EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr P Shinh	**v**	National Grid Plc (1)
		Pontoon (Europe) Limited(2)

PRELIMINARY HEARING

Heard at: Midlands West Employment Tribunals On: 16th November 2017

Before: Employment Judge Coaster

Appearances
For the Claimant: in person
For the First Respondent: Mr A MacPhail, Counsel
For the Second Respondent: Mr R Hayes, Counsel

JUDGMENT

1. Pontoon (Europe) Limited is added as the second respondent..

2. The amendments to add claims of unlawful termination of contract and detriment against the Pontoon(Europe) Limited are allowed.

3. The amendment to add a claim of detriment against the First Respondent is allowed.

REASONS

Background

1. The claimant, trading through a personal service company Global Sourcing International Limited (GSI) of which he is the sole shareholder, director and employee, provides consultancy services as a security adviser. GSI entered into a contract with a recruitment agency Pontoon (Europe) Limited trading as Pontoon Solutions, part of the well-known recruitment business Adecco group, to provide the claimant's services to the First Respondent commencing on 27th September 2016.

2. The contract was terminated by Pontoon / First Respondent on 11th/12th November 2016 although the claimant was paid to 25th/26th November 2016. The claimant complied with ACAS Early Conciliation procedures; he filed an in time complaint against the First Respondent on 19th February 2017.

3. The claimant complained that between 4th and 31st October 2016 he made public interest disclosures under S43B(1)(d) 'health and safety' and (f) 'tending to show…' to his immediate superior at the First Respondent concerning the cyber security of the First Respondent's SMART metering service due to be launched in November 2016. The Claimant also notified Pontoon of the same concerns between 11th and 17th October 2016 and was referred by Pontoon to the First Respondent.

4. The claimant alleges that he communicated his concerns again by email to senior management within the First Respondent and to Pontoon on 31st October 2016. The following day, 1st November 2017 the claimant was informed in a meeting with managers from the First Respondent and the onsite representative of Pontoon that his engagement was terminated. The claimant alleges that when he raised the matter of having made a public interest disclosure, the position changed; instead he was told to go home and was escorted off the premises by Pontoon. By letter dated 11th November 2017 from Pontoon the claimant alleges that his engagement was prematurely terminated with payment until about 25th November 2016 by the First Respondent/Pontoon.

5. The claimant claims that he has attempted to find alternative work and has made multiple applications for work to Pontoon and its sister company, Spring. He was informed by an employee at Spring on 11th January 2017 that he had been "blacklisted" by Pontoon. The claimant continued to make job applications without success, or indeed without receiving acknowledgment of his various applications. By May 2017 the claimant remained out of work. The claimant was not aware of the connection between Pontoon and Adecco until May 2017 when he looked into the matter and filed a Data Subject Access Request (SAR) with the First Respondent. He also made an SAR request against Pontoon in about June/July 2017.

6. The claimant raised the matter of amending his claim against Pontoon as an agenda item on 15th May 2017 but he says that the matter was not dealt with at the telephone preliminary hearing on 22nd May 2017. The claimant was ordered to provide further and better particulars of his existing claim by EJ Perry in the order sent to the parties on 23rd May 2017. As no one at the telephone preliminary hearing objected to the amendment the claimant said that he assumed the request had been accepted by all parties.

7. At the further in person preliminary hearing on 3rd August 2017, the matter of amendment was raised again with EJ Camp who refers in the order to the claimant wishing to add Pontoon Europe Limited as a second respondent and to pursue a claim against them for alleged detriments other than the termination of his company's contract with Pontoon/the First Respondent. Judge Camp noted that although the tribunal file did not contain a copy of the amended particulars of claim, the respondent and Pontoon had a copy (of 8th June 2017).

8. The claimant received the SAR response from Pontoon in late August 2017. He saw the documents on return from holiday in early September 2017. The claimant alleges that the disclosed documents confirm that instructions had been given by senior management within Pontoon/Adecco which percolated across the Adecco group not to engage with the claimant.

9. The issue of whether the claimant could amend his claim to add a detriment claim against Pontoon as a second respondent was listed for a preliminary hearing, being now the subject matter of these proceedings.

The Issues

10. This preliminary hearing is to determine two issues. As against the First Respondent, in addition to the existing claim of termination of his engagement, the claimant seeks to add a claim of victimization by reason of the First Respondent refusing to engage the claimant because he made a protected disclosure.

11. As against Pontoon, the claimant seeks leave to (1) add Pontoon /Adecco as second respondent to the first pleaded claim of termination by the First Respondent; (2) to amend his claim to include complaints of alleged detriment other than the termination of his engagement.

The law

12. Where a claimant wishes to amend his or her claim form (ET1) the tribunal has a discretion whether to grant or refuse the amendment. The amendment may be by way of adding a second respondent, or an amendment to the substance of the pleaded claim.

13. Under its general powers to regulate its own proceedings and specific case management powers the tribunal can consider an application to amend a claim at any stage of the proceedings (Presidential Guidance March 2014).

14. The Employment Tribunals have a general discretion to grant leave to amend a claim. The leading authorities are **Cocking v Sandhurst (Stationers) Ltd [1974] ICR 65** and **Selkent Bus Co v Moore [1996] IRLR 661**. In **Selkent** the court made a detailed review of the practice and procedure relating to applications to amend.

> *"(4) 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.*
>
> *(5) What are the relevant circumstances? It is impossible and undesirable to attempt to list them exhaustively, but the following are certainly relevant:*
>
> *(a) The nature of the amendment*
>
> *Applications to amend are of many different kinds, ranging, on the one hand, from the correction of clerical and typing errors, the additions of factual details to existing allegations and the addition or substitution of other labels for facts already pleaded to, on the other hand, the making of entirely new factual allegations which change the basis of the existing claim. The Tribunal have to decide whether the amendment sought is one of the minor matters or is a substantial alteration pleading a new cause of action.*
>
> *(b) The applicability of time limits*
>
> *If a new complaint or cause of action is proposed to be added by way of amendment, it is essential for the Tribunal to consider whether that complaint is out of time and, if so, whether the time limit should be extended under the applicable statutory provisions eg, in the case of unfair dismissal, S.67 of the 1978 Act.*
>
> *(c) The timing and manner of the application*
>
> *An application should not be refused solely because there has been a delay in making it. There are no time limits laid down in the Rules for the making of amendments. The amendments may be made at any time - before, at, even after the hearing of the case. Delay in making the application is, however, a discretionary factor. It is relevant to consider why the application was not made earlier and why it is now being made: for example, the discovery of new facts or new information appearing from documents disclosed on discovery. Whenever taking any factors*

into account, the paramount considerations are the relative injustice and hardship involved in refusing or granting an amendment. Questions of delay, as a result of adjournments, and additional costs, particularly if they are unlikely to be recovered by the successful party, are relevant in reaching a decision."

15. The time limit for a complaint to the tribunal under S48(1A) - detriment in contravention of S47B is set out at S48(3):

An employment a tribunal shall not consider a complaint under this section unless it is presented –

(a) before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them, or

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

Submissions

16. I heard oral submissions from all parties. I was referred to **Selkent** on time jurisdiction points by both the First Respondent and Pontoon. I have referred to the submissions below in the course of my deliberations.

The chronology

17. Based on the limited evidence, the parties' submissions and the tribunal file I have established the following chronology for the purposes of this preliminary hearing:-

- 1st November 2016 the claimant attended a meeting with First Respondent and Pontoon and was told his contract was being terminated
- 11th November 2016 Pontoon serve notice of termination
- 26th November 2016 – 5th January 2017 claimant makes job application(s), the last in this period to Spring for a vacancy with the First Respondent.
- 5th January 2017 Spring recruitment confirm approval of claimant's CV and will submit details to the First Respondent
- 11th January 2017 Spring inform the claimant that he has been blacklisted on their system for the First Respondent
- January 2017 First Respondent's Manager confirms to the claimant that he may apply for roles with the First Respondent
- 25th January 2017 an abrupt change in attitude by First Respondent employee towards the claimant
- 19th February 2017 ET1 filed in time against First Respondent for termination of contract (S103A)

- January – March 2017 the claimant applies to other recruitment agencies including Pontoon and Spring in response to advertised vacancies without success

- May 2017 the Appellant investigates and discovers that Pontoon is connected to Adecco and suspects that he may have been blacklisted across the Adecco group

- 10th May 2017 claimant emails case management agenda (proforma) to First Respondent and Pontoon/Adecco referring to application to add Pontoon/Adecco to the proceedings

- 22nd May 2017 preliminary hearing case management before EJ Perry - claimant claims that he raised the amendment at the hearing. No evidence on the tribunal file. Matter of adding Pontoon as a second respondent and amending the claim for detriment is not dealt with at PH case management

- May/June 2017 claimant makes a SAR to Adecco group/ First Respondent

- 8th June 2017 amended complaint form served on First Respondent and Pontoon – no reference to victimisation (blacklisting) and detriment against First Respondent; amendments include allegations of unlawful termination and victimisation against Pontoon/Adecco

- 23rd June 2017 the claimant asks the tribunal whether his amended complaint form has been accepted

- July 2017 claimant obtains through SAR disclosures confirmation that he is 'blacklisted' by First Respondent

- 3rd August 2017 the Appellant applies at PH – Case Management to add Second Respondent and to add claims of victimisation/detriment

- August 2017 claimant obtains evidence through SAR disclosure from Pontoon/Adecco that he is 'blacklisted'

- 11th September 2017 claimant attempts to comply with case management order of 3rd August 2017 to provide further and better particulars of claim

- 4th September 2017 notice of a preliminary hearing on 16th November 2016 to determine the application to amend the ET1 is sent to the parties

- 26th October 2017 F&BPs filed with parties and Tribunal including amendment to add claim of detriment against the First Respondent

- 16 November 2017 preliminary hearing

Conclusions and Decisions

(1) Adding Pontoon as a respondent

18. Pontoon opposed the application. After hearing submissions from the parties, I allow the application to add Pontoon (Europe) Limited as the Second Respondent. The decision and reasons having been given orally at the hearing, written reasons will not be provided unless a written request is received from either party within 14 days of the sending of this record of the decision.

(2) Amendment of claim to include termination of contract and detriment under S47B against Pontoon

19. Pontoon oppose the application. In respect of the termination of the contract with GSI by Pontoon, it was conceded that the amendment it would have little effect on the overall length and cost of proceedings as the point engages the same evidence as the in time claim already pleaded against the First Respondent.

20. However, Pontoon submits that the application to amend to include a claim for detriment is a new and substantial cause of action which is also substantially out of time. The claimant was aware of the comment that he had been blacklisted on 11th January 2017 and could have brought a new claim within the statutory time limit which expired 10th April 2017. No reasonable explanation had been given for the delay in making the application to amend and several opportunities to make an earlier application had not been taken - for example the filing of the original ET1 in February 2017, the preliminary hearing in May 2017. The prejudice to Pontoon includes the cost of defending the new claim, time and expense in making further disclosure and the taking of statements from witnesses implicated in the allegation of blacklisting. The Appellant had drafted his amended pleading in June 2017 and reference thereafter to SAR disclosure is irrelevant.

21. From the claimant's perspective he was given a first indication that he was blacklisted by Pontoon on 11th January 2017. The claimant submitted that was the comment of one person and he did not believe it was sufficient to support an application to commence an application to amend his proceedings or commence fresh proceedings.

22. The claimant had also been informed by a member of the First Respondent's management team in January 2017 that he could apply for roles within the First Respondent. He later discovered following the SAR disclosures in about July 2017 by the First Respondent that the First Respondent had in fact also blacklisted him.

23. The claimant made multiple applications for advertised vacancies with the First Respondent and other clients via Adecco group recruitment companies including Pontoon and Spring with *"zero response"*. None of his applications were acknowledged by Pontoon/Adecco group.

24. The claimant submitted that he still receives no response from Pontoon to his continuing job applications to the date of the hearing and he remains out of work. The claimant submitted that being blacklisted by Pontoon/Adecco in the West Midlands area has serious repercussions for him and his family. He is unable to work more than 45 minutes from his home because of the need to support his wife in an emergency arising from her medical condition, and whilst they are other recruitment agencies, Adecco are the biggest and work with the larger companies in the West Midlands, the companies who are likely to need the claimant's services. As Adecco has a global reach it is in the long term it is also a concern to the claimant that being blacklisted across Adecco's systems internationally could affect his work prospects in the future.

25. Pontoon do not dispute that they were fully aware of the alleged protected disclosures made in October 2016. I find that it is highly likely to be the case that Pontoon was instructed by the First Respondent to terminate its contract with GSI regarding the provision of the claimant's services to the First Respondent. Pontoon must have been aware throughout (although the claimant was not aware until September 2017) that the claimant had been 'blacklisted' across the Adecco group of companies. Pontoon were aware of the claimant's wish to add Pontoon as a second respondent by 10th May 2017 when it received his case management agenda for the preliminary hearing case management on 22nd May 2017. It could have come as no

surprise to Pontoon that there was such an application by the claimant. They must have been expecting such an application having been already expressly referred to in the ET1 as being present at the termination meeting and escorting the claimant from the premises. The amended pleading dated about 8th June 2017 also could not therefore have been a surprise to Pontoon, both as to the being joined as the second respondent and the allegation of detriment.

26. This is clearly not a case which is manifestly hopeless and without merit. The claimant submitted that the SAR disclosures had provided hard evidence of being blacklisted by both Pontoon/Adecco and the First Respondent.

27. With regard to the first amendment relating to Pontoon terminating the engagement, as Pontoon were already referred to in the ET1, I allow the amendment.

28. As to the application to amend by adding a claim of detriment, I first considered whether the amendment could be classed as a relabelling due to the inextricable link between the termination of the claimant's engagement, the alleged public interest disclosure and the alleged blacklisting. If it is a relabelling exercise, then time limits do not arise and the application to amend can be granted. The First Respondent and Pontoon submitted that it is a new head of claim of a completely different nature to the termination claim. I find that the claim of detriment is a new head of claim.

29. As a new head of claim, **Selkent** requires the tribunal to have regard to the applicability of the relevant time limit and if the claim is out of time to consider whether time should be extended under the appropriate statutory provision, in this case S48(3) ERA 1996. The claimant submitted that it was not until about March - May 2017 that his suspicions of being blacklisted by Pontoon/Adecco grew and were confirmed. He submitted that it had taken several months to reach the conclusion because the job vacancies he could apply for were sporadic and spread over the period January – May 2017. The claimant put the First Respondent and Pontoon on notice in writing on 10th May 2017 that he wished to add Pontoon as a respondent. The matter was not dealt with in the telephone case management hearing on 22nd May 2017. I do not attribute blame to the claimant that an omission was made. The claimant is a litigant in person not used to dealing with complex and unfamiliar court proceedings by telephone; this was such a case when a case management discussion in person would with hindsight have been preferable.

30. From 22nd May 2017 the claimant has consistently pressed his application to add Pontoon as a respondent. He served an amended pleading on 8th June 2017 to that effect and on 23rd June he wrote to the tribunal and the other parties to confirm that he understood that as no one had objected to the amended pleading, he could proceed on that basis.

31. On 3rd August 2017 EJ Camp corrected the claimant's misapprehension and confirmed he had not been given leave to amend the proceedings on 22nd May 2017 but had been given a direction to file and serve further and better particulars. On 4th September 2017 the notice of hearing to deal with his application on 16th November 2017 was sent to the parties.

32. It was submitted by Pontoon that time started to run on 11th January and expired on 10th April 2017. The claimant submitted that he did not believe the single comment made by a Spring employee (that he had been blacklisted) was sufficient to found a new complaint. He believed he needed evidence, and could not rely on just a suspicion. The claimant is a professional and I accept that he needed to have some tangible evidence to justify bringing a very serious allegation against a large recruitment group such as Pontoon/Adecco. I was not unreasonable for the claimant to proceed with caution.

33. For that reason I find that it was not reasonably practicable for the claimant to file proceedings within the 3 months limitation period ending 10th April 2017 until he had something more concrete to support the comment made in January 2017. By May 2017 he reached the view that the number of consistent refusals by Pontoon/Adecco May 2017 was indicative of being blacklisted and was sufficient. I find that the claimant then took reasonably prompt steps under S48(3) (b) "within such further period" to file an application to add Pontoon as a respondent. He put Pontoon on notice on 10th May, he raised it at the 22nd May case management hearing.

34. The matter of the application should have been dealt with at the 22nd May 2017 preliminary hearing and it is unfortunate that it was not. The claimant was a novice, a litigant in person, caught up within the tribunal procedures and subject to the case management directions. I understand that the claimant may have felt that he had done enough to put at the very least a marker down. Certainly he believed on 23rd June 2017 in his email to the tribunal and the parties that his amended pleading of 8th June 2017 had been accepted by the parties as no one had objected.

35. The claimant's next opportunity in the tribunal process was to raise the amendment application again at the preliminary hearing case management on 3rd August 2017 which he did. EJ Camp records the application in his order of 3rd August 2017 at paragraph 4 and gave directions for the processing of the application.

36. I therefore reject the submission that the claimant delayed unreasonably – the length of time from 10th May 2017 to this preliminary hearing 16th November 2017 was dictated by the tribunal administration.

37. If the allegation is true that Pontoon completely failed to communicate to the claimant over several months 11th January 2017 to May 2017 that it did not wish to receive job applications from him and would not process them, there has been misrepresentation by Pontoon that the claimant's chances of success in applying for job vacancies through them were the same as any other job applicant. It is the claimant's case that Pontoon/Adecco clandestinely blacklisted him. I do not find it unreasonable that the claimant hesitated to proceed with a serious allegation against Pontoon/Adecco until he had a pattern of refusals to support his suspicions. The claimant alleges Pontoon continues to fail to even acknowledge his various job applications.

38. Stepping back and looking at the time line and the circumstances, and having taken into account the submissions by Mr Hayes, I extend time under S48(3) to add the claim of detriment against Pontoon.

39. For completeness and in the event that I am found to be wrong to have extended time under S48(3) ERA 1996, I have also considered whether, if I found the claimant's application to amend to be out of time, it would necessarily result in the application failing. **Selkent** clearly states that the tribunal must take account of all the circumstances and balance between the injustice and hardship of allowing the amendment against the injustice and hardship of refusing it.

40. I refer to the decision of Mr Justice Underhill in **Transport & General Workers Union v Safeway Stores Limited UKEAT/0092/07/LA** at paragraph 10 on the subject of paragraph 5 point (b) of **Selkent** in which Mummery P set out the **'Cocking'** test (see paragraph 14 above):

> "*Point (b) might, if taken out of context, be read as implying that if the fresh claim is out of time, and time does not fall to be extended the application must necessarily be refused. But that was clearly not what Mummery P meant. As Waller LJ observed in* ***Ali v Office of National Statistics [2005] IRLR 201*** *at*

*paragraph 3, point (b) is presented only as a circumstance relevant to the exercise of the discretion; and the reasoning of the Appeal Tribunal on the actual facts of the case clearly turns on the exercise of a '**Cocking** discretion' rather than the application of an absolute rule (see in particular points (3) and (4) at pp 844-5). …..Thus the reason why it is "essential" that a tribunal consider whether the fresh claim in question is in time is simply that that is a factor – albeit an important and potentially decisive one – in the exercise of the discretion."*

41. I would have no hesitation, if I had found that the application was out of time, to exercise my discretion to allow the application under **Selkent**, as explained in **Transport and General Workers,** and to decide that it should not fail because it was out of time.

42. As I have stated above, Pontoon must have anticipated being joined to the proceedings on the question of dismissal as they had the contractual connection to the claimant and his personal service company GSI. It must have been a surprise initially that they were not a respondent to the original claim. Furthermore, if as the claimant submits, it is true that Pontoon were blacklisting the claimant then they could and should have anticipated that they would also in due course be party to the proceedings for detriment caused by their alleged conduct.

43. I have read and taken into account the submissions ably made by Mr Hayes on behalf of Pontoon. I do not accept that the addition of the detriment necessarily will result in the substantive hearing of 5 days 19th – 23rd March 2017 being too short. I am satisfied that there is an arguable claim against Pontoon/Adecco; much of the evidence relating to the termination of the claimant's engagement would be heard in any event and a substantial degree of disclosure has already taken place through the SAR relating to the detriment claim.

44. In conclusion, had I found that the application to amend was out of time, I would not hesitate to find that the hardship and injustice to the claimant of not allowing the claim would far outweigh the hardship and injustice to Pontoon in allowing the claim for the reasons stated above.

(3) Amendment of claim to include detriment under S47B against the First Respondent

45. Many of the submissions made on behalf of Pontoon have applicability in respect of the First Respondent although there are differences in the time line. The time line of the claimant being out of time in making his application to amend the proceedings to include a claim of detriment against the First Respondent was not made until much later that the application to amend in respect of Pontoon. There was no reference to the First Respondent in respect of facing an allegation under S47B detriment in the May or August case management decisions. The First Respondent was not mentioned in the amended pleading on 8th June 2017. The allegation of detriment against the First Respondent was first mentioned in the further and better particulars served by way of a purported draft Scott schedule in September and in the final version served on 26th October 2017.

46. There is therefore a stronger case to answer on the question of time limits in respect of an amendment application against the First Respondent. The detriment case against the First Respondent commences potentially on 25th January 2017 when the claimant observed that a First Respondent employee had an unexplained change in attitude towards him. That was an intangible incident which left the claimant with no more than a feeling, a concern. Furthermore in January 2017 a manager within the First Respondent said that he could apply for roles within the organisation which appears to have been potentially a misrepresentation. The

claimant's job applications between January – May including some for vacancies at the First Respondent were repeatedly unsuccessful and the claimant continues to be out of work despite his experience and qualifications.

47. The first concrete evidence of the First Respondent 'blacklisting' the claimant came in about July 2017 with the First Respondent's responses to the SAR. The claimant therefore could have acted promptly and written to the tribunal copied to the First Respondent to request leave to amend the pleading to include a claim of detriment in July 2017. There was however, a delay until September/ 26th October 2016 when the detriment claim was first formalised against the First Respondent. (I am satisfied that at the preliminary hearing on 16th November 2017 the First Respondent fully understood the nature of the amendment application to include detriment.)

48. No explanation was been given by the claimant for the delay of the application to amend the proceedings against the First Respondent for the period between the receipt of the First Respondent's SAR responses in about July 2017 and the application to amend the proceedings against the First Respondent on 26th October 2017 (although it was conceded that a draft was submitted in September. The exercise of discretion to extend time is therefore not readily justifiable under S48(3)(b). Mr MacPhail submitted that time limits are strict. However, I repeat here my reasoning at paragraph 40 above. S 48(3)(b) enables the tribunal to exercise a discretion; furthermore if time limits are not met, at **Selkent** paragraph (5)(b) that is a factor, and certainly an important factor, in the exercise of that discretion. It is not an automatic, inflexible outcome that the application to amend is out of time and must be refused.

49. In reaching a decision, following **Selkent**, on where the balance of hardship and injustice between the parties falls, I take into account that once the First Respondent had responded to the SAR request, on the basis that the claimant submitted that the disclosure revealed evidence of First Respondent staff not engaging with him, then the First Respondent could reasonably have anticipated an application to amend for detriment. It can therefore have been no surprise to them that the claimant eventually made an application in include detriment. They were in any event on notice in May and on 8th June 2017 that the claimant was making a detriment claim against Pontoon (for blacklisting) and the First Respondent must have realised that such a claim against them would be likely.

50. The involvement of the First Respondent in the termination of the claimant's engagement following the day that he made an alleged public interest disclosure to the First Respondent's senior management, is, as I have already stated, inextricably linked to an alleged blacklisting of the claimant in his attempts to find further work from the First Respondent. If that blacklisting allegation is true, the First Respondent must have given instructions accordingly to Pontoon and its recruitment representative on site with the First Respondent in respect of vacancies within its own organisation.

51. Preventing an individual from working by clandestine means (blacklisting) is a very serious matter. My comment on misrepresentation by Pontoon above also applies to the First Respondent if, as the claimant alleges, he was encouraged on the one hand to submit application for work to the First Respondent, and on the other he was blacklisted without any indication being given to him that his applications for worked would be rejected automatically. There is also in my view a public interest in establishing whether the allegation of detriment made against the First Respondent is true. The claimant alleges that the First Respondent has for an unlawful reason acted to prevent him working for them. It is natural justice that he must be able to establish whether that has or has not happened. The claimant has been unable to

find work through either the First Respondent or Pontoon in the West Midlands. For family reasons he is unable to work outside the West Midlands. The First Respondent is a very large employer in the West Midlands and Pontoon/Adecco are one of the largest recruitment companies dealing with the larger employees in the West Midlands who would more likely avail themselves of the claimant's skills and experience. The failure to find work has been extremely serious for the claimant for what is now over 12 months.

52. It was submitted that the First Respondent would be put to more expense and management time to defend the detriment claims. The First Respondent is an international organisation. The claimant has satisfied me that there is an arguable claim against the First Respondent.

53. The additional work and cost in defending the amendment does not significantly increase the disclosure already made under the SAR and the number of witness will not be substantially increased – it is a question of one or two more witness statements. The two allegations of termination of engagement and detriment are, as I have already said, inextricably linked and I find it highly likely that substantially the same witnesses will deal with both matters. I do not accept that with appropriate time management the five day substantive hearing in March 2018 would not be sufficient time and would need to be vacated and relisted for a longer period.

54. Stepping back and taking the evidence and the submissions in the round, I exercise my discretion under **Selkent**. I find although the application to amend the claim to bring a detriment claim against the First Respondent is out of time, that the injustice to the claimant in disallowing his application to amend outweighs by far the injustice and hardship to the First Respondent in allowing the amendment.

55. The matter is already listed for a case management discussion on 11th December 2017 at 10am.

Employment Judge Coaster
6 December 2017