IN THE EMPLOYMENT TRIBUNAL (SCOTLAND) AT EDINBURGH

Judgment of the Employment Tribunal in Case No: 8000146/2023 Issued Following Open Preliminary Hearing Heard at Edinburgh on the 11th of September 2023

Employment Judge J G d'Inverno

Ms Vaneeza Abbas	**Claimant** **In Person**
ISS Facility Services Limited	**Respondent** **Represented by:** **Mr P Livingston of Counsel**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal is that the claimant's Application for Leave to Amend is refused.

Employment Judge: **J G d'Inverno**
Date of Judgment: **19 September 2023**
Entered in register: **19 September 2023**
and copied to parties.

I confirm that this is my Judgment in the case of Abbas v ISS Facility Services Limited and that I have signed the Judgment by electronic signature.

REASONS

Overview and Procedural History and Factual Background

1. This case called, on the Cloud Based Video Platform, for determination of the claimant's opposed Application for Leave to Amend dated 4th July, at Edinburgh on 11th September 2023 at 10 am.

2. The claimant appeared in person. The Respondent Company was represented by Mr Paul Livingston of Counsel.

3. There was before the Tribunal a hearing bundle extending to some 81 pages to some of which reference was made in the course of submission. Each party addressed the Tribunal in submission, the respondent's representative setting out the Grounds of Opposition at first instance, the claimant responding thereto and the respondent's representative exercising a limited right of reply.

4. The claimant first presented her initiating Application ET1 to the Employment Tribunal on 2nd of April 2023.

5. In her initiating Application the claimant bears to give notice of a complaint of Direct Discrimination, in terms of section 13 of the Equality Act 2010, because of her protected characteristic of sex, she being a woman, and assertedly evidenced by:-

    (a) The respondent's failure to provide a ladies washroom, and their advising the claimant that she should use the accessible toilet;

(b) By her locker being opened without permission and no action taken in respect of it;

(c) By her being referred to as “a horrible person and not good for work”;

(d) The boiler and air conditioning being switched off;

(e) Non payment of company sick pay;

(f) Of personal injury in 2019 and of being provided with a metal chair.

6. The claimant separately asserts:-

(a) that she was sexually harassed in terms of section 26 of the Equality Act 2010 in March of 2022.

(b) That she was owed holiday pay, arrears of pay and other payments.

7. The respondent entered appearance resisting the claims, denying:-

(a) That the claimant was subjected to unlawful discrimination on the basis of her sex;

(b) That the claimant was subjected to harassment on the basis of her sex and or harassment of a sexual nature; and

(c) That the claimant was owed any arrears of pay, whether holiday pay, sick pay or other payments as alleged or at all;

(d) Seeking specification/additional information about the type of discrimination claimed, the details of each of the allegations

referred to and the basis upon which the claimant considered that the reason for her treatment was her sex; and

(e) Asserting that some of the acts or omissions identified were time barred having occurred before 11th of November 2022.

8. By letter dated 4th May 2023 the claimant wrote to the Tribunal and the respondent's representative in the following terms:-

"4th of May 2023
Case Number 8000146/2023

Dear Sir/Madam

I request to amend my existing claim as I missed one which is related to "pay rise".

My pay was increased 2 times in the year 2022, once in April and second in October 2022.

Which I think in April it was not raised the rate which company was paying the other staff, so company raised it after 6 months to make the rates equal to others. I request to allow me to discuss this to respondent in preliminary hearing.

Looking forward. Best regards.

Vaneeza Abbas
cc respondent ISS Facilities Services."

9. The issue of the claimant's potential amendment was discussed before Employment Judge Maclean at the Closed Preliminary Hearing Case Management Discussion on the 1st of June 2023.

10. Judge Maclean deals with the letter at paragraph 7 of her Note of Output dated 2nd June and under the heading "Preliminary Issues", viz;

> "7 There was brief discussion about the claimant's letter dated 4th May 2023 seeking to amend her claim. I had difficulty understanding the statutory and factual basis of the proposed amendment; and why it was not included in the claim form. Without this information I felt that it was premature to consider the application to amend. I issued an Order seeking this information and to allow the respondent an opportunity to consider the matter."

11. In paragraph (Third) of her Case Management Orders of the same date Judge Maclean directed as follows:-

> "3. If the claimant wishes to amend her claim form as mentioned in her letter of 4th May 2023 the claimant should write to the Tribunal and copy the respondent by **21st June 2023** setting out:
>
> (a) What is the statutory basis of the claim that she is making in the application to amend?
>
> (b) What facts in her claim form does she rely upon in support of that claim?
>
> (c) If she relies upon additional facts what are they?
>
> (d) Why was this claim not included in the claim form that she sent on the 2nd of April 2023?
>
> (e) Why should the Tribunal exercise its discretion and allow the application to amend?"

12. By letter dated 19th June 2023 the claimant wrote to the Tribunal, copied to the respondent, in the following terms:-

"Case Number 8000146/2023

Dear Sir/Madam

I request to amend my existing claim as I missed one which is related to "pay rise".

The reason for the amendment request is that I am an individual and was filling up my form by myself so I missed this claim to fill up in the original form.

I was the only security officer working on the site by the time of that increment, as my colleague resigned in 2021 and hiring was in process. There is also one site supervisor whose annual increment is different than mine because of the role.

So there was no-one who I could compare my salary apart from estate colleagues who are based on different VMO2 locations, when I asked couple of them they confirmed that their increment was only once in a year, this clearly shows that I was not given the increased rate but the minimal than the others.

So at first place increment should be equal to the estate colleagues which they were getting by that time.

The letter sent by Jonathan William (Regional Manager) on 18th October clearly mentioned that company was paying me less rates and want to rectify it, it should be started from April not from October (letter attached).

I request the court for amendment permission. Calculation for this claim will be provided after permission.

Looking forward. Best regards

Vaneeza Abbas
cc respondent ISS Facilities Services Limited."

13. The terms of the claimant's correspondence of 19th June 2023 were not complaint with Judge Maclean's Order. The claimant did not comply with the terms of Judge Maclean's Order by the deadline set of 21st June 2023.

14. By letter dated 4th July 2023, the claimant wrote to the Tribunal in the following terms cc the respondent:-

"July 4th 2023
Case Number 8000146/2023

Dear Sir/Madam

I request to amend my existing claim as I missed one which is related to pay rise.

3A. The statutory basis of the claim are about the original dates of pay rise. Pay rise appears on salaries every year in April, in my case it was twice first time in April and second time in October.

3B. Past 4 years, every time my salary was increased in April, only in year 2022 it was increased twice in April and in October.

I called a couple of my colleagues (ISS) who are based on different VMO2 locations, they confirmed that they only got one increment which was in April 2022.

3C. I was the only security officer working on this site by the time of that increment, as my other colleague resigned in 2021 and hiring was in process. There is also one site supervisor whose annual increment is different than mine because of the job role. So there was no-one who I

could compare my salary apart from colleagues who are based on different VMO2 locations.

At first place increment should be equal to the colleagues which they were getting in April 2022.

In April 2022 I should be give the full pay rise, instead of that it was given in parts. The letter sent by Jonathan William (Regional Manager) on 18th October clearly mention that company was paying me less rates and want to rectify it, it should be started from April not from October (letter attached).

3D. The reason for amendment request is that I am an individual and was filling up my form by myself so I missed this claim to fill up in the original form.

3E. I request the court for claim amendment permission because of an individual and representing myself without any legal and professional help. I got very basic knowledge about the law and the learning process through different websites and articles.

Looking forward. Best Regards.

Vaneeza Abbas
cc respondent ISS Facilities Services Limited."

15. The claimant's letter of 4th July 2023 was compliant only in part with the requirements of Judge Maclean's Order. The letter of 4th July is the latest iteration of the terms which the claimant seeks Leave to Amend into her pleaded case.

16. By correspondence dated 19th July the respondents wrote to the Tribunal opposing the Application to Amend and setting out the Grounds of Resistance.

17. By letter dated 24th July 2023 the Tribunal, having acknowledged receipt of the Application of 4th July and the Grounds of Objection of 19th July, wrote to parties enquiring whether either had a preference for the Determination of the Application on paper without a Hearing, or alternatively at a Hearing.

18. By correspondence dated the same day, 24th July 2023, the respondent indicated a preference for Determination of the Application on paper.

19. By correspondence dated 31st July 2023 the claimant indicated her preference for a Hearing. By email dated 4th August Judge Maclean's Direction that the Application be listed for Determination at an Open Preliminary Hearing subsequently fixed for 11th September 2023, was issued to parties.

Summary of Submissions for the Respondent in Opposition to the Application

20. The respondent's representative contended that, pursuant to the principles set out in **Selkent Bus Company Limited v Moore** [1996] IRLR 661, the Application ought to be refused on the following grounds:-

    (a) That neither the Proposed Amendment and its effect, nor the basis in fact and in law for the claim which it was sought to introduce, could be discerned from the terms of the Application (the claimant's letter of 4th July). That that of itself was a factor, if not a ground on its own right, which mitigated against the granting of Leave.

    (b) **The nature of the amendment** – what the Application/terms of amendment disclosed, at their highest, was that the complaint which the claimant sought to introduce was one which related to the fact that her salary had been reviewed and increased on 2 occasions in 2022 rather than on one occasion only (in April),

with an unspecified suggestion that that was because of her sex. If that was the proposed claim, it could not be discerned from the existing pleadings and thus the amendment proposed was a "significant amendment". It was not a mere relabelling nor was it a building on facts already pled. It was a new cause of action with new facts.

(c) **Time limits**. - On any view, relating as it appeared to do to an act or omission of the respondents which occurred in April of 2022 which failing October 2022, the potential claim was substantially out of time as at today's date, 11th September 23. It was also out of time even if it fell to be regarded as having the subject of an Application for Leave to Amend on the 4th of May 2023. The claimant had first made contact with ACAS on the 11th of February 2023 and thus, acts or omissions founded upon as having occurred before the 11th of November 2022 were time barred. The Application did not include nor, did the claimant's oral submissions (confirmed when exercising the respondent's right of reply), any good explanation for the delay or why, in the circumstances, it would be just and equitable to extend time. The claimant's explanation that she was a litigant in person and had simply missed this claim was, of itself, insufficient to constitute a good explanation for the delay and neither, absent something more, did it provide a basis in law on which the Tribunal might judicially exercise its discretion to extend time.

21. **Timing and Manner of the Application** – there had separately been delay on the part of the claimant in making the Application and of providing such specification/detail of the basis for it as she had ultimately done.

(a) Her complaint to the Employment Tribunal was first presented on the 2nd of April 2023. And although as was evidenced by her letter of 4th May she was aware of her oversight as at that date and had been advised by ACAS that she must make an

Application for Leave to Amend she only proposed discussing the matter at the Closed Preliminary Hearing set down in the case for 1st of June.

(b) In terms of her Note of Output and Case Management Orders of 1st June Judge Maclean had made clear that the terms of the letter of 4th May 2023 were inadequate for the purposes of supporting an Application for Leave to Amend. She allowed to the claimant a period of 3 weeks from that date within which to make an Application providing specific detail all as directed by the Tribunal in paragraph 3 of the Judge's Case Management Orders.

(c) While the claimant had written a further letter to the Tribunal on the 19th of June 23, that letter had failed to address any of the questions or provide any of the specification directed at sub paragraphs 3A to E of Judge Maclean's Order.

(d) While the claimant wrote a further letter on the 4th of July 2023 (a further iteration of the terms of the Proposed Amendment and Application), that letter was sent some 2 weeks after the expiry of the deadline set by Judge Maclean and in its terms was not fully compliant with the Judge's Order.

(e) That position of non compliance remained as at the date of today's Hearing, 11th September, some 2½ months later.

22. That the claim which was proposed in terms of the Proposed Amendment, in so far as it was possible to discern the same, was one which enjoyed no reasonable prospect of success for the following reasons

(a) The terms of the amendment continued to fail to disclose any basis in law, whether in statute or contract, and or any basis in fact, for the purported complaint which appeared

to be that the claimant's pay, when increased in April 2022, was not increased at the correct rate in comparison to other employees of the respondent and because of that the respondent further raised the claimant's pay to rectify the issue in October of 2022. That proposition was wholly speculative. There was no offer to prove primary facts which, if proved would support such a finding.

(b) The reality was that the respondent completed an annual pay review in April of each year which typically results in a standard uplift to colleagues' pay rates. In April 2022 the national living wage increased by 59 pence from £8.91 to £9.50. Accordingly the respondent decided to increase the claimant's hourly pay by the same amount of 59 pence from £9.51 to £10.10.

(c) In October of 2022, the claimant's hourly rate was further increased from £10.10 to £10.35 and the claimant, amongst others, was advised by letter dated 18th October 22 that the pay increase resulted from the respondent having "*conducted an exercise where we were benchmarking our pay rates against the local market".* Additional funds had become available on the Virgin Media 02 (**VM02**) contract which resulted in a business decision to harmonise pay. The claimant's speculation as to the reason for the two increases in the same year was unsupported by any offer to prove relevant primary fact and was wholly misconceived.

(d) The balance of injustice and hardship of granting the amendment was greater than the injustice and hardship of refusing it, that position being exacerbated by the fact that the claimant still failed to properly particularise the proposed amendment and therefore the proposed

additional claim in terms of the Tribunal's Orders of 1st June 2023 such as to afford the respondent, let it be assumed that the Application was granted, fair notice of the claim which it had to meet.

The Claimant's Submissions

23. With a view to doing justice to the claimant's submissions I set them out below in full.

24. The claimant submitted as follows:-

(a) *"I want to mention that I have no knowledge of the law.*

(b) *On the first time I missed this claim. I told ACAS who said I must amend.*

(c) *I want to relate this claim to the discrimination. I have 3 questions that I want the answers to.*

(d) *My only query was about the pay rise, in April 2022 from £9.50 to £10.10 per hour and in October to £10.52. On previous occasions when there was a pay rise there was a letter telling you what it was for. In April of 2022 there was no letter just told there's a pay rise. In October there was a letter which said the pay rise was due to the fact that we were being paid less than the market rate.*

(e) *So my question is my salary was increased in October. When that happened I was the only worker on my site. That's my first argument, then they show me a spreadsheet which is in the bundle at page 81. That spreadsheet refers in the second and the third entry to 2 officers at Tannochside. One of them is me but there was no other officer. From May of 2022 to December of*

2022 I was the only officer at Tannochside so, by way of benchmarking, they gave an increase to a non existent person in the spreadsheet. So some unknown person was drawing down salary from April to October of £10.10 per hour and from October to December of £10.35 per hour.

(f) *So another point is that the spreadsheet is not dated. It does not say what the percentage increase was and why. Further down on the spreadsheet appears the Croydon security officer. There are 4 showing there but only 1 out of the 4 got an increase.*

(g) *On page 80 there is an email dated 1st September 2022 referring to this Schedule so why is it presented as evidence. If we go back to page 79 we see 2 other emails, 18th May and 22nd May, both 2023. So this document was prepared I think after I asked my questions.*

(h) *The last question is that a company search shows that the respondent says it had £12,000 in the budget and wanted to distribute it as pay rises. In September 2023 to December 2023 I sent emails about the Covid risk associated with cleaning. The respondents did not respond to those emails. If they had £12000 to spend they should have used it more wisely. They should have used it to buy toilet rolls and soaps for us. I was having to bring in my own toilet roll.*

(i) *There was no cleaner on the site from June 2022 to August 2023 so there were no cleaning products being renewed and we had to use our own toilet materials.*

(j) *So my question is the same, they should spend this money on cleaning at my site which was very dirty. I am just proposing.*

(k) *So I think that is all the points which I have discussed so far."*

25. When asked by the Tribunal if there was anything else which she wished to say in support of her Application for Leave to Amend, the claimant having taken time to consider replied “No that is all I want to say about my application because I am a person doing this for myself.”

The Respondent’s Reply

26. In exercising a restricted right of reply the respondent’s representative made three points:-

(a) That this was the claimant’s Application for Leave to Amend and her direction of criticism against the Schedule produced by the respondent at page 81, regardless of how misconceived, was irrelevant in the circumstances, and it did not provide any basis upon which the Tribunal might exercise its granting the discretion in favour of Application for Leave to Amend.

(b) The document showed, in its penultimate column, the rate of pay being received in October 2022 by employees of the respondent and benchmarked that pay against that shown in the third column the “Total Job/Omni” comparator market rate.

(c) The claimant’s contention, made in her oral submission, that the £12,000 of additional funding, which the respondent chose to distribute to its employees by way of wage rise across the board, would have been more wisely spent in purchasing toilet and cleaning materials for the claimant’s site, provided no basis in fact or in law for any complaint before the Employment Tribunal which it had jurisdiction to consider.

Applicable Law Discussion and Disposal

The Applicable Law

When is an Application to Amend required?

27. A party's case should be set out in its original pleading (the claimant's ET1 and the respondent's ET3), their essential cases.

28. In **Chandhok v Tirkey** [2015] ICR 527, per Langstaff P as he was then, the EAT said:

> "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 or subtract merely upon their say so. Instead, it serves not only a useful but a necessary function. It sets out the essential case. It is that to which a respondent is required to respond. A respondent is not required to answer a witness statement, nor a document, but the claims made – meaning under the Rules of Procedure 2013, the claim as set out in the ET1".

29. It follows that if a claimant wishes to argue a claim that is not set out in the ET1, they should make an Application to Amend. Similarly, a respondent needs to apply to amend their ET3 if it wishes to assert a new ground of defence. In principle, it is not permissible to expand the scope of a claim or a response through, for example, Further Particulars, inter party correspondence, a List of Issues or witness statement.

30. A Tribunal can consider an Application to Amend a claim or a response at any stage of the proceedings.

31. In **Scottish Opera Limited v Winning** UKEAT/0047/09 Underhill P (as he then was) noted that:

> "Clear and accurate pleadings are of importance in all cases, but particularly in discrimination claims. It is essential that parties seeking permission to amend to introduce such a claim, formulate the proposed amendment in the same degree of detail as would be expected had it formed part of the original

claim; and Tribunal should ensure that the terms of any such proposed amendments are clearly recorded."

32. "While the Rules of Procedure do not prohibit the making of an Oral Application to Amend in the course of a Hearing the above guidance points to the appropriateness of amendments being set out in writing."

Factors taken account of

33. The Tribunal considers an Application to Amend a claim or response, in light of its duty, under the Overriding Objective, which is set out in Rule 2 of the Procedure Rules, to deal with cases fairly and justly and which includes:

(a) Ensuring that the parties are on an equal footing

(b) Dealing with a case in ways which are proportionate to the complexity and importance of the issues

(c) Avoiding unnecessary formality and seeking flexibility in the proceedings

(d) Avoiding delay, so far as compatible with proper consideration of the issues

(e) Saving expense

34. Two key decisions of the Employment Appeal Tribunal have identified factors which the Tribunal should include in its consideration when determining an Application to Amend:-

- In **Cocking v Sandhurst (Stationers) Limited** [1974] ICR 650, the then President held that regard should be had to all the circumstances of the case and in particular, the Tribunal should "*consider any injustice or hardship which may be caused to any of*

the parties …. if the proposed amendment were allowed, or as the case may be, refused."

- The case of **Cocking** was followed by the EAT in **Selkent Bus Company Limited (trading as Stagecoach Selkent) v Moore** [1996] IRLR 661, which held that, when faced with an Application to Amend, a Tribunal must carry out a careful balancing exercise of all the relevant circumstances, and exercise its discretion in a way that is consistent with the requirements of "relevance, reason, justice and fairness, inherent in all judicial discretions." The EAT considered that the relevant circumstances would include:-

    - The nature of the amendment,
    - The applicability of time limits, and,
    - The timing and manner of the application

35. In **Chaudhry v Cerberus Security and Monitoring Services Limited** [2022] EAT172, the EAT suggested a two point checklist that Tribunals might find helpful when considering applications to amend:

    (a) First identify the amendment or amendments sought which should be in writing

    (b) It is important to clarify the specific amendments that are sought because otherwise it will not be possible to balance the injustice and or hardship of allowing the amendment(s) against that of refusing them. Often there need not be an all or nothing decision because some amendments may be clearly identified and the case for allowing them may be compelling while others may be nebulous and the arguments for permitting them insufficient.

(c) Second, in express terms, balance the injustice and or hardship of allowing or refusing the amendment or amendments, taking account of all the relevant factors, including the extent appropriate to those referred to in **Selkent**

The Nature of the Amendment

36. When an Application seeks to make a substantial amendment, such as introducing a new cause of action, the Tribunal will exercise its discretion more carefully having regard to the wording of the Proposed Amendment.

New Cause of Action

37. A distinction falls to be made between amendments that:

(a) Seek to add or substitute a new claim arising out of the same facts as the original claims; and

(b) Those that add a new claim entirely unconnected with the original claim.

38. In order to determine whether the Proposed Amendment is within the scope of an existing claim or constitutes an entirely new claim, the entirety of the claim form should be considered.

39. In some cases the Application will merely be seeking to “relabel” a set of existing facts and may not therefore be as significant an amendment as at first seems; And a Tribunal may be expected to adopt a flexible approach and to grant amendments that, for example, only change the nature of the remedy sought.

New Claims arising out of the same fact as the Original Claim

40. Where new claims are very closely related to the claim originally pleaded and depend on facts that were substantially already alleged, that is likely to be a factor in favour of allowing amendment.

Determining whether the Amendment seeks to bring a New Cause of Action

41. In **Ali v Office of National Statistics** [2004] EWCA Civ 1363, the English Court of Appeal held that whether a claim form already contained a specific claim could only be judged by looking at the document as a whole and considering the name given to the claim as well as the factual details accompanying it. If a claim was put very generally for example discrimination, its Particulars would need to be specific enough to enable the employer to be clear about what allegations were being made against them.

Time Limits

42. Time limits are relevant if the claimant wishes to add by amendment what is an entirely new complaint.

When should the Time Limit Issue be decided?

43. In **Patka v British Broadcasting Corporation** UKEAT/0190/17, the EAT approved the Tribunal's decision to not decide whether the new claim was still in time when determining the amendment application. This followed a shift in the approach taken to amendment applications. The position previously established in the case of **Selkent**, was that:

> "If a new complaint or cause of action is proposed to be added by way of amendment, it is essential for the Tribunal to consider whether the complaint is out of time and, if so, whether the time limit should be extended under the applicable statutory provisions."

44. In **Amey Services Limited and another v Aldridge and others** UKEATS/0007/16, the EAT in Scotland held that determining an amendment application is a single stage exercise and an amendment cannot be allowed "subject to time bar issues". The decision in **Amey Services** referred to earlier decisions explaining that the reason why consideration of time bar issues was essential when determining an amendment application was because, once an amendment was granted, a respondent was prevented from raising a limitation defence.

45. However, in **Galilee v Commissioner of Police of the Metropolis** UKEAT/0207/16, the EAT in England reached a different view: namely, that a Tribunal can decide to allow an amendment, subject to limitation points (or, alternatively, it can postpone making a decision on the Application to Amend). This might be necessary in cases that require significant evidence in order to determine time points, such as whether there are any continuing acts or whether time should be extended in discrimination claims. Furthermore, the EAT held that amendments in pleadings in the Tribunal, which introduced new claims or causes of action, take effect for the purposes of limitation at the time permission is given to amend. **Galilee** is not authority for the proposition that time points cannot ever be considered as part of an amendment application at a Preliminary Hearing; it says, rather, that it is not mandatory to do so, and notes that it may be difficult to do so in certain cases where significant evidence is required.

Timing and Manner of the Application

46. Applications to amend the pleadings can be made at any stage in the proceedings and an Application will not generally be refused solely because there has been delay in seeking amendment. The extent of a party's delay, however, is a factor that the Tribunal may take into account. In general terms the party seeking Leave to Amend will need to show why the Application was not made earlier and why it is now being made.

47. As set out above Judge Maclean, at paragraph 7 of her Note of Output issued following the Closed Preliminary Hearing Case Management Discussion which proceeded before her on the 1st of June stated in relation to the terms of the then Proposed Amendment of 4th May, "*I had difficulty understanding the statutory and factual basis of the proposed amendment; and why it was not included in the claim form. Without this information I felt that it was premature to consider the application to amend. I issued an Order seeking this information and to allow the respondent an opportunity to consider the matter."*

48. As at the date of the Open Preliminary Hearing, 11th September 2024 and the passing of a further four months, that situation pertains in relation to the latest iteration of the Proposed Amendment dated 4th July 2023 in terms of which the claimant seeks Leave to Amend. The 4th July 23 iteration does not disclose a basis in fact and or in law, whether in contract or in statute, for any claim, including in particular the matter about which the claimant appears, from its terms as supplemented by her oral submissions, to be complaining. The claimant has had 3 opportunities in the space of some 5 months from the date upon which she first wrote to the Tribunal about the matter, in which to set out in discernible terms the amendment in respect of which she seeks Leave (Proposed Amendment). Judge Maclean took time to set out, in clear and unambiguous detail, the matters which the claimant required to make clear in any amendment which she proposed to bring forward, and she allowed to the claimant a significant additional period of time within which to do so. Following the lodging and intimation of the current iteration of the Proposed Amendment on 4th July 2023, the respondents set out in detail, by email dated 19th July the Grounds of Objection. No attempt has been made to address those by way of adjusting the terms of the Proposed Amendment in the intervening 2½ months. The effect is that the amendment, in its proposed terms, fails to give fair notice of the complaint which the respondents would require to meet in the event that the Tribunal were to grant Leave to Amend in those terms.

49. Against that general observation I turned to consider matters in terms of the **Selkent** principles.

50. I consider that the respondent's representative's submission that the Proposed Amendment, in so far as the same can be discerned from its terms is a "significant" Proposed Amendment in terms of **Selkent**. The apparent claim which it is said to embody is not disclosed in the initiating Application ET1 which presents complaints of different nature and type. The Proposed Amendment does not give rise to the circumstance of mere relabelling of existing facts nor indeed of the building on a factual matrix already given notice of. Were Leave to be granted it would constitute a new cause of action with new facts, albeit one substantially lacking in specification such as to fail to give fair notice of the case to be met.

51. On any view, the claim or speculative claim given notice of is out of time, both in terms of section 111(2)(a) of the Employment Rights Act 1996, let it be assumed that the claim is intended to be one of unauthorised deduction from wages and in terms of section 123(1)(a) of the Equality Act 2010 let it be assumed, as suggested by the claimant in her oral submission, that it related to sex discrimination. Nor is there before the Tribunal evidence or explanation of any circumstances upon which the Tribunal might exercise its discretion to extend time by holding that it had not been reasonably practicable for the claimant to include the claim within her original claim form or, alternatively, that it would be just and equitable in the circumstances to extend time, respectively in terms of section 111(2)(b) of the Employment Rights Act 1996 or section 123(1)(b) of the Equality Act 2010.

52. While recognising that the claimant is a litigant in person and as such is to be accorded more leeway than parties who enjoy the benefit of professional or commercial representation, I accept the submission of the respondent's Counsel which was to the effect that that fact, namely party litigant status, does not, of itself, provide a good reason for a failure to include a complaint in the absence of something more. The Employment Tribunal is a jurisdiction designed by Parliament in which parties may access justice without the need

for representation whether professional or otherwise. Every day within the United Kingdom many thousands of litigants in person do so while adhering to time limits and giving fair notice to the other party if the case which it is to meet. Litigant in person status does not, of itself, provide a basis for disapplication of the rules or time limits.

53. In relation to the timing and manner of the Application, there has been delay on the part of the claimant in bringing forward the terms of the Proposed Amendment, as now set out in her correspondence of 4th of July. In her correspondence of 4th May 2023 the claimant confirms, in terms, that she was, as at that date if not earlier, aware of the fact that she had omitted to include something in her original complaint which she now wished to include and further, based upon her discussions with ACAS, that she was aware of the fact that she would require, in those circumstances, to seek Leave to Amend. In terms of Judge Maclean's Orders of 1st June 2023 the claimant was given specific guidance and direction as to the matters which any Proposed Amendment brought forward would require to make clear and, with a view to furthering its duty to ensure that cases are progressed expeditiously, a period of 3 weeks within which to do so. The claimant failed to do so in terms compliant with the Order and, as at today's date 11th September 2023, the terms of the Proposed Amendment are not compliant with Judge Maclean's Order of some 4 months ago.

54. Turning to the prospects of success of the apparent claim, I accept the submission of the respondent's representative that on an Application of the normal rules of construction and according to the words used their normal English language meaning, and while making allowance for the fact that English is not the claimant's first language, the Proposed Amendment, let it be assumed that the claimant were to establish everything which, in its terms she asserts, fails to disclose any relevant claim in fact and or in law over which the Tribunal has jurisdiction. It is a potential claim, which if admitted by way of amendment, in the terms in which it is given notice of, must necessarily fail. The Tribunal would err in law were it to grant Leave to

Amend in a claim which, it is satisfied enjoys no reasonable prospect of success.

The Balance of Injustice and Hardship

55. In seeking to balance the relative injustice and hardship resulting to parties in the respective cases of allowance or non allowance of the Amendment, I consider that on the one hand refusing the Application would not cause significant prejudice to the claimant in that she would not be deprived, thereby, of her various existing complaints but rather of a complaint, let it be assumed that it is what it appears to be, which enjoys no reasonable prospect of success. On the other hand, to allow the Amendment would cause significant prejudice to the respondent by reason of:-

(a) their being required to respond to a complaint the terms of which fails to give them fair notice of the case which they are to meet,

(b) By requiring them to respond to a claim over which the Tribunal would have no jurisdiction, in any event, by reason of time bar.

(c) By requiring them to respond, and to incur the cost of responding, to a complaint which enjoys no reasonable prospect of success; and,

(d) As the complaint heralded in the Proposed Amendment is a new cause of action based on additional facts, by putting them to the cost of producing evidence from additional witnesses, all of which in turn is likely to lead to a requirement for a longer Merits Hearing than has currently been listed.

56. I do not consider it consistent with the Overriding Objective to allow an Amendment, in September of 2023 which introduces a new factual basis for a complaint, in circumstances where the introduction of such a claim would otherwise be time barred and in which, for reasons not clearly placed before

the Tribunal, the claimant had merely omitted to include in the claims of which she gave notice when first presenting her initiating Application in April of 2022.

57. Upon a consideration of all of the relevant circumstances, including those particularly identified in **Selkent Bus Company Limited v Moore** and on a carrying out of a balancing of the relative prejudice and hardship to parties, I determine that the balance lies in favour of refusing the Amendment and I accordingly do so.

58. The case will now proceed to its already listed Final Hearing in accordance with the previously issued relative Case Management Orders.

Employment Judge: J G d'Inverno
Date of Judgment: 19 September 2023
Entered in register: 19 September 2023
and copied to parties.

I confirm that this is my Judgment in the case of Abbas v ISS Facility Services Limited and that I have signed the Judgment by electronic signature.