



EMPLOYMENT TRIBUNALS

PUBLIC PRELIMINARY HEARING

Claimant: Mr G Allan

Respondent: Compass Group UK & Ireland Limited

Heard at: North Shields Hearing Centre **On:** Monday 25th November 2019

Before: Employment Judge Martin

Appearances:

Claimant: Mr Wilkinson of Counsel

Respondent: Mr McHugh of Counsel

JUDGEMENT

The Claimant be given leave to amend his particulars of claim in accordance with the draft amended particulars of claim dated 11th September 2019 and the additional claims set out in the letter from his solicitors to the Tribunal dated 19th November 2019.

REASONS

1. The Tribunal was provided with a substantial bundle of documents consisting of substantial e-mail correspondence and file notes between the Claimant and his former solicitors Lyons Davidson.
2. The Claimant gave evidence to this Tribunal. That evidence was not contested by the Respondent's representative, although he did state that the evidence was not all unchallenged. He had decided not to cross examine as a matter of proportionality.
3. The Tribunal was also provided with skeleton arguments by both parties' representatives and heard oral submissions. The claimant's skeleton argument also attached an appendix which set out details of when each of the

claims in the amended particulars of claim had been raised with the claimant's former solicitors.

4. The Tribunal considered the cases referred to by both parties in their skeleton arguments, in particular the Tribunal noted the case of **Cocking v Sandhurst and another 1974 ICR 650**. The case emphasised the need to consider all the circumstances in particular any injustice or hardship which might be caused to the parties by any amendment. The Tribunal also took into account the leading and well-known case in this area of law being **Selkent Bus Company Limited v Moore 1996 ICR 836**. That case sets out a number of principles to consider in relation to an application for leave to amend namely:- the nature of the application, the applicability of time limits, the timing and manner of the application and the need to take account of all circumstances as well as balancing the injustice and hardship of allowing the amendment against the injustice or hardship in refusing it. In this case, at the previous preliminary hearing, it was agreed that the question of the applicability of time limits should not unusually be considered as a factor in determining if the amendment should be allowed.
5. The Claimant accepts that the claims raised in the amended particulars of claim do raise new causes of action. Therefore, the real issue to be determined by this Tribunal is to consider all the circumstances in this case, in particular to consider whether any amendment would cause hardship or injustice to either party in either allowing the amendment or refusing that amendment.
6. This Tribunal finds that there would be considerable injustice and hardship to the Claimant if the amendment was not allowed. It is quite clear from the Claimant's evidence and the documentary evidence produced by the Claimant that he did, at the outset, provide his former solicitors with all the documents it needed to submit the claim that is set out in the amended particulars of claim, but for whatever reason they did not do so. They did not submit a claim on the basis of the amended particulars of claim. The Tribunal notes that those documents included a detailed document with regard to a grievance timeline for example as set out at pages 219 to 230 of the bundle. Furthermore it is also clear that the claimant, on numerous occasions, raised concerns with his former solicitors about the facts and claims made in his ET1 and particulars of claim. He was clearly concerned that the facts and claims that he wanted to pursue had not been put in the ET1 and accompanying particulars of claim. He was informed on a number of occasions that those claims would be put forward at a later date or form part of his witness statement. He understood that he would be able to bring in those claims. It was only when new solicitors were appointed that the issue of amending his claim was raised by way of the amended particulars of claim.
7. Further it is clear that the respondent was aware of these claims, which are largely set out in the substantial grievance raised by the Claimant with the Respondent at the beginning of this year which no doubt the Respondent have had to investigate.

8. The Tribunal consider that there would be substantial injustice to the Claimant in not allowing him to pursue claims which clearly formed part of the claims which he intended to bring to the tribunal at the outset. On the other hand, there is no significant prejudice or hardship to the Respondent. This case has been listed to be heard in September 2020. Although extensive investigations will be required in relation to the additional matters raised in the amended particulars of claim, many of those investigations would or may already have taken place as part of the internal grievance procedure.
9. During the course of the submissions the Respondent's representative suggested that four of the respondent's witnesses had left the company. This was not referred to in his skeleton argument, nor did he identify those witnesses either when they left nor indeed what enquiries had been made with them with regard to the issues raised in these proceedings and/or whether they were prepared to co-operate in relation to these proceedings. Therefore if this was a matter of substantial hardship, no doubt it would have been raised in some detail by the Respondents in this hearing, but it was not.

Accordingly, for those reasons this Tribunal has determined that the Claimant should be given leave to amend his claim as requested.

CONSEQUENCES OF NON-COMPLIANCE

1. Failure to comply with an order for disclosure may result on summary conviction in a fine of up to £1,000 being imposed upon a person in default under s.7(4) of the Employment Tribunals Act 1996.
2. The Tribunal may also make a further order (an "unless order") providing that unless it is complied with, the claim or, as the case may be, the response shall be struck out on the date of non-compliance without further consideration of the proceedings or the need to give notice or hold a preliminary hearing or a hearing.
3. An order may be varied or revoked upon application by a person affected by the order or by a judge on his/her own initiative.

Employment Judge Martin

Date 1 January 2020