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# EMPLOYMENT TRIBUNALS

**Claimant:** Ms M Harrison

**Respondent:** Barts Health NHS Trust

## DECISION

**The Claimant's application to amend her claim dated 4<sup>th</sup> May 2020 is refused.**

## REASONS

- 1 The Claimant's claim was presented on 2<sup>nd</sup> January 2020. On 4<sup>th</sup> May 2020 she applied to amend her claim to bring a new claim for unlawful deductions from her pay in December 2019 and January 2020, when her sick pay reduced to half pay. The payment dates for her pay were 20<sup>th</sup> December 2019 and 27<sup>th</sup> January 2020 (according to the payslips sent subsequently by the Claimant by email dated 1<sup>st</sup> June 2020). Although the Claimant did not set out the exact wording of the proposed amendment in her application, it is clear from her application and the subsequent email attaching the payslips what the claim is for, such that a formal draft is not necessary taking into account she is a litigant in person.
- 2 The Claimant made this application shortly after the preliminary hearing on 22<sup>nd</sup> April 2020, having been advised that this claim for unlawful deductions had not been included in her claim form. By the time of the amendment application, this new claim was out of time. She does not explain in her application why she brought this claim now, rather than making it earlier, taking into account she was back at work between 3<sup>rd</sup> February 2020 and 25<sup>th</sup> March 2020 during which time her pay went back to normal. She has not explained why it was not reasonably practicable for her to bring this new claim within the time limit in s23(2) Employment Rights Act 1996 (claim to be brought within 3 months of the payment date for the wages or within 3 months of the last payment date in a series of payments). I therefore find that it was reasonably practicable for her to bring the new claim in time and no extension of time is granted.
- 3 As regards the merits of this new claim the Claimant does not address the point made at the preliminary hearing that her pay was reduced from 15<sup>th</sup> December 2019 under the Respondent's sickness policy which provides for a reduction in

sick pay after a certain period. She does not say in this application that she disagrees that the Respondent had the power to do this.

- 4 The above matters are relevant to whether the amendment should be allowed (*Selkent Bus Co v Moore* [1996] ICR 836).
- 5 Applying the balance of injustice/ relative hardship test (*Cocking v Sandhurst* [1974] ICR 650) on the one hand the Claimant will otherwise be unable to continue with the new wages claim and it is not a claim which will involve the Respondent in having to undertake extra significant work to respond to it. On the other hand no extension of time is granted to bring the claim and it lacks merit if it is the case (which the Claimant has not disagreed with) that the reduction in her pay in December 2019 and January 2020 was in accordance with her contract and the Respondent's sickness policy. On the material before me the claim is not arguable on the merits.
- 6 Weighing it up, the balance falls on the side of not allowing the amendment and the Claimant's application is therefore refused.

Employment Judge Reid

7 July 2020