



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms Lynne Palmer

**Respondent:** Pladis (UK) Ltd (formerly United Biscuits (UK) Ltd)

## RECORD OF A PRELIMINARY HEARING

**Heard at:** Manchester by CVP

**On:** 14 October 2024

**Before:** Employment Judge Lloyd

### Appearances

For the claimant: Mr McGrath, lay representative

For the respondent: Mr McCrum, solicitor

## JUDGEMENT ON PRELIMINARY HEARING

1. The claimant's application for permission to amend her claim to add new claims regarding events which took place while she was employed by the respondent covering the period before and including November 2021 is refused. This covers complaints regarding:
  - I. the failure of the respondent to make reasonable adjustments in relation to the claimant's hours of work and her duties at work.
  - II. complaints of direct disability regarding redeployment to lighter duties, a refusal of unpaid leave and a failure to be given shorter working hours.
  - III. Direct sex discrimination prior to November 2021 in respect of a failure to give light duties.

## REASONS

### Background

1. The claim was listed for a preliminary hearing to determine the claimant's application to amend her claim.
2. The claimant made an application to amend her claim in an email dated 15 July 2024 following case management orders of Judge Holmes on 8 July 2024.

3. The claimant sought to amend her claim as follows:
  - To bring a claim for failure to make reasonable adjustments prior to November 2021 to reduce the claimant's hours of work, redeploy her to a different role.
  - Direct disability discrimination in respect of a failure to give her a period of sabbatical leave or unpaid leave of absence, or to deploy her to another role.
  - Direct sex discrimination prior to November 2021 as she was not transferred to lighter duties.
4. I had before me a bundle of documents from both parties and I heard submissions from the claimant and her representative and the respondent's representative.

#### **Submissions by claimant**

5. The claimant is represented by her brother, Mr McGrath. He has a law degree and practices in corporate legal work but has no litigation experience or specialism.
6. The claimant and Mr McGrath say that the claimant was not well enough to give full instructions due to physical and mental health problems when her claim was lodged. The claimant said today she has days when she remembers more things than others. The claimant said she was told by a judge at a previous hearing that it did not matter that the claims were late and she could bring them all in.

#### **Submissions by respondent**

7. Mr McCrum says the claims are new matters and they have been brought considerably out of time. They will have to call an additional witness to deal with them.
8. Mr McCrum says the claimant was aware of the new claims as she refers to them as background in her resignation letter. The ET1 and the particulars of claim make no mention of the historical grievances relating to the period before November 2021. Mr McGrath has delayed in making the application to amend.
9. Mr McCrum says the claims are wholly new claims and separate from those set out in the ET1. There is no reason why they could not have been included in the ET1. The nature of the amendment is substantial and involves an entirely new and different set of considerations. Further disclosure will be required.

#### **The relevant law**

10. The Tribunal has power to grant a party permission to amend their claim by virtue of The ET (Constitution and Rules of Procedure) Regulations 2013 rule

29 ('The Tribunal Rules'). The discretion contained within rule 29 must be exercised in accordance with the overriding objection in Rule 2.

11. The task for the Tribunal is to balance all relevant factors having regard to the interests of justice and, in particular, to consider the relative hardship, prejudice or injustice that will be caused to either party by granting or refusing permission to amend respectively (*Cocking v Sandhurst (Stationers) Ltd and Anor* 1974 ICR 650 approved and restated in *Selkent Bus Co Ltd v Moore* 1996 ICR 836 and further approved and restated in *Abercrombie v Aga Rangemaster plc* [2013] EWCA 1148). I have considered the guidance in *Vaughan v Modality Partnership* UKEAT 0147 on the correct procedure to be followed when considering applications to amend pleadings.
12. I have had regard to the Presidential Guidance on General Case Management for England and Wales when considering the amendment application.
13. Commonly, when considering the balance of prejudice, hardship or injustice, the Tribunal looks at a number of factors:
  - the nature, extent and impact of the proposed amendment including, as set out in *Abercrombie* [48], to what extent it might raise new or different legal and factual issues
  - the applicability of time limits
  - the timing and manner of the application to amend.

## **Conclusions**

14. In considering the application to amend I take account of all the circumstances, including the nature of the amendment, time limits and the timing and manner of the application. I consider the specific practical consequence of allowing or refusing the amendment. At its core, the application requires a balancing of the injustice and hardship caused in allowing or refusing the application.
15. The claimant lodged her ET1 on 7 November 2022. It was accompanied by six pages of particulars of claim. There were no complaints regarding matters which took place prior to November 2021. The matters complained about took place when the claimant was off work and when she was dismissed on 15 June 2022. This position was confirmed in a case summary produced following a case management hearing on 19 January 2023. This confirmed that the claim was about the respondent's handling of the claimant's absence from work while she was awaiting surgery. There is no mention of any complaint from matters which occurred when she was in work.
16. On 16 March 2023, Mr McGrath wrote to Mr McCrum and raised possible new claims regarding matters pre November 2021. Mr McCrum asked for more information on this on 3 April 2023. No response was received by Mr McGrath until 7 December 2023. He set out some draft new claims but said he would finalise these when he had taken legal advice. These were not finalised.

17. A case management hearing took place on 8 July 2024. The claimant was told to make any application to amend her claims by 15 July 2024. Mr McGrath did this on 15 July 2024.
18. I find that the nature of the amendment sought to include a claim for matters which occurred prior to November 2021 are entirely new causes of action. I also accept that granting permission to amend to include this claim introduces an entirely new factual matrix. I accept that considerable prejudice would be caused to the respondent by way of further disclosure, witness evidence, all of which will incur significant additional costs.
19. The claim is considerably out of time as it refers to events that took place in November 2021. As I have noted, full particulars of these complaints were not given until 15 July 2024. This is despite the fact that the claimant agreed she was aware of them as they are referred to in her resignation letter. I find there are no grounds to extend the time limit.
20. I did not accept that the claimant was not able to give full instructions due to her health problems. As I have noted, the ET1 contained particulars of claim that ran to six pages. She was able to give full instructions about her complaints when she off work. When I asked the claimant why she had not claimed about events in November 2021 before now she said it was because she did not know she could until a case management hearing when the possible new claims were raised.
21. The claimant has not raised any specific hardship that will be caused by a refusal to amend her claim.
22. The proposed new claims are a substantial amendment involving new factual allegations. The ET1 complains about events when the appellant was off work. The amendments are about matters when she was in work in November 2021.
23. Weighing the injustice and hardship in granting or refusing the application I conclude that greater injustice and hardship would be caused to the respondent in granting the application than is caused to the claimant in refusing it. I therefore refuse the application.

Judge Lloyd  
14 October 2024

Sent to the parties on:  
21 October 2024

For the Tribunal Office: