



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms S Davies

**Respondent:** HM Revenue and Customs

**Heard at:** Manchester

**On:** 3 March 2021

**Before:** Employment Judge Sharkett

## REPRESENTATION:

**Claimant:** Ms C Ward – family member of C

**Respondent:** Mr W Caruama, Solicitor

## JUDGMENT

- (a) By consent the claimant has permission to amend her claim to include a claim under s15 Equality Act 2010 in respect of her dismissal.

## REASONS

1. The Preliminary Hearing was to consider the claimant's application to amend her claim and make case management orders to prepare the claim for final hearing.
2. The claimant was not present at the hearing but was represented by Ms Ward, a family member. There was some confusion about what amendments the claimant was seeking to make and whilst identifying the acts or failures to act relied on by the claimant I explained in detail the different types of discrimination. Following this Ms Ward confirmed that she no longer wished to amend the claim to include a claim of indirect discrimination on the protected characteristic of age, or of perceived age discrimination. She further confirmed that she did not seek to amend the claim to include the act of

dismissal to be one of discrimination on the protected characteristic of age. Consequently the only application before the Tribunal was one to amend the claim form to include a claim under s15 Equality Act 2010, confirming that the unfavourable treatment relied on was dismissal and that this had arisen as a consequence of her absence from work arising from her disability.

## Submissions

### Respondent's submission

3. The claimant having indicated that the only amendment she sought to pursue was the s15 Equality Act claim, Mr Caruama conceded that this was a relabelling exercise of facts already pleaded in the ET1. Whilst he would have objected to the other proposed amendments sought by the claimant on the basis that these were all new claims, this was no longer an issue because the application was not pursued.

### Claimant's Submission

4. The claimant is not legally represented and at the time the ET1 was submitted the trade union representative assisting the claimant became unwell and therefore the claimant had completed the ET1 to the best of her ability.

## The Law

5. In the case of **Selkent Bus Company Limited -v- Moore 1996 ICR 836**, the Employment Appeal Tribunal endorsed the key principle that when exercising its discretion in an amendment application, Tribunals must have regard to all the circumstances and in particular, any injustice or hardship which would result from the amendment or refusal to make it.
6. In that case, Mr Justice Mummery outlined that a Tribunal will need to consider: -
  - (i) The nature of the amendment: is it minor or substantial;
  - (ii) The applicability of time limits – if a new claim is proposed by way of amendment, whether the new course of action is in time or whether time limits should be extended;
  - (iii) The timing and manner of the application.
7. Guidance Note one of the Presidential Guidance on general case management, at paragraph 12 states “if the claimant seeks to bring a new claim, the Tribunal must consider whether the new claim is in time”.
8. However, at paragraph 11.2 Tribunals are reminded that even if no new facts are pleaded, the Tribunal must balance the injustice and hardship of allowing the amendment against the injustice and hardship of refusing it.

9. Before any time limit issues are considered, it is incumbent on the Tribunal to consider the nature of the proposed amendment.
10. In the case of **Abercrombie and Others -v- Aga Range Master Limited 2013 IRLR 953** the Court of Appeal determined that when considering a new allegation amendment, Tribunals should focus on:

**“not on questions of formal classification but on the extent to which the new pleading is likely to involve substantially different areas of enquiry than the old: the greater the difference between the factual and legal issues raised by the new claim and by the old, the less likely it is that it will be permitted”.**

## Discussion and Conclusion

### Constructive Unfair Dismissal

11. The facts of the dismissal are pleaded in the ET1 and the amendment amounts to a relabelling exercise only which is not contested by the respondent. n

Employment Judge Sharkett

Date 3 March 2021

JUDGMENT AND REASONS SENT TO THE PARTIES ON

19 March 2021

FOR THE TRIBUNAL OFFICE