



EMPLOYMENT TRIBUNALS

Claimant: Mrs D Old

Respondent: Davies Group Ltd

Heard at: Midlands West Employment Tribunal (in private by telephone)

On: 3 December 2025

Before: Employment Judge Noons

Representation

Claimant: in person

Respondent: Ms Ogden, Solicitor

RESERVED JUDGMENT

The Judgment of the Tribunal is that:

The claimant's application of 26 May 2025 to amend her claim is refused

Reasons

1. The claimant's application to amend her claim dated 26 May 2025 refers to two incidents which the claimant says were acts of victimisation. The first relates to her treatment on 8 May 2025. On that day the claimant was at work and received confirmation that the mediation bundle for Tribunal was not agreed. She left work to finalise and submit her bundle. When she was leaving work she advised her manager she was leaving work as she was feeling very stressed. After submitting her bundle she advised her team leader that because of the significant stress she was under she would not be returning to work that day. Her team leader agreed this absence and initially said the leave would all have to be unpaid. However shortly after this they emailed the claimant to say she could take some of the leave as sick leave, meaning that she would be paid for some of her absence.
2. The second act of victimisation complained of is in relation to the claimant's return to work meeting on 14 May 2025 when she was advised that she would be referred to occupational health given she had said she was stressed.

3. The third section of the amendment seems to be saying that in fact the respondent should have dealt with the claimant's temporary absence via their flexible working policy and that by not doing so they were subjecting her to a detriment.
4. I explored these claims and allegations of detriment with the claimant although I did not hear any evidence.

The Law

5. The tribunal has a broad discretion to allow amendments at any stage of the proceedings, either on the tribunal's own initiative or on application by a party, however, I remind myself that such a discretion must be exercised in accordance with the overriding objective of dealing with cases fairly and justly.
6. I have had regard to the Guidance note 1 of the Employment Tribunals (England and Wales) Presidential Guidance – General Case Management (2018). 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.

5 Relevant factors would include:

5.1 the amendment to be made. Applications can vary from the correction of clerical and typing errors to the addition of facts, the addition or substitution of labels for facts already described and the making of entirely new factual allegations which change the basis of the existing claim. The tribunal must decide whether the amendment applied for is a minor matter or a substantial alteration, describing a new complaint.

5.2 time limits. If a new complaint or cause of action is intended by way of amendment, the tribunal must consider whether that complaint is out of time and if so whether the time limit should be extended. Once the amendment has been allowed and time taken into account then that matter has been decided and can only be challenged on appeal. An application for leave to amend when there is a time issue should be dealt with at a preliminary hearing to address a preliminary issue. This allows all parties to attend to make representations and possibly even to give evidence.

5.3 timing and manner of application an application can be made at any time, as can an amendment even after Judgment has been promulgated. Allowing an application is an exercise of a judicial discretion. A party will need to show why the application was not made earlier and why it is being made at that time. An example which may justify a late application is the discovery of new facts or information from disclosure of documents.

6 The tribunal draws a distinction between amendments as follows:

6.1 those that seek to add or to substitute a new claim arising out of the same facts as the original claim;

And

6.2 those that add a new claim entirely unconnected with the original claim

7. I also considered the leading authorities in this area in particular *Selkent Bus Co Ltd v Moore 1996 ICR 836, EAT*, where Mummery J stressed that the required balancing exercise involves consideration of all the relevant factors and stated that it is impossible and undesirable to attempt to list them exhaustively. A number of factors that will generally be relevant to the assessment these include the nature of proposed amendment, relevance of time limits and timing and manner of application for amendment.
8. In *Chaudhry v Cerberus Security and Monitoring Services Ltd 2022 EAT 172*, the EAT suggested a two-step approach. First, identify the amendment or amendments sought, which should be in writing. Secondly, in express terms, balance the injustice and/or hardship of allowing or refusing the amendment or amendments, taking account of all the relevant factors, including, to the extent appropriate, those referred to in *Selkent*.
9. The case of *Vaughan v Modality Partnership 2021 ICR 535, EAT* confirmed that the core test in considering applications to amend is the balance of injustice and hardship in allowing or refusing the application.
10. I am to focus on the practical consequences of allowing an amendment. Such a practical approach should underlie the entire balancing exercise. No one factor is likely to be decisive. The balance of justice is always key.

Applying the Law to the Facts

11. The claimant's application relates to what she labels as victimisation and detrimental treatment post claim under Equality Act 2010. In reality these are one claim which is one of Victimation relying upon the issuing of Tribunal proceedings as the protected act.
12. Having reviewed the claimant's amendment application it is quite clear that these are completely new claims (not a relabelling) as they relate to events that took place after the original claim form was issued. The application was made within 2 weeks of the issues complained of on 14 May 2025 and within 3 weeks of the issues complained of on 8 May 2025. These are therefore within the primary time limit. The amendment application was also made in the appropriate manner via the Tribunal online portal.
13. The difficulty comes however when I consider the nature of the amendment being sought. It is difficult to see how the acts now complained of by the claimant could be acts of detriment. Sick leave with the respondent is paid. Unpaid leave by definition is not. An employer referring an employee to occupational health with they have indicated they are suffering stress and feeling bad is likely to be considered a supportive act. The issue of not using the respondent's flexible working policy to deal with the claimant's absence is again not likely to be found

to be a detriment. The claimant in fact had no right just to leave work to complete a step in preparation for the Tribunal process but the respondent not only allowed her to do so but also suggested a solution which would mean she was paid for some of this absence.

14. The claimant's position regarding the respondent not following their flexible working policy as an act of detriment was hard to follow. I agree with the respondent's submissions that the claimant seems to be mixing up an employer's obligations to consider flexible working requests with what her actual request was, which was one of agile working, that is to say a temporary change to what and where she had to work for the day on 8 May 2025. Again this claim appears to have very little prospect of success and I do not understand from what the claimant has put in her amendment application nor from what she said to me how this is a detriment.
15. This is already a complex and multi-faceted discrimination claim. If I were to allow this amendment application there is significant hardship for the respondent as they would have to spend further time and costs in defending a new claim of victimisation which is unlikely to succeed. It could even mean having to call further witnesses leading to a longer hearing with the inevitable risk that the hearing gets postponed to a much later date.
16. In considering the hardship to the claimant in not allowing the amendments I am mindful that the new claim is highly unlikely to succeed given the difficulty she will have in showing she has suffered any detriment. I am also conscious that she already has her other complaints which are proceeding to final hearing.
17. On that basis therefore considering the overriding objective, the balance of injustice and hardship in this case is weighs in favour of the respondent, there will be more injustice and hardship to them if I were to allow the amendment than to the claimant if I were to refuse the amendment.
18. I therefore refuse the amendment application.

**Employment Judge Noons
22 December 2025**

