance of hardship as he submitted that the motivation in seeking the amendment was to force engagement in relation to her issues.

7. Mr Adamou also referred me to overriding objective and to a number of authorities including **Chadock v Tirkey 2015 ICR 527**, **Scottish Opera Ltd -v- Whinney UKEAT/0047/09, CX -v- Secretary of State [2025] EAT 114** and **Selkent Bus -v- Moore [1997] ICR 836** of which I have taken cognisance of.

8. Mr Adamou submitted that if the application were allowed the respondent would suffer prejudice in the form of having to file an amended response, there potentially having to be a hearing to deal with the issue of disability as this was not conceded, having wider disclosure obligations, more witnesses and a longer hearing. He also referred to the relative strength of the amendments in particularly the reliance on the grievance from July 2023 as a protected act which was used to support the first victimisation claim. As had been noted by

Employment Judge Harding the claimant's failure to raise an allegation of discrimination in this grievance as she did not want to raise "the race card" would be fatal to establishing that there was a protected act. Mr Adamou also referred to the fact that the claims were potentially out of time allow he accepted that an amendment could be allowed subject to issues of time limits being determined at the final hearing.

Conclusions

9. In making my decision I have considered the documents to which I have been referred, the oral submissions of the parties and have considered the cases to which I have been referred.
10. I then directed myself that I should apply the tests set out in **Selkent Bus v Moore [1996] I.C.R. 836** which require me to consider (1) the nature of application to amend; (2) the timing and manner of the application; (3) the applicability of time limits; and (4) the balance of prejudice. I also considered the Presidential Guidance, General Case Management issued in January 2018 which makes it clear that in deciding whether to grant an application to amend, the Tribunal must carry out a careful balancing exercise of all the relevant factors having regard to the interests of justice and the relative hardship that will be caused to the parties by granting or refusing the amendment.
11. Additional factors for the Tribunal to consider include the merits of the claim. It is not of course the Tribunal's function on an amendment application to decide upon the merits of the claim. However, a proposed claim may be obviously hopeless. That said, unless there is material to demonstrate the hopelessness of the case then it should otherwise be assumed that the case is arguable.
12. I am satisfied that the claimant's application to amend is not a relabelling exercise notwithstanding the fact that she does refer to her health in the claim form and, indeed, I note that in paragraph 2 of the Grounds of Resistance the respondent thought there could be a disability claim as it denied, if it was alleged, that the claimant was discriminated against on the grounds of any disability.
13. In terms of the timing and manner of the amendment, the claimant has made an application at a relatively early stage of the proceedings, before disclosure has been undertaken or case management orders issued. Such amendment was made within weeks of receiving some advice from ELIPs. The claimant wanted to make sure she had a potential claim and was mindful of not wasting the Tribunal's time in making an application to amend. She cannot be criticised for that.
14. I have, however, concerns about the merits of the claimant's application to amend her claim to include the first allegation of victimisation arising out of the grievance raised in July 2023. Given that no allegation of discrimination was raised in the grievance relied on I cannot see how this claim can succeed. Further, there has been a significant delay, two years, in bringing this claim. As such this amendment is refused.

15. In relation to the remaining requested amendments, taking into account the interests of justice and the relative hardship that will be caused by the granting or refusing the amendment, I am satisfied that greater hardship will be caused to the claimant if the application is not granted. The claimant will be left without a remedy whilst the respondent will largely need to deal with the remaining amendments in any event in response to allegations of age discrimination. The proceedings are also still at an early stage. As such, these amendments are allowed subject to issues of time limit being reserved for the final hearing.

Approved by Employment Judge Choudry
1 November 2025

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<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>