



EMPLOYMENT TRIBUNALS

Claimant:
Ms K Forshaw

v

Respondent:
Virgin Atlantic Airways Limited

PRELIMINARY HEARING

Heard at: Reading

On: 3 April 2018

Before: Employment Judge Chudleigh

Appearances

For the Claimant: Miss G Cheng, Counsel

For the Respondent: Mr B Williams, Solicitor

JUDGMENT

1 The claimant is granted permission to amend the claim to include complaints that:

(a) the dismissal was an act of direct discrimination contrary to section 13 of the Equality Act 2010; and

(b) that the dismissal was a breach of contract in that the claimant was dismissed summarily.

2 The claimant's other applications to amend the claim to add complaints under sections 19, 20, 21 and 26 of the Equality Act 2010 were refused.

REASONS

1. A closed preliminary hearing took place in this case on 3 April 2018.
2. At the outset of the hearing, the claimant's counsel produced a list of issues for determination at the final hearing. Much of what was in the list of issues was not pleaded in the claim form presented on 18 October 2017.
3. Time taken at the hearing to identify the issues that were pleaded and Miss Cheng then advanced an application to amend on behalf of the claimant in respect of the new matters.

The submissions of the parties

4. The claimant's case was that the claimant's absences from work gave rise to disability discrimination and it would be in the interests of justice to allow an amendment.
5. Mr Williams on behalf of the respondent disagreed. He argued that all the new matters were more than relabeling, they were out of time and that dealing with them would be burdensome for the respondent.

The law

6. Employment tribunals have a wide discretion as regards applications to amend.
7. In determining whether to grant an application to amend, an employment tribunal must always carry out a careful balancing exercise of all the relevant factors, having regard to the interests of justice and to the relative hardship that would be caused to the parties by granting or refusing the amendment. In *Selkent Bus Co Ltd v Moore* 1996 ICR 836, EAT, Mr Justice Mummery, explained that relevant factors would include: the nature of the amendment; the applicability of time limits; and the timing and manner of the application.

Conclusions

8. In my judgment, the application to amend to assert that the dismissal was an act of direct discrimination contrary to s. 13 was mere relabeling; the same could be said for the application to add a complaint of wrongful dismissal. The claimant was already complaining about unfair dismissal so the tribunal was going to have to examine the circumstances of the dismissal and the reason for it.
9. I had regard to the fact that the complaints were new causes of action and that the application to amend was made after the expiry of the primary time limit. However, as these two amendment were pure re-labeling of an existing complaint no limitation issues arose.
10. Mr Williams conceded that the respondent was not prejudiced with regard to those two issues because the respondent was able to advance a case as to the reason why it dismissed the claimant and why it regarded the claimant's dismissal as gross misconduct.
11. In the circumstances having conducted a careful balancing exercise, I permitted the claimant to amend to add those two complaints. It was not necessary for me to consider the exercise of my discretion to permit the complaints to be advanced out of time as these additions were pure re-labeling. However, had I done so, I would have unhesitatingly decided that it was just and equitable to extend time as the respondent was not prejudiced by the addition of these two new complaints. In making this decision I had regard to all the circumstances of the case, including the delay on the part of the claimant in advancing these matters.
12. The other proposed new complaints however went outwith the matters that had been pleaded which were essentially concerned with the dismissal on 25

May 2017 rather than matters leading up to the dismissal. The claimant wanted to add complaints of indirect discrimination, a failure to make reasonable adjustments and harassment regarding matters before her dismissal.

- 13. The proposed amendments regarding indirect discrimination and reasonable adjustments were formulated in the draft list of issues but the complaints of unlawful harassment were not.
- 14. The proposed complaints of indirect discrimination and a failure to make reasonable adjustments concerned an alleged practice of giving employees who were absent from work warnings and cautions. This was a new ambit of enquiry and these causes of actions were different to those which had been alleged in the original claim.
- 15. The complaint of harassment was also the addition of a new cause of action as well as new factual allegations.
- 16. These new complaints were out of time and I could see no basis to suggest that it would be just and equitable to extend time.
- 17. There was no explanation advanced for the omission of the proposed new claims from the original pleading and I noted that the claimant has had solicitors on the record for some time (Windsor Croft Solicitors).
- 18. Overall, my view, after careful consideration, was that the balance of prejudice favoured rejecting the applications to amend to add allegations under sections 19, 20, 21 and 26 of the Equality Act 2010. They were new matters that had been advanced substantially after the primary limitation period, the respondent was prejudiced in addressing them as to do so would require additional work that would be burdensome and there was no explanation for the delay.

Employment Judge Chudleigh

Date: 21 / 6 / 2018

Reasons sent to the parties on

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