



EMPLOYMENT TRIBUNALS

Claimant: Mrs T Tomlinson

Respondent: Veolia ES (UK) Limited

HELD AT: Liverpool

ON: 19 January 2018

BEFORE: Employment Judge Buzzard

REPRESENTATION:

Claimant: Mr McNerney, Counsel

Respondent: Mr Williams, Counsel

JUDGMENT

The judgment of the Tribunal is that the claimant's application to amend her claim to include the grounds of claim as contained in the claimant's correspondence of 11 December 2017 is successful, and the claimant's claim is amended accordingly.

REASONS

1. The claimant's claim was presented to the Employment Tribunal in April 2017. There was a case management discussion in June 2017. At that case management discussion the claimant's claim was discussed and clarified. Shortly after that case management discussion the claimant determined that an amendment to her claim was required.
2. The claimant's representative submitted to the Tribunal that matters had been unable to progress after it was realised the claimant's claim needed to be amended. The claimant had to seek funding to make the application to amend her claim.
3. During this period no attempt was made to inform the respondent that an amendment could, or may, be sought. In November 2017 the claimant gave the respondent the first indication that an amendment to claim may be sought. An amendment to the claimant's claim was eventually applied for, with drafted particulars, on 11 December 2017. This matter is scheduled for full and final hearing in three weeks' time, at the beginning of February 2018.

4. The respondent's representative confirmed to the Tribunal that the respondent could, given the nature of the amendments sought, by amending witness statements which had already been prepared, be in a position to deal with the claim at the currently listed final hearing. The parties were both agreed that it should be possible to deal with the claim, if amended, within the time set aside for the hearing.

5. The claimant's representative could give no credible reason why, despite the delay caused by the need for funding to be proved, the respondent was given no indication that an application to amend would be made until so late in the overall progress of this case.

6. The claimant's representative was unable to give any credible explanation as to why these matters had not been aired at the original preliminary hearing, prior to which an agreed List of Issues, which did not include the amendments to the claimant's claims, had been prepared by the parties' representatives.

7. Balancing the prejudice to the parties the Tribunal concluded as follows:

- (1) That the only prejudice to the respondent is that additional costs may be incurred in making necessary amendments to witness statements and taking appropriate instructions prior to the final hearing.
- (2) The prejudice to the claimant of not permitting the amendment would be that a potentially valid claim or claims would not be heard by a Tribunal.

8. Balancing these two prejudices it appears clear that the prejudice to the respondent is far less than that to the claimant, and accordingly the amendment should be permitted.

9. In the event that the respondent does incur additional costs in preparing to defend these claims, where such costs would not have been incurred had the claims been properly identified either in the claimant's pleadings, the parties' agreed List of Issues, or at the first case management hearing in this case, then the respondent can seek to redress this prejudice by making an application for costs which would then be determined on its merits.

Employment Judge Buzzard

6 February 2018