



EMPLOYMENT TRIBUNALS

Mrs. Sophie Fatih

V

St Ignatius College

Claimant

Respondents

Heard at: Watford Employment Tribunal

On: 3 October 2025

Before: Employment Judge Daley

Appearances:

For the claimant: In person

For the respondents: Ms. Alice Defriend- Counsel

WRITTEN REASONS

On a Preliminary Hearing

1. This matter was set down for a preliminary hearing for the following issues to be determined:-
2. **Issues**
 - (i) Whether to make an order permitting the claimant to amend her claim to include an allegation of victimisation.
 - (ii) Whether to strike out the parts of the claimant's claim which refer to without prejudice correspondence between the parties.
 - (iii) Whether the claimant remains an employee of the respondent or had resigned.
 - (iv) Whether to grant the claimant an order for specific disclosure.

REASONS

The claim

1. The claimant issued her claim on 30 September 2024. The claimant was employed by the respondent, a catholic voluntary aided secondary school on 1 September 2022 as a subject lead for Art, Design and Technology. The Respondent is a Catholic voluntary aided secondary school for boys aged 11 – 18 and girls aged 16 – 18 years old.
2. Her claim alleges that following her informing the respondent of her pregnancy on 26 January 2024, she was subjected to discriminatory acts.
3. The claimant claims that on informing her employer of her pregnancy, she requested a risk assessment be carried out under the Health and Safety Regulations. She claims that in February 2024, an outdated risk assessment was undertaken, and that despite this risk assessment reasonable adjustments were not put in place. The claimant claims that this failure to carry out a full risk assessment and to implement adjustments caused her 'physical and emotional strain'.
4. The claimant claims that during her pregnancy she was signed off sick by her doctor in March 2024, and that following this, on two occasions 14 April and 1st of July unlawful deductions were made from her wages which amounted to discrimination on account of her pregnancy. The claimant further claims that although she was signed off for pregnancy related health conditions, between March and July 2024, she was repeatedly pressured by her employer to return to work.
5. The claimant further makes complaint of an earlier incident which took place in November 2023, when photographs were taken of her by a pupil during a lesson without her consent.
6. In July 2024, informal discussions took place concerning the Claimant leaving her role and her employer providing her with a compensatory package. This was referred to within the claimant's claim.
7. The respondent in their Grounds of Resistance denies that the Claimant was subjected to repeated acts of sex discrimination, harassment or victimisation. The Respondent further claims that any acts which were alleged to have occurred prior to 15 June 2024 are subject to the three-month time limit for bringing claims for acts of discrimination. The respondent also objects to the part of the claimant's claim which refer to the informal discussion on the grounds that the discussions which took place were "Without Prejudice" discussions and that the subsequent correspondence is privileged. The respondent seeks an order striking out that part of the claimant's claim.

The procedural history

8. The claimant applied for ACAS early conciliation on 21 September 2024; the early conciliation period ended on 25.09.24 and a certificate was granted.
9. The claimant issued her ET 1 on September 2024. A Notice of Claim, from the Tribunal, ordered that the respondent submit a response.
10. The respondent filed a Response and Grounds of Resistance on 29 October 2024.
11. A case management hearing was held before Employment Judge de Silva KC, on 17 March 2025, where directions were given for the matter to be prepared for the final hearing and the matter was set down for hearing on 7-14 June 2027.
12. Following the Case Management hearing, on 28 April 2025, the claimant applied to amend her claim to include an additional claim of victimisation under section 27 of the EA 2010.
13. Following correspondence from the parties concerning a number of issues the Tribunal wrote to the parties on 13 August 2025, notifying them that the Tribunal had set the matter down for a 1-day preliminary hearing on 3 October 2025.
14. These written reasons follow the claimant's request for written reasons following the hearing and the case management order dated 30.10.2025.

The Hearing

Attendance

15. The hearing was held at Wafford Employment Tribunal and was attended by the parties on video link. The claimant represented herself. Also in attendance at the hearing was Ms Alice Defriend- Counsel, Mr Millet, and Mr Matthew Loughran of the respondents.

The Evidence

16. The Tribunal was provided with a bundle of 105 pages, together with a Skeleton Argument on behalf of the Respondent and a witness statement from Mr Loughran.
17. The Tribunal heard from the claimant and the respondent's counsel on each of the issues in turn.

The Application to Amend the claimant's claim

18. The claimant wished to amend her claim to include the following additional matters, a) a complaint of 12 January 2024 to Mary O'Keefe (Headteacher) about the respondent's handling of an investigation into the alleged inappropriate photographs taken of the

claimant by students, and the respondent's refusal to change the policy in relation to this ; b) a complaint of 11 March 2024 to Jackie O'Brien (School Business Manager) about excessive pressure and stress placed upon her by her line manager, Bradley Cassidy, during the claimant's pregnancy; and c) complaints of 15 and 16 April 2024 to Mr Loughran about unlawful reduction of her pay during pregnancy-related sickness absence.

19. In her application to amend the claimant set out that:- *"The proposed amendment does not introduce wholly new facts or issues but applies an additional legal classification (victimisation) to factual matters already pleaded or closely related to those already before the Tribunal."* and that *"The facts relied upon for the victimisation claim arise from the same core factual background already pleaded in the original ET1."*

20. The protected acts relied upon by the claimant were set out in the appendix to her application. She identified them as follows:- *The Claimant engaged in the following protected acts within the meaning of section 27 of the Equality Act 2010:*

(i) 12 January 2024

The Claimant raised a formal complaint with Mary O'Keefe (Head Teacher) regarding the Respondent's handling of an investigation into inappropriate photographs taken of her by students. The respondent also refused to agree to a proposed change in school policy relating to the management of such incidents, as the claimant suggested whilst asserting her rights.

(ii) 11 March 2024

The Claimant made a complaint to Jackie O'Brien (School Business Manager) concerning the excessive pressure and stress placed upon her by her line manager, Mr Bradley Cassidy, during her pregnancy, raising concerns about risks to her health and wellbeing.

(iii) 15 and 16 April 2024

The Claimant raised complaints with Matthew Loughran (HR Manager, Enfield) regarding attempts by payroll to unlawfully reduce her pay during periods of pregnancy-related sickness absence

21. In response the Respondent's representative stated -: *"None of those alleged protected acts were pleaded in the original details of claim, and they amount to new factual allegations. As to the first alleged protected act, at §8 of the details of claim, C asserted that she reported the incident of students taking inappropriate photographs of her during class to the headteacher [20]. However, there is no reference to a separate*

complaint made to the headteacher about R's handling of the investigation into her complaint.25. As to the second and third alleged protected acts, there is simply no reference in the details." of claim to such complaints being made at all."

Whether to make an order permitting the claimant to amend her claim to include an allegation of victimisation.

The Photo Incident

22. The Tribunal's power to permit the claimant to amend her claim is found in Rule 30 of the Employment Procedure Tribunal Rules 2024. Within her application, the claimant referred to *Selkent Bus Co Ltd v Moore* [1996] ICR 836, this case provided guidance to the tribunal on how to apply its discretion.
23. The guidance provided by Selkent and the Presidential Guidance provided that the key principle when considering the exercise of the Tribunal's discretion to allow an amendment, is to have regard to all the circumstances. This includes any injustice or hardship resulting from an amendment or refusal to amend.
24. In the Selkent case, the Employment Appeal Tribunal set out a non-exhaustive list of relevant factors which are to be taken into account in considering the required balancing exercise, such as giving due regard to the interests of justice and the relative hardship that will be caused to the parties by the granting or refusing of the amendment. These were; the nature of the amendment, the applicability of time limits, and the timing and manner of the application.
25. The Tribunal firstly considered the claimant's submissions and asked itself whether the application amounted to a re-labelling of the existing claims or reclassification.
26. The Tribunal noted that the first chronological incident occurred in November 2023 which referred to a photograph having been taken of the claimant by a pupil (the photo incident). The Tribunal considered both the claimant's claim and the respondent's reply in relation to this incident.
27. The Tribunal noted that within the original claim, although the claimant set out details of the photograph incident, which occurred in November 2023 and referred to her dissatisfaction with how her complaint was handled. The claimant made no mention in her claim of the investigation in January 2024.
28. Her claim also provided no detailed allegation of the victimization the claimant alleged that she suffered in her claim (ET1) given this the tribunal noted that it was not simply a relabelling of an existing claim.
29. The Tribunal noted that at the time that the claim was brought on 1 September 2024, this incident was already outside the three months' time limit. Further the Tribunal was not satisfied that the claim had been fully particularised.

30. The Tribunal finds that the complaint of victimization or the facts now relied upon concerning the photograph incident were not part of the claimant's original claim. To permit the amendment would be to introduce a substantially new allegation. This would necessitate further particulars and amendment to the Grounds of Resistance. The Tribunal was not satisfied that it was within the interest of justice to grant leave to amend the claimant's claim, in circumstances where the claim is both substantially out of time and not particularised in such a way that the respondent could provide a detailed response.
31. Accordingly, the application to amend to include this incident is refused.

The 12 January 2024 complaint

32. The Tribunal also applied *Selkent*, to this amendment. It noted that this amendment would if granted introduce substantially new facts, which were not within the claimant's ET1. The Tribunal accepted the Respondent's written submission that -: The nature of the amendments are substantially to plead entirely new factual allegations *not previously pleaded (save for only 2 of the alleged detriments), and not simply to relabel facts already pleaded as a complaint of victimisation. Those allegations involve multiple different witnesses and are said to have occurred over a year ago to this hearing (and will have occurred 3 years ago at the date of the final hearing).* 34. Moreover, so far as the detriments are concerned, they are poorly particularised. In particular, they lack specificity as to a) when they are said to have occurred; b) by whom they are said to have occurred; and c) precisely what is said to have occurred. If those amendments were allowed; R would simply be in a position where it does not know what facts it is being asked to investigate, who the relevant perpetrators are, and accordingly, what evidence it needs to call."
33. Accordingly, the Tribunal considered that to grant this amendment would be prejudicial to the respondent. Accordingly, the Tribunal refused the claimant's application to make this amendment.

The Reduction of Pay

34. The Tribunal drew a distinction in its consideration of this allegation; it noted that the claimant had provided details of the reduction/ attempted reduction in relation to her pay. In her claim at paragraph 6, the claimant refers to the respondent's deduction to her pay.
35. The Tribunal noted that the issue of whether there was a reduction in the claimant's salary, and the reason and circumstances in which any such reduction or proposed reduction was made is an issue that is already before the Tribunal. Given this, the Tribunal was not satisfied that granting this amendment would cause hardship to the Respondent.
36. The claimant's application to amend the claim to include this allegation was granted as set out in the case management order.

Whether to strike out parts of the claimant's claim

37. The Respondent made an application to strike out part of the claimant's claim, on the grounds that it referred to Without Prejudice negotiations which had taken place between the claimant's representative Ms Docherty and Mr Loughran on behalf of the respondent. The Tribunal heard and accepted the evidence of Mr Matthew Loughran the school personnel services manager.
38. Mr Loughran set out that he had met with the claimant and her representative Ms Docherty on 24 April 2024. He told the Tribunal that the meeting had been contentious as the claimant had believed that disciplinary action was being taken due to her sickness absence which was not the case. He set out that following that meeting the claimant's representative Ms Docherty had contacted him on 11 July 2024 asking to have an "off the record conversation". Mr Loughran set out that he had had such discussions with Ms Doherty in the past, and that he had understood from this, that this was another such "Without Prejudice" discussion.
39. He set out that he understood from Ms Docherty that there was an on-going dispute, as she had informed him about a grievance and subject access request which the claimant was about to issue and that as an alternative the claimant might accept an exit package.
40. In her written submissions to the Tribunal, the claimant set out that she had not authorised Ms Docherty to undertake the discussions. The claimant set out that the as follows-: *"The Claimant's reference to the 12 July 2024 offer is made not to challenge or enforce the offer, but to:• Illustrate the Respondent's approach to her concerns (i.e. offering a severance package rather than engaging with her grievance);• Support her argument that the handling of the matter added to the hostile and discriminatory environment;• Demonstrate a failure of procedural fairness, consistent with principles established in Malik v BCCI.5.2 The Tribunal retains discretion to admit such material where it serves a broader evidential or contextual purpose and where the communication is not protected by privilege."*
41. The Tribunal accepted that the claimant was not an active participant in the discussions. However, the Tribunal accepted Mr Loughran's evidence that it was his understanding that this was a "without prejudice" discussion which was instigated by Ms Docherty in her role as a shop steward.
42. The tribunal finds that it is unlikely that such a discussion would have taken place without the consent of the claimant. However, if the Tribunal is wrong about this, it finds that in asking for the discussion to be off the record, Ms Docherty (who was representing the claimant) instigated a without prejudice discussion on her behalf.
43. In her evidence to the Tribunal, the claimant, contended that she did not authorise Ms Docherty to propose a specific sum. The Tribunal noted, however, that she did not resile from the suggestion that Ms Docherty had been instructed to attempt a settlement on her behalf.

44. Ms Defriend referred the Tribunal to the dicta in *Cutts v Head [1984] Ch 290*. Ms Defriend told the Tribunal that to invoke, “Without Prejudice” there had to be an existing dispute or potential dispute. She provided contextual information that the claimant was on sick leave and had indicated to her employer through Ms Docherty that she was in the process of issuing a grievance. Ms Docherty also informed Mr Loughran that the claimant did not wish to return to work.
45. Ms Defriend submitted that there was a dispute/ potential dispute between the claimant and respondent when the Without Prejudice discussion took place between Mr Loughran and Ms Docherty. She told the Tribunal that such discussions were not unusual between the two and had occurred before in the context of employment disputes with other employees.
46. She submitted that although the words “Without Prejudice” may not have been used, this was the context in which the discussions took place.
47. The claimant told the Tribunal that her understanding of the discussions were that they were exploratory and given this, she did not consider the discussion to be Without Prejudice.
48. The Tribunal in reaching its decision took account of the case of *Curtis and Head* in which it was stated that:-
- “That the rule rests, at least in part, upon public policy is clear from many authorities, and the convenient starting point of the inquiry is the nature of the underlying policy. It is that parties should be encouraged so far as possible to settle their disputes without resort to litigation and should not be discouraged by the knowledge that anything that is said in the course of such negotiations (and that includes, of course, as much the failure to reply to an offer as an actual reply) may be used to their prejudice in the course of the proceedings.”*
- Ms Defriend in her written submission set out that:- *“The fact that the label “without prejudice” was not used in the parties’ written correspondence is not determinative (per Rush and Tompkins at §42 above). Nor is the fact that C may not have been told by Ms Docherty that such discussions were without prejudice; what matters is that R and Ms Docherty (as C’s agent) understood such discussions to be an attempt to be to settle the extant dispute between C and R.”*
49. The Tribunal in reaching its decision on the respondent’s application to strike out part of the claimant’s claim considered Rule 38 (1) (e) of the Tribunal Procedure Rule 2024. It reminded itself that its role in determining whether to make an order under this rule was to consider whether it was possible to have a fair trial of the issues.
50. The Tribunal noted that there was a dispute in the account of what had occurred between Ms Docherty and Mr Loughran, and that to resolve this dispute would involve an extension to the litigation to determine this issue. It also considered that the introduction of the Without Prejudice discussion of a potential settlement would be prejudicial to the respondent.

51. The claimant in her submissions set out that she wanted to introduce the evidence of this settlement to "*Illustrate the Respondent's approach to her concerns (i.e. offering a severance package rather than engaging with her grievance)*". The Tribunal considered that the introduction of such evidence, was by the claimant's own admission designed to show the respondent in a negative light. However, this would be prejudicial and unfair as the respondent genuinely believed the discussion was "*off the record*" or *Without Prejudice*. The Tribunal decided that the introduction of the Without Prejudice discussion would affect the fairness of the hearing.
52. Accordingly, the Tribunal granted the Respondent's application and determined that paragraphs 3 and 9 of the claimant's claim, and all references to the Without Prejudice discussion should be struck out of the claimant's claim.

Whether the claimant remains an employee of the respondent or had resigned from her job

53. The wording which gave rise to this issue was the claimants in her grounds of claim. In answer to what remedy was sought she stated financial compensation only and added the words "*I am seeking only financial compensation in light of the situation continuation of my employment and a return to work is not tenable and I wish my employment to end immediately*".
54. Ms Defriend submitted that The Tribunal was invited to find that the wording used in the details of claim amounted to the claimant's immediate resignation from her employment with the Respondent.
55. In her Skeleton Argument Ms Defriend submitted that:- "*R contends that the wording is unambiguous and clear in amounting to a notice of resignation, and as such is to be taken at face value. In particular, the words "I wish my employment to end immediately" are clear and unambiguous words of immediate resignation.*56. *Second, if the Tribunal considers that the words are ambiguous, then taking all of the circumstances into account and viewed objectively, the reasonable listener (or reader in this case) would have construed those words to amount to words of resignation.*"
56. The claimant did not consider that her words amounted to a resignation. She told the Tribunal that there had been on-going employment related correspondence between herself and the respondent since her claim had been issued. In her written submissions she set out that:- "*The statement in my Particulars of Claim that "I wish my employment to end immediately" was not intended to constitute a resignation. Rather, it was a reflection of my distress and the circumstances surrounding the issues raised in my claim. It was an expression of how I felt at the time, not a formal or legal termination of the employment relationship. No resignation letter was submitted, no oral resignation was given, and no conduct consistent with a resignation took place...*"
57. The Tribunal was not satisfied that the words within the Grounds of Claim amounted to a resignation, it noted that the respondent had continued to treat the claimant as an employee after that date.

58. The Tribunal was satisfied that although the claimant wrote that statement, had she wished to resign she would have followed this up with a formal letter of resignation, The Tribunal was not satisfied that the words were a clear and unequivocal statement of resignation. For this reason, the Tribunal finds that the claimant did not resign on 1 September 2024, when she issued her ET1. The Tribunal also considers that if the Tribunal is wrong about this, both parties treated the claimant's employment as continuing after that date.
59. Accordingly, the Tribunal finds that the claimant remained an employee of the respondent.

Whether to grant the claimant an order for specific disclosure.

60. The Tribunal heard that the claimant had made a subject access request to the Respondent in her capacity as an employee. The claimant in her application for specific disclosure set out that not all the information held by the respondent concerning her had been disclosed.
61. The respondent's solicitor in their written correspondence set out their view that it was not for the Tribunal to make an order for specific disclosure following on from a subject access request, and that the process followed for a subject access request was not within the Jurisdiction of the Employment Tribunal.
62. The Tribunal considered the powers open to the Tribunal, which were found in Rule 33 of the Tribunal Rules "*The Tribunal may order any person in Great Britain to disclose documents or information to a party (by providing copies or otherwise) or to allow a party to inspect such material as might be ordered by the county court or, in Scotland, by a sheriff.*"
63. The Tribunal noted that the parties had not yet undertaken disclosure of documents in accordance with the case management order. Given this, the Tribunal considered the claimant's request to be premature. The Tribunal could not form a view as to whether there was a need for specific disclosure. It also noted that the claimant had not set out specific documents which she believed were in the respondent's possession and her reason for this believe, neither had she satisfied the Tribunal that the respondent would not comply with the Case Management Order concerning disclosure.
64. Given this, the Tribunal decided not to grant the claimant's request for an order specific disclosure. The Tribunal provided directions for the exchange of documents details of which were set out in the case management order.

Approved by:

Employment Judge Daley

Date: 30 July 2026

Case Number: 6013213/2024

Sent to the parties on:

31 July 2026

For Secretary of the Tribunals