



EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case No: 8000057/2022

Held by written representations at Dundee on 30 January 2023

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Employment Judge McFatridge

Mr J Ataarem

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Claimant
Written representations

SGZ Cononish Limited

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Respondent
Written representations

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Tribunal is that the claimant's application to amend the claim
dated 5 December 2022 be accepted.

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REASONS

1. In this case the claimant submitted a claim to the Tribunal in which he
made claims of race discrimination. He ticked the box to indicate he was
making a claim of unfair dismissal and referred in his paper apart to what
he termed "constructive discriminatory dismissal". A preliminary hearing
took place on 3 November 2022 following which an order was made that
within 14 days the claimant would either formally apply to amend his claim
so as to include claims under section 100, 103A and 47A of the
Employment Rights Act 1996 or confirm that he no longer sought to pursue
these claims. The claimant was due to comply by 18 November and did

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not do so. The respondent applied for strikeout of the claim on 2 December however before this could be actioned the claimant emailed the tribunal on 5 December with an application to amend his claim. His solicitor indicated that the delay was due to an oversight on his part in diarising the matter.

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2. Along with the application he provided written reasons why in his view the amendment should be allowed. He confirmed that he was happy for the matter to be dealt with on the basis of written representations. The respondent were asked to comment and provided their own written representations on 12 January 2023. The respondent confirmed that they had no objection to the addition of a claim of victimisation under section 27 of the Equality Act but noted that this appeared to be based on the same facts as the whistleblowing detriment and there did not seem to be a material difference.

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3. With regard to the claims of automatically unfair dismissal in terms of section 100(1)(e) and section 103A of the Employment Rights Act they noted that these new heads of claim were both based on the alleged disclosure of gas test readings to Robert Fraczek (his supervisor) on 16 June and that this disclosure was not mentioned in the original ET1.

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4. In deciding whether or not to accept the amendment I am required to exercise my discretion in accordance with the approach set out in the well-known case of **Selkent Bus Company Ltd v Moore**. This is essentially a multi-factorial approach which requires me to look at all of the relevant factors and also the issue of balance of prejudice between the parties.

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5. Approaching the matter in this way I note that the application to amend, although coming in later than anticipated at the PH has not come in particularly late in the day. It is not unusual for claims submitted by unrepresented parties to require some work to be done to clarify them after the date of the first preliminary hearing.. I do accept the explanation provided by the claimant's representative as to why the 14 day deadline from the date of the preliminary hearing was missed. He indicated this was simply an error in diarising the matter. I do not consider the delay of a few days here to be material.

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6. The claims were not mentioned in the original ET1. At the time the claimant presented his ET1 he was not represented. I do note that with regard to the section 27 claim and section 47A claim this does appear to be foreshadowed in the ET1 and the victimisation claim is based on the same facts. It simply amounts to a relabelling of these facts.
7. With regard to the other claims I do accept the respondent's position that there is nothing about the alleged disclosure regarding the gas test to the claimant's supervisor.
8. That having been said it is not particularly unusual that where an unrepresented party makes a claim based on having made protected disclosures that further and better particulars of these disclosures are required after the initial preliminary hearing. What has happened in this case is really no more than this.
9. I do not consider that allowing the amendment will result in much in the way of additional work for the respondent. The disclosure mentioned is a new disclosure not foreshadowed in the ET1 but I do not consider that it will greatly extend this scope of the hearing or the time taken for the hearing if this amendment is allowed.
10. The respondent has not indicated they will have any particular difficulty in asking the claimant's former supervisor about the alleged disclosure. There is nothing to say the cogency of the evidence will be effected. To some extent, the claims of automatically unfair constructive dismissal are simply putting a new label on the facts already pled. The claimant's original claim was of discrimination. He is now indicating that the matters where he complains of unfavourable treatment may have been due to some other cause and amount to automatically unfair dismissal. I do not see that there will be great prejudice to the respondent in allowing this claim. On the other hand if the claimant's application to amend is not allowed then the claimant is potentially being denied a remedy to which he is legally entitled.
11. With regard to time limits I note that the claim was submitted within the time limit which would have been applicable for the claims of automatic unfair dismissal at the time. The amendment does come outwith the three

months' time limit however the issue here is that the claim was already before the Tribunal. The question of whether or not to allow the claim is a case management decision based on discretion and the issue of time limit is simply one of the matters which I am required to take into consideration.

5 In the circumstances given that the claimant was not represented at the time he lodged his initial application and given the fact that there has in fact been very little actual delay in this case it appears to me that overall the balance favours allowing the amendment. For this reason I will allow the claimant to amend his claim in terms of the application dated
10 5 December 2022.

Employment Judge: I McFatridge
Date of Judgment: 7th February 2023
Date sent to parties: 15th February 2023