

FAIR EMPLOYMENT TRIBUNAL

CASE REFS: 102/18FET
13689/18

CLAIMANT: Ursula Louise Merrick

RESPONDENTS: 1. Police Service of Northern Ireland
2. Ian Campbell

DECISION ON A PRE-HEARING REVIEW

1. The claimant is permitted to amend her complaint of discrimination to include the attention of a protected characteristic, namely perceived religion.
2. The claimant is permitted to include in her amended complaint additional evidence relevant to that additional protected characteristic and to that of her sex and being a part-time worker.

CONSTITUTION OF TRIBUNAL:

Employment Judge (sitting alone): Employment Judge Browne

APPEARANCES:

The claimant was represented by Mr R Smith, Barrister-at-Law, instructed by Edwards & Company, Solicitors.

The respondents were represented by Mr J Rafferty, Barrister-at-Law instructed by the Crown Solicitor's Office.

ISSUES AND EVIDENCE

1. This pre-hearing review was required because the claimant sought to amend her original claim, lodged on 18 September 2018. The claimant at that time was not legally represented, and compiled and submitted the ET1 complaint form by herself, alleging detriment for whistleblowing, and discrimination against both respondents.
2. The substance of her claim, insofar as it related to discrimination, referred to less favourable treatment on the grounds of her gender, disability and being a part-time worker.

3. On 21 September 2018 (that is, three days after lodging her initial claim), the claimant sent an email to the Tribunal, stating that she had "... forgotten to include that I also believe the actions of my former manager [the second respondent] towards me are based on his perception that I am a Catholic".
4. The respondents were sent a copy of the claim, and from the outset, the respondents accept that they were aware of the claimant's additional email. The respondents addressed the head of claim in their response, in which they objected to its inclusion, primarily because it was not in the original complaint.
5. The respondents appear to place substantial reliance in their objections to the perceived religion amendment application on difficulties which now might be faced by the second respondent in recalling the factual background, which appears to relate to an incident a few years before the circumstances at the core of the claimant's case.
6. Obviously, had the claimant included her complaint of religious discrimination in her initial complaint three days earlier, it would not have been appropriate for the respondents to advance an argument of evidential difficulty as a ground to preclude her from pursuing the allegation. The appropriate course then open to the respondents would be to probe the evidence at the hearing, highlighting any potential weaknesses, such as delay.
7. That situation also applies to meeting the additional evidence now sought to be introduced regarding the claimant's existing sex and part-time worker discrimination claims.
8. A key part of the consideration of the claimant's application to amend her complaint is therefore its timing.
9. There is already an issue in this case regarding the time limits for lodging the initial complaint on 18 September 2018. That will be determined by the Tribunal in the course of the full hearing.
10. My task therefore is confined to determining the propriety of permitting the claimant to amend her original claim.
11. I have had particular regard to the assistance to be found in the **Selkent [1996] ICR 836 EAT** case.
12. I am mindful of the potential for additional ground to be covered by the respondents in addressing the issues now sought to be added by the claimant. It is my conclusion however that these are of a very limited scope, confined to two alleged incidents. They also relate to only one individual, who is already a named respondent.
13. It also appears to me that there is no element of surprise at a late stage in proceedings, which clearly would have the potential to compromise the respondents' time or ability to defend themselves.

14. An unusual feature of this case is that both respondents were aware from the outset of being served with these proceedings that the claimant was making these additional assertions. It would perhaps be most surprising if they had not in fact investigated them immediately upon being apprised of them. This case therefore appears to me to be a classic case of simple re-labelling, by way of formally updating the Tribunal as to what the parties have known from the outset.
15. I therefore consider that the potential for prejudice to the respondents in their ability to address the issues was in effect extinguished from the outset. The objections which they raise regarding delay can readily be incorporated into cross-examination of the claimant at the hearing.
16. Those objections should not in my view result in the claimant being refused permission to amend her claim, and to provide the brief relevant evidence in support, thereby denying her the right to pursue a claim. This additional allegation is closely linked to her existing claims in their attribution of the possible grounds for the second respondent's alleged personal antipathy towards her.
17. The issue of time limits is already a live issue in the case. It is my conclusion that the gap in time of three days is so short as to render the respondents' objections without enough substance to warrant refusing the claimant's applications. In the event that the Tribunal hearing the case concludes that the original application of 18th September 2018 was in time, or, if out of time ought to be extended, it is my conclusion that it would be unjust to usurp that Tribunal's ability to apply the same view to her email of 21 September 2018. Whilst the Tribunal would have the power to do so, I consider that the appropriate course is to allow the application at this stage.
18. I therefore conclude that it is just and equitable to permit the claimant to amend her existing claim to include the protected characteristic of (perceived) religion; and to provide relevant additional background information in support of that additional head of claim and to that of her sex and her status as a part-time worker.

Employment Judge:

Date and place of hearing: 25 February 2019, Belfast.

Date decision recorded in register and issued to parties: