



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4100558/2022(7)

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Held via Cloud Video Platform (CVP) on 12 May 2022

Employment Judge Jones

10 **Miss L Trivett**

**Claimant
Represented by:
Ms Smith - CAB [Lay
Representative]**

15 **Arnold Clark Automobiles Ltd**

**Represented by:
Mr Meechan -
Solicitor**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

1. The claimant's application to amend her claim to include a claim in terms of section 9 Equality Act 2010 that she was subject to direct discrimination and/or harassment is allowed to the extent set out below.
2. The claimant's further particulars are accepted to the extent set out below.
- 25 3. The claimant's application to combine her claim with case number 4100231/2022 is refused.
4. The respondent will make any necessary amendments to its grounds of resistance within 21 days of the date on which this note is sent to the parties.
- 30 5. Date listing letters will be issued to parties to list the claim for a final hearing in person in the Glasgow Employment Tribunal before a full Tribunal.

REASONS

1. The claimant lodged a claim before the Employment Tribunal on 26 January 2022. The claimant claimed that she had been unfairly dismissed. She also

5 claimed that she had been discriminated against and harassed on grounds of her sexual orientation and been subjected to sexual harassment and victimisation. No reference to the statutory provisions being relied upon were set out in the paper apart to the claim form. The respondent resisted the claims.

- 10 2. A preliminary hearing for the purposes of case management took place on 29 March. The claimant was ordered to provide further particulars of her claim at that hearing. At the hearing Ms Smith also indicated that the claimant wished to amend her claim to include an additional claim of associative race discrimination. The claimant was ordered to set out in writing the terms of the proposed amendment. A further hearing was listed to consider case management and the application to amend.
- 15 3. In addition, an application was made to combine her claim with case number 4100231/2022. That application was opposed and an Employment Judge ordered that the issue be determined at the further hearing once further particulars of the claim had been provided.
- 20 4. The claimant lodged further particulars of her claim on 12 April, together with an application to amend the claim. The application included both the foreshadowed application to amend the claimant's claim to include a claim of associative race discrimination, but also a further amendment to include a claim of sex discrimination. The application to amend was opposed by the respondent in an email dated 3 May, together with observations on the further particulars which had been provided.
- 25 5. A hearing took place on the Cloud Video Platform to determine the following issues:
 - a. Leave to amend the claimant's claim to include a claim of associative race discrimination
 - b. Leave to amend the claimant's claim to include a claim of sex discrimination

c. An application to combine the claimant's claim with case number 4100231/2022.

6. In addition, the respondent's agent indicated that some aspects of the claimant's further particulars of her claim of discrimination because of sexual orientation were not foreshadowed in the claimant's claim form. He said that these were not therefore further particulars, but that an application to amend was required. I therefore indicated I would also address this issue.
7. During the course of the hearing, the claimant's agent indicated that the claimant wished to withdraw her application to amend the claim to include a claim of sex discrimination. Therefore, it was no longer necessary to determine that issue.
8. In the first instance I highlighted to the claimant's representative that the application to amend the claimant's claim did not specify which allegations set out in the further particulars which had been provided were said to amount to associative discrimination because of race. I would not be able to determine the application to amend the claimant's claim without understanding what allegations of discrimination were being made. It was therefore necessary to go through the further particulars in some detail in order to determine what conduct was said to amount to discrimination because of sexual orientation, what was said to amount to associative discrimination because of race and whether any allegations were said to amount to both.
9. This exercise was not assisted by the fact that the claimant's representative had incorrectly believed that the provisions of section 14 Equality Act which relate to combined discrimination were in force.

Application to amend

10. I considered the claimant's application to amend her claim to include a claim in terms of section 9 Equality Act. The claimant referred to paragraphs 1.4, 4.5, 4.6, 4.8 and 6.3 of the further particulars as being allegations in terms of section 9. It is in my view appropriate to consider each individual allegation in turn.

11. The first allegation is set out at paragraph 1.4 of the further particulars refers to the claimant being suspended after she had allegedly racially abused a colleague. There were no facts pled to substantiate gn allegation that the claimant was suspended because of her association with her colleague Mr
5 Munro, who is of black Caribbean origin. It was also said that this allegation amounted to discrimination because of the claimant's sexual orientation in that colleagues against whom the claimant made allegations of discriminatory conduct were not suspended. There is some reference to the issue of the claimant's suspension in the original claim.
- 10 12. The second allegation is at paragraph 4.5 of the further particulars which alleges that the claimant was threatened with violence and subject to abusive comments by colleagues.
13. The third allegation is at paragraph 4.6 which alleges abusive comments were made on a further occasion towards the claimant. Reference is made
15 in the claimant's original claim to abusive comments although no specific reference to dates was provided. Both the second and third allegations are also said to amount to harassment.
14. It was also said that the allegations set out in paragraph 4.8 amounted to unlawful conduct in terms of section 9. This paragraph made reference to
20 derogatory comments which are also referred to elsewhere in the further particulars.
15. The final paragraph relied upon is paragraph 6.3. this paragraph is in the section of the further particulars which is said to explain in what way alleged conduct had the purpose of effect of violating the claimant's dignity and
25 makes reference to derogatory comments.
16. The claimant's position was that the amendment application amounted to a request that existing allegations were simply relabelled rather than the making of new allegations. It was also said that matters were set out in the agenda document which had been lodged prior to the previous hearing.
- 30 17. The respondent's position was in summary that this was a new claim, it was not relabelling exercise, there was no reason why the claim could not have

been raised in the original application and that the application was out of time.

18. I have given consideration to the submissions made by both parties and the balancing exercise required in terms of **Selkent Bus Company Ltd v Moore** 1996 ICR 836.
19. I have concluded that the application should be allowed in terms of all paragraphs other than paragraph 1.4. I have reached this conclusion for the following reasons.
20. In terms of paragraph 1.4, which relates to the suspension of the claimant, there are no facts advanced by the claimant to demonstrate that she was suspended because of her relationship with Mr Munro.
21. In relation to the other allegations, reference is made to the factual background to the matters in the claimant's original claim form. While the further particulars which have been provided have not been presented in a way which is of assistance in clarifying the exact nature of the claims being made by her, nonetheless, I am persuaded that this is a relabelling exercise rather than the introduction of an entirely new claim. While the original claim form was not at all focused in terms of the specifics of the allegations being made by the claimant in terms of the who, what, when questions which should always be addressed when setting out allegations of discriminatory treatment, I am persuaded that there is sufficient information in the claimant's original claim to allow the amendment.
22. I also considered what prejudice there might be to the respondent in these matters. Evidence will already have to be led in relation to the specific allegations which have been made and while no doubt there will be additional time required for submissions on this matter, nonetheless, I am persuaded that it is in the interests of justice for the amendment to be allowed.

Further particulars

23. I then turned to consider the question of whether an amendment application was required in relation to any of the allegations set out in the further particulars lodged by the claimant.
- 5 24. It was said that paragraphs 1.2 and 1.3 in particular were allegations in respect of which an application to amend was required. It was said that these factual matters were not set out in the original claim.
25. While I accept that the original claim was not drafted in a manner which set out the specific factual matters being relied upon by the claimant as amounting to unlawful treatment, I also recognised that this was the purpose of providing further particulars of the claim. While there may often be a fine line between what amounts to further particulars of a claim which is already before the Tribunal and what amounts to a new claim, I am satisfied that the allegations set out in further particulars other than those at 1.3 should be accepted as further particulars. I agree with the respondent that the allegations set out in 1.3 are of an entirely different nature to the other allegations made by the claimant in her original claim form. Paragraph 1.2 falls into the former category and paragraph 1.3 the latter. In particular I note that there is reference in the claimant's original claim to derogatory comments and paragraph 1.2 provides specification of when and by whom such comments were alleged to have been made. By contrast the allegations in paragraph 1.3 is not referenced in the original claim form and is of an entirely different nature to the allegations of derogatory comments.
- 10 15 20 25 30 26. As pointed out by the respondent, guidance provided by Mr Justice Langstaff in **Chandok v Tirkey [2015] IRLR 19** states that 'the claim as set out in the ET1, is not something just to set the ball rolling, as an initial document necessary to comply with time limits but which is otherwise free to be augmented by whatever the parties choose to add.' There is no reference to the factual issues raised in paragraph 1.3 in the claimant's claim form and the nature of the allegation is quite different to that of the allegations of comments being made and threats of violence. Therefore I agree with the respondent that this aspect of the claimant's further particulars should be

treated as an application to amend the claim and this application is refused for the reasons given.

Application to combine claim

27. I then turned to consider the application to combine the claim with that of Mr Munro. The application is refused. I accept that there is overlap in the two cases and each claimant is likely to be a relevant witness in relation to the claim of the other. However, the claimant has a claim of unfair dismissal relating to specific allegations against her. She alleges that she was subject to specific treatment which amounted to discrimination, harassment and/or victimisation. Although some of that treatment related to Mr Munro, the treatment was directed at the claimant. Moreover, Mr Munro was not dismissed but resigned. I understand that further particulars of his claim are still to be addressed. I am not satisfied that, on the information currently available, that it would be in keeping with the overriding objective for both cases to be heard together. It may be that once the issue of further particulars in relation to Mr Munro's claim has been resolved, that a further application for both cases to be heard together can be made. However at present the application is refused.

Summary of claimant's claims

28. As there was considerable confusion during the course of the hearing as to the specification of the claimant's claim I indicated that I would summarise the claims which, taking into account the decisions outlined in this note, are outstanding.

29. The claimant's claims can be summarised as follows.

- a. Claims of direct discrimination in terms of section 13 in relation to the protected characteristic of sexual orientation which are set out in paragraphs 1.2, 1.5, 1.6 and 1.7 of the further particulars.
- b. Claims of direct discrimination in terms of section 9 in relation to the protected characteristic of race which are set out at paragraphs 4.5, 4.6 and 4.8 of the further particulars.

- c. Claims of harassment in terms of section 26 in relation to the protected characteristic of sexual orientation which are set out in paragraphs 4.2, 4.3, 4.4, 4.5, 4.6 and 4.7 of the further particulars.
- d. Claimant of harassment in terms of section 26 in relation to the protected characteristic of race (associative discrimination) which are set out in paragraphs 4.5, 4.6 and 4.8 of the further particulars.
- e. Claims of harassment in terms of section 26(3) of harassment of a sexual nature in terms of paragraph 6.3 of the further particulars.
- f. Claims of victimisation for having done a protected act, where the protected acts are said to be in terms of paragraphs 9.3 - 9.7 and 9.9 -9.20 of the further particulars. The detriments alleged to have been suffered by the claimant are set out in paragraphs 10.2 -10.9 of the further particulars.

Further procedure

30. The respondent will have 21 days from the date on which this judgment is sent to the parties to amend its grounds of resistance to address any issues raised in the claimant's further particulars and application to amend which have been accepted as forming part of the claimant's claim.
31. Date listing letters will be issued to the parties to list it for a final hearing in person. Parties are expected to co-operate with a view to preparations for the final hearing, and if any orders are required to assist in that regard an application should be made for such orders in the normal manner.

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Employment Judge: A Jones
Date of Judgment: 16 May 2022
Entered in register: 17 May 2022
and copied to parties

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