



EMPLOYMENT TRIBUNALS

Claimant: Miss J South & Others

Respondents: Raleigh Learning Trust

Record of an Open Preliminary Hearing heard by CVP at the Employment Tribunal

Heard at: Nottingham

On: 31 August 2022

Before: Employment Judge Blackwell (sitting alone)

Representation

Claimant: Mr Small, Counsel

Respondent: Miss Nichols, Counsel

JUDGMENT

1. Miss South is permitted to amend her claim form so as to include the following at paragraph 55. **“Further and/or alternatively, it is contended that the detriments at paragraphs 47 and 48 of above constitute less favourable treatment of the Claimant as a result of her mixed heritage race. In respect of the micro-managing the Claimant relies upon the actual comparators in paragraph 27 above being Tom Elliot, Sarah Hetherington and Brett Summersby. In respect of the remaining complaints of less favourable treatment the Claimant relies upon hypothetical teacher whose circumstances are materially the same as her own.”**
2. Miss Stewart is permitted to amend her claim form so as to include at the end of paragraph 46 the following. **“Further the Claimant contends the detriments at paragraph 41 above constitute less favourable treatment of the Claimant as a**

result of her race. The Claimant relies upon a hypothetical comparator who would be White and whose circumstances would be materially the same as the Claimants.”

REASONS

HISTORY

1. Both Claimant's claim forms were received by the Tribunal on 10 December 2021.
2. On 20 December 2021 a notice of a Preliminary Hearing to make Case Management Orders was sent out such hearing to be on 4 May 2022.
3. Such hearing went ahead on the 4th May and immediately prior to the hearing on the eve of the hearing on 3 May the Claimant's made the applications to amend that had been granted above. I declined to deal with the application to amend on 4 May because insufficient notice had been given.
4. On 17 May the Respondents objected to the applications to amend and set out the reasons for that objection. On 10 July the Claimant's representative responded to the Respondent's objection. On 20 August this Preliminary Hearing was listed to determine the application to amend the claims.

CONCLUSIONS

5. I had the benefit of written submissions from Miss Nichols in which she expanded on orally and largely oral submissions from Mr Small although he had made short submissions prior to the Preliminary Hearing of 4 May. Both Counsel agree that I am to determine the applications to amend in accordance with the Selkent principles thus the first matter is the nature of the amendment. In relation to Miss South the claim of direct race discrimination is entirely a new claim. In relation to Miss Stewart, she already has raised a claim of direct race discrimination but wishes to amend to add to it.
6. In this regard I accept Mr Small's submissions which were largely unopposed that the factual basis in both Claimant's cases remains precisely the same and it will need no new players or witnesses to deal with the amendments.
7. Miss Nichols submitted that it will widen in both cases the considerations of the Tribunal, I accept that submission, but I do not accept that it is relevant in determining whether to permit the application.
8. The second Selkent principle is the applicability of time limits in fact neither Counsel directly addressed that point no doubt because in almost all applications to amend the new claims will be out of time, however, given that both applications relate to race discrimination the just and equitable extension principle will apply.
9. The third and most contentious of the Selkent grounds is the timing and manner of the application. Miss Nichols helpfully referred me to the **Ladbrokes Racing Limited**

v Traynor EATS0067/06 in which the ETA gave guidance. The first matter was why the application was made at the stage it was made and why it was not made earlier? In fact, there is no explanation as to why it was not made until the eve of the Preliminary Hearing. The facts as noted above remain precisely the same and were known both to the Claimants and their advisors. The second Ladbroke factor is whether if the amendment is permitted delay and additional costs will ensue. There will be no delay there maybe additional costs to the Respondents in dealing with the new allegations of direct race discrimination but in my view such costs will be minimal given that the same facts apply. The third and final factor is whether delays put the party ie the Respondents in a position where evidence relevant to the new issue is no longer available or in the alternative whether evidence has been rendered of lesser quality. In my view it can't be said that either apply here.

10. Finally, I am to consider the balance of prejudice as between the parties and in terms of prejudice to the Respondents I accept that there will be certain additional, though minimal costs, in investigating and dealing with the new allegations. Miss Nichols also made the point although I am not entirely clear of its relevance that the mere fact of the application to amend underlines the weakness of the Claimant's original claims again that may be so, but I do not believe it to be the relevant factor in my decision.
11. As for the merits of the amendments I take no view whatsoever because they are clearly fact dependent.
12. As Mr Small rightly submits when one reads the claim forms in the 3 consolidated claims race runs as a theme throughout the pleadings. If Miss South and Miss Stewart were unable now to plead direct race discrimination, then in my view that would be a significant prejudice to them given the nature of the proceedings as a whole. I therefore conclude that on balance it would be right to permit the amendments in the form I have set out above.

Employment Judge Blackwell

Date: 12 September 2022

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE

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