



EMPLOYMENT TRIBUNALS

Claimant
Mrs Walton

-v-

Respondent
Derbyshire County Council
& others

PRELIMINARY HEARING

Heard at: Nottingham **On:** 13 March 2018

Before: Employment Judge Evans (sitting alone)

Representation

For the Claimant: Mr Walton (lay representative – husband)

For the Respondent: Ms Wedderspoon (Counsel)

JUDGMENT

1. The Claimant's application for an order requiring Yorkshire Bank to permit inspection of a bank mandate is refused.
2. The Claimant is refused permission to amend her claim to include a claim of victimization.

REASONS

Background

1. A preliminary hearing was held on 13 March 2018 ahead of the final hearing of the above Claims. The hearing is listed to run from 10 to 30 April 2018 in the Nottingham Employment Tribunal.
2. I have set out in the record of that closed preliminary hearing the various orders which were made in relation to the final preparatory steps for that hearing. I have also set out in that record the discussion concerning arrangements to be made to enable the Claimant to participate fully in the final hearing.
3. The preliminary hearing on 13 March 2018 had been scheduled to deal with the matters set out in the previous paragraph. However, prior to the preliminary hearing the Claimant made two applications. These were as follows:

- 3.1. An application contained in an email dated 15 February 2018 that the Tribunal order Yorkshire Bank to produce for inspection the original of a bank mandate of Whittington Green School running to seven pages which the Respondents had disclosed (“the Bank Mandate”);
 - 3.2. An application contained in a document dated 12 January 2018 that the Claimant be permitted to amend her claims so as to include a claim of victimization.
4. The Respondent objected to both applications.

The bank mandate application

5. The Claimant alleged that one of the Respondents, Ms Burnside, had forged the Claimant’s signature on page 6 of the Bank Mandate.
6. The Claimant had provided a handwriting expert’s report to the Tribunal dated 5 January 2018. This concluded as follows in relation to the signature at page 6:

Examination and comparison of the questioned signature with the known signatures revealed a marginal difference and mainly similarities. In view of this, in my opinion the evidence that the questioned signature had been penned by another hand is essentially inconclusive having only one character indicating a difference in construction as far as could be assessed from the copy documents.

7. The Claimant argued that inspection of the original of the Bank Mandate might show that the disclosed copy was not a true copy of the original. I asked Mr Walton, the Claimant’s representative, how that would assist the Claimant.
8. After some discussion Mr Walton stated that it would assist the Claimant because she alleged that Ms Burnside had instructed her to open a bank account for the purposes of transactions on ebay in breach of audit directions (“the ebay bank account”). This was denied by Ms Burnside. If the signature on the Bank Mandate had been forged this would support the Claimant’s allegation.
9. Under Rule 31 of the Employment Tribunal’s rules of procedure I have the power to order Yorkshire Bank to allow the Claimant (and Respondent) to inspect the Bank Mandate. However I should not exercise that power unless I am satisfied that it is necessary to dispose fairly of the claim or to save costs. Equally, I should take account of the over-riding objective set out in Rule 2 in deciding whether to make such an order.
10. I decided not to make the order requested because I concluded that it was not necessary in order to dispose fairly of the claim. This was because Mr Walton simply could not explain to me coherently how the signature on the Bank Mandate being forged (and it would be fair to say that the handwriting expert’s report does not conclude that it was) would assist the Claimant in her claim (other than because such forgery would go to the credit of Ms Burnside if it were shown that she was responsible for it). That is to say Mr Walton could not explain to me coherently how the signature on the Bank Mandate being forged would help her to provide that Ms Burnside had instructed the Claimant to open the ebay bank account. The bank mandate did not relate to any particular bank account. It was clear on the face of it that it applied to all the bank accounts held at Yorkshire Bank, but gave no indication of how many bank accounts there were. There was simply no link between the Bank Mandate, on the one hand, and the alleged instruction to the Claimant to open the ebay bank account, on the other.

11. I therefore refused the Claimant's application.

The Claimant's application to amend her claim

12. The written document setting out the application did not clearly identify the protected act relied upon by the Claimant. After some discussion, Mr Walton explained that the protected act was bringing a claim of unlawful discrimination against Ms Burnside in November 2015. The act of victimization was the production of the Bank Mandate as genuine when in fact it bore a forged signature.
13. The Employment Tribunal has a general discretion to permit amendments to existing claims under Rule 29 of the Employment Tribunal's Rules of Procedure. In Selkent Bus Co Ltd v Moore [1996] IRLR 661 Mummery LJ, then the President of the Employment Appeal Tribunal, gave general guidance as to how applications for leave to amend should be approached.
14. He observed that the discretion to permit amendments should be exercised "in a manner which satisfies the requirements of relevance, reason, justice and fairness inherent in all judicial discretions".
15. He also observed that "whenever the discretion to grant an amendment is invoked, the tribunal should take into account all the circumstances and should balance the injustice and hardship of allowing the amendment against the injustice and hardship of refusing it."
16. He did not give an exhaustive list of the relevant circumstances but those which will certainly be relevant include:
- 16.1. The nature of the amendment;
 - 16.2. The applicability of time limits;
 - 16.3. The timing and manner of the application (although there is no time limit for an application to amend).
17. Having heard from Mr Wilton and Ms Wedderspoon, I considered the matter, and took into account factors including the following:
- 17.1. The application was a substantial one – a new complaint of victimization would be introduced.
 - 17.2. The timing and manner of the application – given the Claimant had only recently become aware of the matters which she said showed the Bank Mandate was forged, this did not count against the Claimant.
 - 17.3. Time limits – the claim was not out of time so this did not count against the Claimant.
 - 17.4. The merits of the new claim – the victimisation claim has, I have concluded, no reasonable prospect of success because it is incoherent. The alleged forgery of the signature on the Bank Mandate would not be to the benefit of Ms Burnside or to the detriment of the Claimant, whether in these proceedings or otherwise. As I have set out above, Mr Walton was quite unable to explain to me how the alleged forgery would assist the Claimant in proving her case.

- 17.5. The stage of proceedings at which the new claim was raised – preparation for the hearing of the claims generally was complete by the date of the preliminary hearing at which this application was considered. A bundle had been agreed and witness statements had been exchanged. A hearing listed for 3 weeks was due to begin in just 4 weeks' time. If the amendment were permitted, the Respondent would have to be given time to plead its response and then it would be necessary for at the very least additional witness evidence to be produced. There would be a risk that this would mean that the hearing scheduled to begin on 10 April 2018 would not be able to go ahead. That would be to the substantial disadvantage of all concerned, not least the Claimant, given that I had medical evidence before me which made plain that the Claimant would not be able to recover fully until the Tribunal proceedings were complete.
18. Taking matters in the round, I therefore concluded that the balance of injustice and hardship weighed in favour of me refusing the application. The Claimant will suffer little if any hardship: the victimisation claim would have been but a small add-on claim of little value that had no reasonable prospect of success. The Claimant would also suffer the possible disadvantage to her health of the hearing in April being delayed. The Respondent, on the other hand, would suffer the very real disadvantage of having to redo parts of the completed preparation and, quite possibly, of not being able to go ahead with its defence of the claims at the Hearing next month.

Employment Judge Evans

Date: 15 March 2018

JUDGMENT & REASONS SENT TO THE PARTIES ON

17 March 2018

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FOR EMPLOYMENT TRIBUNALS