



EMPLOYMENT TRIBUNALS

Claimant: Mr Amer Alhaj Zen

Respondents: Charnwood Molecular Ltd

Record of an Open Preliminary Hearing heard at the Employment Tribunal

Heard at: Nottingham On: 27 January 2022

Before: Employment Judge Hutchinson (sitting alone)

Representation

Claimant: In person

Respondent: Olivia Sinfield, Counsel

Covid-19 statement:

This was a remote hearing. The parties did not object to the case being heard remotely. The form of remote hearing was V – video. It was not practicable to hold a face-to-face hearing because of the Covid-19 pandemic.

JUDGMENT

The Employment Judge gave Judgment as follows;

1. The Claimant is granted permission to amend his claim as per his application dated 22 July 2021.
2. No decision is made as to whether the claims of direct discrimination are out of time. That decision will be made by the Employment Tribunal at the final hearing.

REASONS

Background to the Claim

1. The Claimant presented his claim to the Tribunal on 14 February 2021. Prior to issuing his claim he had notified ACAS in accordance with the early conciliation procedure about his claim on 28 December 2020 and a certificate had been issued on 8 February 2021.
2. At the time he presented his claim he was still in the employment of the Respondents. He had been employed by them since 9 October 2014 as a Senior Researcher.
3. He had only ticked the boxes for race discrimination and other payments but at a later hearing it was clarified that his claims are as follows;
 - Direct race discrimination.
 - Direct associated disability discrimination.
 - Harassment related to his association with a disabled person.
4. The race discrimination is advanced on the basis that he is Arabic, and his disability discrimination is advanced on the basis of association with his son who has Albinism.
5. The Claimant was not represented and had done his best to put his claim forward, but it was not well particularised.
6. A response was received from the Respondents on the 1 April 2021 which denied the allegations and requested further particulars.
7. At a Telephone Case Management Preliminary Hearing conducted by my colleague Employment Judge Victoria Butler held on 7 May 2021 she identified the claims and the nature of the allegations. She noted that; “they lacked the requisite factual detail, as well as an explanation of the legal basis on which each allegation is pursued”.
8. It can be seen from the record of that Preliminary hearing that my colleague ordered the Claimant to provide further and better particulars of the claim and gave other directions leading to the final hearing which was set already for 12 September 2022 for 3 days.
9. In accordance with the orders Mr Zen provided his further particulars of claim on 11 June 2021. He set out in that a description of the events that he was complaining about. He went on to provide details about his allegations regarding;
 - Making comments about his furlough.

- Removing him from a preferable project.
- Giving him more responsibility with less pay.
- Putting him down in meetings and blaming him.
- Picking up minor errors and escalating them into larger problems.
- Preventing him from promotion to Principal Scientist.
- Exclusion from meetings and emails about his mentees.
- Harassment because of a policy introduced by James Hitchin.

10. After what the Claimant described as further incidents, he resigned on 21 June 2021.

11. On 22 July 2021 he made an application to amend his claim to add further claims of;

- Victimisation.
- Breach of contract.
- Constructive unfair dismissal.

12. Some of the acts of victimisation date back to December 2020 and there may well be time issues in respect of those. He provides considerable detail about the events that he says led up to his resignation on 21 July 2021. He claims that by their behaviour the Respondents breached a fundamental term of his contract of employment namely the duty of trust and confidence.

13. By their letter of 31 July 2021, the Respondent objected to his application. The reasons for the objections can be summarised as follows;

1. It was said that the amended claim contained 3 new heads of claim namely victimisation, breach of contract and constructive dismissal and that none of the facts giving rise to those claims had arisen at the time the claim was first presented. It went on to say that the new heads of claim relate to events occurring post presentation of the original claim and leading up to the point of the Claimant's resignation.
2. The claims involved analysis in respect of different facts as well as points of law.
3. In support of their position they referred to the well known case of **Selkent Bus Company Limited v Moore [1996] IRLR661** and the Employment Tribunal's Presidential Guidance and in particular note 1.
4. Of particular relevance was the nature of the amendment requested namely that these were more than minor events and are more substantial and were new claims entirely unconnected with the original claims.

14. The Preliminary Hearing today was set to determine the following;

1. Whether the Tribunal has jurisdiction to hear the claims of direct associative disability discrimination and direct race discrimination as it is said by the Respondents that they were presented out of time.

2. Whether the Tribunal should allow the Claimant to amend his claim in accordance with his application to add claims of;

- Victimisation.
- Breach of contract.
- Constructive unfair dismissal.

The Hearing Today

15. I heard from Miss Sinfield for the Respondent and read the Claimant's submissions first of all regarding the application to amend and then on the jurisdiction issue.

16. Miss Sinfield referred me to;

- The Employment Tribunals Presidential Guidance (Guidance Note 1 Paragraph 5) which says that; When determining applications to amend I should have regard to the following factors;
 - The nature of the amendment.
 - Time limits;
 - The timing and manner of the application.

17. Miss Sinfield referred me to the Selkent case referred to above and;

- ***Prakash v Wolverhampton City Council EAT 0140/06.***
- ***Edwards v London Borough of Sutton EAT 0111/12.***
- ***Secretary of State for Health v Vaseer and others UKEAT 009614/.***
- ***Ali v Office of National Statistics 2004 EWCA Civ 1363.***
- ***Quarcoopome v Sock Shop Holdings Limited UKEAT 300/95.***
- ***Ennever v Metropolitan Police UKEAT 0051/06.***

18. The Respondents do not object in respect of the matters contained at paragraph 2.1 to 2.49 of the further particulars of claim. They agree that these amount to no more than clarification of his claims.

19. They only object to paragraphs 2.50 to 2.54 of the amendment application on the basis I have outlined above.

My Conclusion in respect of the Amendment Application

20. I am satisfied that it is now well established that the Tribunal can allow the Claimant to introduce by way of amendment allegations about events occurring after the date on which the claim form was presented. The authority in respect of that is ***Prakash v Wolverhampton City Council UKEAT/0140/06*** which says as such.

21. I still have to have regard to the principles in Selkent. I must consider a number of factors relevant to the exercise of my discretion and including;
 - a) The nature of the amendment.
 - b) The applicability of time limits.
 - c) The timing and manner of the application.
22. The paramount consideration remains at of a comparative disadvantage. I must balance the disadvantage to the Claimant caused by refusing the amendment against the disadvantage to the Respondent caused by allowing it.
23. The victimisation allegations arise from the protected act of making his claim to the Employment Tribunal on 14 February 2021. Some of the allegations that he makes in respect of that may have been out of time by the time he submitted his amendment application but that should be determined by the final Tribunal.
24. In respect of his breach of contract and constructive dismissal claim though whilst some of the events that he relies on occurred before his claim the final events that led to his resignation occurred in June 2021 and it was on 21 June 2021 that he resigned. The application to amend made on 22 July was made about a month after his resignation and so is in time as is his breach of contract claim.
25. They are in nature, of course, different to his original claims, but they are claims that need to be determined by a Tribunal hearing.
26. As was said in the Selkent case my paramount consideration is of comparative disadvantage. I am satisfied that the Claimant would suffer a substantial disadvantage if he was not allowed to proceed with his claims of victimisation, breach of contract and constructive unfair dismissal. The only prejudice to the Respondents is they have to face fresh claims, but these will be dealt with by mainly the same witnesses who have to deal with the rest of the claim.
27. I am satisfied that the application to amend the claim should therefore be allowed.

Jurisdictional Issues

28. In respect of the issue of whether the claims of direct discrimination referred to in the original complaint are out of time I am satisfied that it would not be appropriate for me to deal with those issues at this hearing.
29. On the face of it the two claims do appear to be out of time namely the issue of his furlough pay crystallised apparently when the last payment was made in the August payroll and his flexible working request was rejected in August 2020. Mr Zen tells me though that he only became aware of the differences in treatment between himself and his comparators on or around 23 November 2021. He says that it would be just and equitable to extend the time in the circumstances.
30. I have not heard any evidence in respect of his case only submissions and I am satisfied that it will not hinder the final hearing to deal with these issues once they

have heard all the evidence. It is still a live issue and will be one of the issues that the Tribunal will need to deal with during the course of that hearing.

31. I therefore decline to make any determination in respect to the time issues.

Listing a Final Hearing

32. **The claims will now be heard by an Employment Judge sitting with members at the Tribunal Hearing Centre, 50 Carrington Street, Nottingham NG2 1EE on 23 January 2023 to 27 January 2023 and then from the 30 January to 1st February 2023 inclusive. 8 days have been allocated to hear the evidence and determine all the issues including remedy. The first day will be a reading day and the parties are to attend on 2nd day by 9.30am so that the Tribunal can start promptly at 10.00am.**

Judicial Mediation

33. The Claimant is interested, and the Respondents will inform the Tribunal **within the next 14 days** whether they are. I encourage the parties to partake.

34. **If the Respondents agree then the Judicial Mediation will be conducted by Closed Preliminary Hearing by CVP on 6 April 2022 at 9.45am. Details of how to join the hearing will provided at a later date.**

ORDERS

Made pursuant to the Employment Tribunal Rules 2013

1. The Claimant will provide to the Respondent and to the Tribunal **by 9 March 2022** an up to date schedule of loss.
2. The Respondents will provide a counter schedule of loss if they agree to partake in the Judicial Mediation **by 30 March 2022**.
3. The Respondent will also be responsible for the preparation of a draft list of issues which will be sent to the Tribunal and to the Claimant **by 30 March 2022**.

List of Documents

4. The Claimant and Respondent must send each other a list of all documents they have relevant to the issues which includes documents relevant to financial losses and injury to feelings **by 4 May 2022**.
5. If the Respondents want copies of any documents, they must ask for them and the Claimant must send copies of documents **by 18 May 2022**.
6. Documents include recordings, emails, text messages, social media and other electronic information. You must list all relevant documents you have in your possession or control even if they do not support your case.

7. **By 1 June 2022** the Claimant and Respondent must agree which of the documents are going to be used for the hearing and the Respondent must prepare a file of those documents with an index and page numbers. They must send a hard copy to the Claimant **by 1 June 2022**.
8. The file should contain;
 1. The claim and response forms, any changes or additions to any relevant Tribunal orders. These should be placed in the front of the file.
 2. Other documents or parts of documents that are going to be used at the hearing in date order.

Witness Statements

9. The Claimant and the Respondent must prepare witness statements for use at the hearing. Everybody who is going to be a witness at the hearing including the Claimant needs a witness statement.
10. A witness statement is a document containing everything relevant the witness can tell the Tribunal. Witnesses will not be allowed to add to their statements unless the Tribunal agrees.
11. Witness statements should be typed if possible. They must have paragraph numbers and page numbers. They must set out events usually in the order they happen. They must also include any evidence about financial losses and any other remedy the Claimant is asking for. If the witness statement refers to a document in the file it should give the page number.
12. At the hearing the Tribunal will read the witness statements. Witnesses may be asked questions about their statements by the other side and the Tribunal.
13. The Claimant and the Respondent must send each other copies of all their witness statements **by 30 September 2022**.
14. The Claimant and the Respondent must bring copies of their witness statements and bundles to the hearing for their own use.
15. The Respondent must bring **4 copies** of the witness statements and the bundle of documents to the hearing for the Tribunal to use **by 20 January 2023**. They must also produce an electronic version of the same.

Employment Judge Hutchinson

Date: 1 February 2022

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

Notes

- (i) The above Order has been fully explained to the parties and all compliance dates stand even if this written record of the Order is not received until after compliance dates have passed.**
- (ii) Failure to comply with an order for disclosure may result on summary conviction in a fine of up to £1,000 being imposed upon a person in default under s.7(4) of the Employment Tribunals Act 1996.**
- (iii) The Tribunal may also make a further order (an “unless order”) providing that unless it is complied with the claim or, as the case may be, the response shall be struck out on the date of non-compliance without further consideration of the proceedings or the need to give notice or hold a preliminary hearing or a hearing.**
- (iv) An order may be varied or revoked upon application by a person affected by the order or by a judge on his/her own initiative. Any further applications should be made on receipt of this Order or as soon as possible. The attention of the parties is drawn to the Presidential Guidance on ‘General Case Management’:**

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

(v) The parties are reminded of rule 92: “*Where a party sends a communication to the Tribunal (except an application under rule 32) it shall send a copy to all other parties and state that it has done so (by use of “cc” or otherwise). The Tribunal may order a departure from this rule where it considers it in the interests of justice to do so*”. If, when writing to the Tribunal, the parties do not comply with this rule, the tribunal may decide not to consider what they have written.