Case Number: 2202826/2022

EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Ms G Balcikoniene	**v**	Sainsbury's Supermarkets Ltd

PRELIMINARY HEARING

Heard at: **London Central** **On: 15 September 2022**

Before: **Employment Judge Baty**

Appearances
For the Claimant: In person
For the Respondent: Mr Carter (counsel)

JUDGMENT

1. The tribunal does not have jurisdiction to hear the claimant's complaints of crime, theft, fraud, defamation, breach of the Data Protection Act 1988 or breach of contract before dismissal (or any of the other potential complaints set out in the claim form save for those referred to in the paragraphs below). Having discussed this with the judge, the claimant acknowledged that the tribunal did not have jurisdiction and withdrew these complaints. They were accordingly dismissed.

2. The claimant confirmed that she was not bringing complaints of discrimination because of sex or religion or belief. To the extent that these had been pleaded, they were therefore dismissed.

3. The claimant's complaints of direct race discrimination have no reasonable prospect of success. They were accordingly dismissed.

4. The claimant's application to amend the claim to include a complaint of detriment because of making a protected disclosure ("whistleblowing") was refused.

5. Accordingly, the only remaining complaints are the claimant's complaints for unlawful deduction from wages (sick pay). These have been set down for a final hearing on 26-27 January 2023.

REASONS

Background

1. The claimant has been employed by the respondent since 2007 and, at the time she brought her claim, remained employed by the respondent. She worked as a Retail Assistant at the respondent's Cromwell Road store.

2. By a claim form dated 17 May 2022, the claimant brought various complaints. In the claim form, she ticked the boxes for race discrimination, sex discrimination and discrimination because of religion or belief and those for "arrears of pay" and "other payments". The annex to the claim form then runs to between 200 and 250 pages. The first 15 pages, which are hard to follow, set out certain allegations and enclose a grievance letter of 30 April 2022. The remainder of the claim form appears to contain various correspondence and attachments which have been added to it. The claim form lists a large number of legal statutes and claims, in relation to which the tribunal does not have jurisdiction, including crime, theft, fraud, defamation, breach of the Data Protection Act 1988 and breach of contract (notwithstanding that the claimant was at the time she presented her claim an employee of the respondent).

3. The respondent defended the complaints.

4. A preliminary hearing for case management purposes was listed for 11.30 on 16 August 2022 by video ("CVP"). That preliminary hearing was listed before EJ Isaacson. EJ Isaacson's note of that hearing, which was set out in the notice to the parties of 16 August 2022 setting up this preliminary hearing in public, included the following:

"Both parties were given notice by letter of 30 June 2022 which states that the hearing would be by video (CVP). The notice asks the parties to tell the Tribunal if they have any disability that makes telephoning into the hearing or communicating difficult. The claimant emailed the Tribunal at 10.26 on the morning of the hearing to ask that the hearing be rescheduled because it had only come to her attention that day that the hearing was via the Internet and her computer would not receive a good internet connection. The clerk spoke to the claimant on her mobile telephone to explain that she could telephone into the hearing. The claimant said she did not want to join by telephone. The claimant was notified that the hearing would go ahead, and she would not be prejudiced by the hearing being conducted on the telephone and that the hearing would be converted to be by telephone so that both parties were on an equal footing. The clerk spoke to the claimant again on the telephone and she said she had difficulty understanding over the telephone and would prefer an in-person hearing. The claimant did not pick up the telephone when EJ Isaacson telephoned both parties. EJ Isaacson wanted the claimant to have an opportunity to clarify her claims and move the case forward by case managing and listing for a final hearing. If EJ Isaacson felt that the claimant was having difficulty understanding or communicating the hearing would have been adjourned. Instead, the Employment Tribunal's and the respondent's time was wasted."

5. On the same day, EJ Isaacson listed the present preliminary hearing in public, in person and for one day, to determine whether all or part of the claimant's complaints should be struck out on any of the following bases:

> 5.1. The tribunal does not have jurisdiction to hear the claimant's complaints of crime, theft, fraud, defamation, breach of the Data Protection Act 1988 or breach of contract pre dismissal.

5.2. The claimant's complaints of discrimination on the grounds of race, sex and religion or belief have no reasonable prospect of success as the claimant has not set out any grounds for those claims other than alleging *"Sainsbury's and NHS are trying to prove I Russian or Ukrainian in order to deprive me of my legal rights"*.

5.3. The claim has not been actively pursued (for the reasons set out in the extract from her note above regarding the claimant's non-attendance at the original case management preliminary hearing).

5.4. The claims are scandalous or vexatious as alleged in the respondent's grounds of resistance and set out in any application made by the respondent.

6. EJ Isaacson also set out in that note that:

"The claimant needs to be prepared to clearly explain the claims she is making at the OPH. It will be sensible for the claimant to write down before the hearing short paragraphs under each head of claim what she is alleging. For example, for her discrimination claims she needs to set out in date order what alleged less favourable treatment she has suffered because of her race, sex and religion."

7. The claimant did not do this in advance of the preliminary hearing in public.

This hearing

8. The preliminary hearing in public took place in person at the London Central employment tribunal.

9. In advance of the hearing, the respondent provided a short bundle containing those documents which were relevant to the issues to be determined.

10. It is difficult to consider whether or not complaints have reasonable prospects of success without knowing what those complaints are. As noted, the claim form was very long and it was impossible to determine what the actual complaints were without further discussion with the claimant, particularly as the claimant had not provided any further information, as advised by EJ Isaacson, to assist the tribunal in this respect. I explained this to the parties at the start of the hearing.

11. I then spent the whole of the morning of the hearing (around 3 hours) going through the complaints with the claimant to ascertain what they were before then hearing the strike out applications (or rather those of them which continued to be pursued) in the afternoon.

Ascertaining the complaints/withdrawal of certain complaints

12. The claimant acknowledged that the core of her claim was contained in the first 15 pages of the annex to her claim form (which, as explained, ran to some 200 to 250 pages in total). She explained that she was not a lawyer and not particularly computer literate and had therefore added a lot of documents and emails to the end of the claim form. However, for these purposes, she was happy for us to focus on those first 15 pages, which included the 30 April 2022 grievance letter.

Jurisdiction

13. I started by going through in detail with the claimant the references in the claim to statutes and pieces of law where it appeared that the tribunal did not have jurisdiction (including those for crime, theft, fraud, defamation, breach of the Data Protection Act 1988, breach of contract before dismissal and various others). I explained that the tribunal did not have jurisdiction to hear these types of complaints and why. The claimant accepted that and therefore decided to withdraw all of these complaints. Accordingly, I dismissed those complaints.

Unlawful deduction from wages (sick pay)

14. The only complaints which were tolerably clear from the claim form were those in relation to sick pay. However, I again spent some time discussing these with the claimant in order to be absolutely sure what the complaints which she was pursuing were.

15. Those complaints are for unlawful deduction from wages. The claimant maintains that, during two periods when she was absent from work due to sickness, she was not paid contractual sick pay by the respondent and she maintains that that was unlawful; the respondent maintains that, in accordance with its policy on contractual sick pay, the claimant was not entitled to contractual sick pay in the circumstances in question. The claimant accepts that she was paid any SSP due in relation to these periods. The two periods are:

15.1. 13 May 2022 to 27 April 2022 plus 30 April 2022 (the claimant says she actually worked on 30 April 2022 but was not paid for it; and was off sick from 13 May 2022 to 27 April 2022) (the "2022 complaint"). The total sum claimed in respect of this period is £1,646.50.

15.2. 23 March 2021 to 10 May 2021 (the "2021 complaint"). The total sum claimed in respect of this period is £1,079.03.

16. It is acknowledged by the respondent that the complaint in relation to 2022 was presented in time. However, the respondent maintains that the complaint in relation to 2021 was presented out of time.

17. During our discussion, the claimant referred to a further period of 1 May 2022 to 28 May 2022 and 29 May 2022 to 25 June 2022, for which she said she had not originally been paid. However, she confirmed that she had now been paid in full in respect of these periods and there was therefore no complaint in respect of them.

18. The issues for the tribunal to determine are, therefore:

18.1. Is the claimant is entitled to be paid the sums claimed under the 2022 complaint and the 2021 complaint?

18.2. Does the tribunal have jurisdiction to hear the 2021 complaint? In particular, was the 2021 complaint presented in time? Does it form part of a "series of deductions or payments" with the 2022 complaint such that it is deemed to be in time? If not, was it reasonably practicable for the claimant to

have presented the 2021 complaint in time? If not, was the 2021 complaint presented within such further period of time as was reasonable?

Discrimination complaints

19. We had a very long discussion regarding the discrimination complaints. I explained to the claimant that, to prove a complaint of direct discrimination, it was not enough to show that there had been less favourable treatment and that the claimant had a particular protected characteristic (be it of race, sex, or religion); the less favourable treatment had to be because of that protected characteristic.

20. I said that I had seen a couple of references in the claim form to race, some referencing that the claimant was white and others that she was perceived as being Russian or Ukrainian or German. I said that I had not seen any suggestions that any of the alleged treatment was because of the claimant's sex or religion/belief (beyond the claimant having ticked the boxes on the claim form in this respect).

21. The claimant immediately confirmed that she was not claiming that she had been treated less favourably because of sex or religion/belief and there were no complaints in this respect. I asked her if she was sure about this and she said that she was. I therefore noted that there were no such complaints but that, to the extent that there had been, they were withdrawn. Accordingly, I dismissed any complaints of sex or religion/belief discrimination.

22. The claimant then identified that she was bringing some complaints of race discrimination. Some of these were made on the basis of her characteristic as being white; others were on the basis that she was perceived to be Russian or Ukrainian or German. During the course of a long discussion, the claimant identified three complaints of direct race discrimination. These were, as described by the claimant, as follows:

22.1. Salah Mohammed, a manager at the Cromwell Road store, told the claimant's GP that she was Ukrainian, in the hope that the claimant would be given less good treatment by her GP and that the GP would not properly examine her, with the result that the respondent would not be liable for any potential injury sustained by the claimant as a result of slipping in some water which was spilled at work on or around 22 March 2021. The claimant relies in this respect only on a note from her GP of 1 April 2021 which references that the claimant is Ukrainian (the claimant is in fact a Lithuanian national) and a further letter from the claimant's GP of 7 May 2021 which stated that the claimant had problems with her employer.

22.2. Lin Chaun McMenamin, an employee of the Cromwell Road store, observed the claimant in the toilet and subsequently described the way she was dressed to third parties, with the result that people in cars followed the claimant. Ms McMenamin has done this on a daily basis since 2018 to the present day and on one occasion people in a particular car (blue Audi) followed her at 4.40 in the night on one night in March 2022 and subsequently tried to steal the claimant's bicycle (but did not succeed). To be clear, the claimant's case is that various people in various cars followed her periodically from 2018 to present but the incident with the blue Audi was a one-off specific incident in March 2022. In

support of this, the claimant asserts that, when she asked Ms McMenamin why she did it, Ms McMenamin answered "here it's England, not Russia".

22.3. The claimant maintained that, if she was late, the respondent came to complain to her about it and did not pay her. She accepted that it was correct to do this under the respondent's policy. However, she identified a manager, Mr Leo Aquilio, and an employee, Ms Marjorie Mitchell, both of whom are black. She explained that Ms Mitchell was frequently late and that Mr Aquilio nonetheless still paid her even when she was not working whereas, when she the claimant was late, they did not pay her and they told her that she was late. The claimant confirmed that Ms Mitchell worked at the Cromwell Road store until 1 June 2021 (although she subsequently said that, whilst Ms Mitchell was not working at the Cromwell Road store after that date, she may have been technically assigned to the Cromwell Road store beyond that, although certainly no later than autumn 2021); and that Mr Aquilio started at the Cromwell Road store on 11 March 2020 and left the store by autumn 2021. The period over which any such differential treatment could have taken place was therefore at a maximum between 11 March 2020 and autumn 2021.

23. The claimant confirmed that the first two allegations were brought relying on perception of race, specifically the respondent perceiving that the claimant was Russian or Ukrainian or German (when in fact she is Lithuanian); and the third allegation was based on the fact that the claimant is white.

24. I asked the claimant whether, beyond these three allegations, there were any other allegations of things done by the respondent which she thought were on the grounds of her race. The claimant confirmed that these were the only three.

<u>"Whistleblowing"</u>

25. I noted that, on around page 10 of the annex to the claim form, there was a sentence which began:

"Regarding the whistleblowing matter, please arrange an investigator like Nigel Boardman in an enquiry regarding the former Prime Minister David Cameron and Greensill, Prime Minister Boris Johnson had selected Nigel Boardman from Slaughter and May law firm to carry out all the possible investigations. Even David Cameron was no longer working as Prime Minister, he still had to undergo the investigation process."

26. However, whilst the "whistleblowing matter" was referenced, it was not identified either in that paragraph or anywhere else in the claim form. I therefore asked the claimant what this was a reference to and if she did indeed intend to bring a whistleblowing complaint. At the same time, I explained how such complaints operated; namely, that there needed to be a protected disclosure of information and that the claimant then need to be treated detrimentally because of that disclosure of information.

27. The claimant stated that she did wish to bring a "whistleblowing" complaint. The claimant explained that there had been an incident on 7 September 2021, when she came back from a break to her till, and when she said that a colleague of hers, Sandra Sow, came to her till and started to shout at the claimant; that there was an investigation which followed this; that she was duly accused of having been aggressive to Sandra Sow, and that as part of the investigation she was shown a

witness statement which, she told me, was "faked" (from subsequent discussion, I understand that the claimant's allegation is that that witness statement was forged). She says that on 11 September 2021 she told her operations manager, Saleh Tarafdar, that the document was "faked". She then went on to outline a large number of other alleged incidents where there were witness statements which she maintained were "faked" and where she says she informed management. These covered a long period from autumn 2021 through to August 2022 and they involved a large number of different individuals who were all alleged to have "faked" documents.

28. I tried to ascertain what the detriment was which the claimant said she was subjected to as a result of making these alleged disclosures about "faked" documents. After I had tried to ascertain this from her for some time, she said that the detriment was that the checkout manager, Rachel Jennings, had said in June or July 2022 *"take your items and leave the store"* (she was clear that in saying this Ms Jennings was not, however, dismissing or attempting to dismiss her).

29. Despite my asking repeatedly, this was the only detriment which the claimant stated she relied on. It predated at least one and possibly three of the alleged disclosures of "faked" documents which she says she made. Whilst I was trying to ascertain what the detriment was, the claimant repeatedly made reference to further examples of faked documents which she had allegedly told the respondent about. She appeared obsessed with the issue of the respondent faking documents on a massive scale.

30. The "whistleblowing" complaint which the claimant wanted to bring was therefore eventually identified. The claimant confirmed that there were no others. This complaint was not, however, set out in the claim form and it was clear that an amendment would be required to add it to the claim.

31. By this stage it was after 1 PM and the hearing adjourned for lunch, with the strike out applications to be heard in the afternoon. However, in the light of everything that had taken place in the morning, there was no need to hear the strike out application in relation to the jurisdictional points (as the claimant had withdrawn these complaints). Furthermore, as the claimant had attended today, Mr Carter confirmed that he no longer wished to pursue the strike out application on the basis of the claim not being actively pursued. That left the strike out applications on the basis of reasonable prospects and whether any of the complaints had been brought scandalously or vexatiously.

The strike out applications

32. The hearing resumed after lunch. I heard submissions from Mr Carter and then the claimant. During her submissions, the claimant repeatedly went off on tangents. In particular, she repeatedly went back to allegations about "faked" documents at the respondent, despite my repeatedly asking her to concentrate on the matters in hand. In addition, she kept going off on tangents about employees of the respondent stealing money (without providing any evidence beyond assertion and notwithstanding that this was not relevant to the issues which we had so painstakingly identified before lunch).

33. At the start of his submissions, Mr Carter explained that on 27 August 2022, the respondent had dismissed the claimant for gross misconduct because of alleged aggressive behaviour by her on 7 March 2022 and the claimant was aware from

shortly after that incident of the likelihood that she would be disciplined for it; there had been an appeal against dismissal which had been set down for an appeal hearing at which the claimant had not attended (although the claimant had since told the respondent that she had thought it had been postponed). Mr Carter said that his instructions were that the appeal had been heard in the claimant's absence although he was not sure whether it had been adjourned. The result was that the claimant had been dismissed but that that dismissal remained, at present, still subject to an appeal.

34. He also drew my attention to certain parts of the annex to the claim form. These were:

34.1. An allegation that the claimant was seeking compensation from the respondent *"for implanting several chips under my skin in my body"*.

34.2. An allegation that *"Since 2011 Sainsbury's management deliberately and on constant basis instructs managers, other employees, customers, NHS doctors, bus drivers to pull illegal and even incriminating stunts on me"*.

34.3. Allegations that HR and the CEO of the respondent had planned a *"secret meeting"* in relation to her with a view to *"getting rid of"* her.

The Law

35. The power to strike out a claim is contained in Rule 37 of the Employment Tribunal Rules 2013 which provide:

> "37. At any stage of the proceedings, either on its own initiative or on the application of a party, a Tribunal may strike out all or part of a claim or response on any of the following grounds ….
>
> (a) that it is scandalous or vexatious or has no reasonable prospect of success..."

36. The importance of determining discrimination claims on their merits has been emphasised in the past, in particular in Anyanwu v South Bank Students Union [2001] IRLR 305, where it was stated that the power of strike out should be used only in the most plain and obvious of cases. In that case, Lord Steyn, at paragraph 24, emphasised:

> "Discrimination cases are generally fact-sensitive, and their proper determination is always vital in our pluralistic society. In this field, perhaps more than any other, the bias in favour of a claim being examined on the merits or de-merits of its particular facts is a matter of high public interest."

37. At paragraph 37, Lord Hope of Craighead stated:

> "I would have been reluctant to strike out these claims, on the view that discrimination issues of the kind which have been raised in this case should as a general rule be decided only after hearing the evidence. The questions of law that have to be determined are often highly fact-sensitive. The risk of injustice is minimised if the answers to these questions are deferred until all the facts are out. The tribunal can then base its decision on its findings of fact rather than on assumptions as to what the claimant may be able to establish if given an opportunity to lead evidence."

38. However, more recent cases have shown a keener interest in disposing of poor cases. Mummery LJ commented in Gayle v Sandwell & West Birmingham Hospitals NHS Trust [2011] IRLR 810 at paragraph 12:

> "One area of debate is about cases of little or no merit, but considerable nuisance value. All are agreed that they should be cleared out of the system as soon as possible. They should not be allowed to take a disproportionate amount of time in the ET or cause the other party to incur irrecoverable legal costs and loss of valuable working time."

39. In addition, Judge Peter Clark in Deer v University of Oxford UKEAT/0532/12/KN [2013] stated at paragraph 42:

> "There is a tendency to treat the observations of Lord Hope of Craighead in [Anyanwu] paragraph 37 as meaning that discrimination claims, including victimisation, must always be permitted to run their full course. That is too generalised an approach. Each case must be viewed on its own facts and circumstances."

40. In discrimination cases, the burden of proof rests initially on the claimant to prove on the balance of probabilities facts from which the tribunal could decide, in the absence of any other explanation, that the employer did treat the claimant less favourably because of the relevant protected characteristic. In Madarassy v Nomura International Plc [2007] IRLR 246 it was established that the burden of proof in discrimination cases does not pass to the employer simply on the claimant establishing a difference in status and a difference in treatment. There must be something more. If the claimant can establish this, the burden of proof shifts to the respondent to show that on the balance of probabilities it did not discriminate. If the respondent is unable to do so, the tribunal must hold that discrimination did occur.

41. As regards amendments, the first question which the tribunal needs to determine is whether or not an amendment to the claim is actually required. If it is, the tribunal then needs to determine whether or not such an amendment should be granted.

42. The leading case on amendments is the case of Selkent Bus Co Ltd v Moore [1996] ICR 836. In determining whether to grant an application to amend, the tribunal must always carry out a careful balancing exercise of all the relevant factors, having regard to the interests of justice and to the relative hardship that would be caused to the parties in granting or refusing the amendment., The following factors were identified as being potentially relevant: the nature of the amendment; the applicability of time limits; and the timing and manner of the application. However, the test is essentially a balance of the prejudice to one party should the amendment be granted against the prejudice to the other party should it not be granted.

Conclusions on the issues

43. First, the decisions below are set against the background of the sections of the claim form which Mr Carter took us to which are set out in paragraphs 34.1 – 34.3 above and the repeated and seemingly obsessive references made by the claimant throughout his hearing to "faked" documents and to stealing at the respondent. All this is indicative of someone whose view of reality is not normal or reasonable and it smacks of someone who is prone to conspiracy theory. That is relevant in any

assessment of the likelihood of the claimant proving the facts which form the basis of her complaints.

44. Of less importance, but of relevance nonetheless, is the fact that the claim was brought after the incident on 7 March 2022 for which the claimant was aware she was likely to be disciplined and for which she was ultimately dismissed. As Mr Carter submits, that provides the context of why the claimant chose to bring these complaints at this stage, when many of them relate to historic matters going back to 2021.

The race discrimination complaints

Salah Mohammed/the claimant's GP

45. I accept that this complaint, as Mr Carter submits, is completely implausible. The idea that a manager would give false information to a medical practitioner in the hope or expectation that that medical practitioner deliberately wouldn't do their job properly is inherently implausible. Furthermore, when that information is simply informing the GP that the claimant was Ukrainian rather than Lithuanian, it becomes more implausible still; why would a GP make a different diagnosis because he thought that his patient was Ukrainian rather than Lithuanian? This is a conspiracy theory, consistent with the nature of the claimant as set out above. Furthermore, it would be virtually impossible to prove that Mr Mohammed gave this information to the claimant's GP or that he did so for this purpose, and still more so to prove that the GP changed his assessment of the claimant because of it. For these reasons, this allegation has no reasonable prospect of success and it is therefore struck out. It is unquestionably one of those "plain and obvious" cases.

46. In addition, the allegation is about a year out of time. In the light of the decisions below, there is no in time allegation to which it could be joined as part of conduct extending over a period such that it would be deemed to be in time. No reason has been given why it was not brought earlier and the high probability is that it has been brought now only as a result of the claimant knowing that she was about to be disciplined and quite possibly dismissed. I also therefore consider that there is no reasonable prospect of the claimant persuading the tribunal that it would be just and equitable to extend time in relation to this allegation such that the tribunal had jurisdiction to hear it. Accordingly, it is struck up for that reason as well.

Lin Chaun McMenamin/cars following the claimant

47. Again, this allegation is completely implausible. The idea that an employee of the respondent would provide, to a whole range of different people, information about the way the claimant was dressed so that they could then follow her in cars on a number of different occasions over a period of years, and on one occasion attempt to steal her bicycle, is a further conspiracy theory. Why would Ms McMenamin do this? Why would all these people spend so much time following the claimant in cars? There is no reasonable prospect of the claimant proving these facts. This allegation is therefore struck out. This is, again, another "plain and obvious" case.

Leo Aquilio/Marjorie Mitchell

48. The allegation is that, whilst the respondent followed its procedures in relation to the claimant, a black manager did not follow those procedures in relation to another

black employee such that the claimant has in this respect been treated less favourably because of her colour. The issues regarding the claimant's propensity to conspiracy theory are relevant here too to whether she is likely to prove the facts of this allegation. However, there is a conflict of factual evidence here and whether this happened would ordinarily be a question of evidence, to be determined by a tribunal. The allegation a does not in itself have the characteristic of inherent implausibility which the two previous allegations so clearly have. Notwithstanding my concerns about the claimant's general plausibility, it is not possible to say whether or not it could be proven without hearing that evidence. In terms of its merits, therefore, I cannot say that it has no reasonable prospect of success on its merits and do not therefore strike it out on those grounds.

49. However, this allegation is considerably out of time. As noted, the treatment can only have occurred (if it did occur) between 11 March 2020 and 1 June 2021 or at the latest autumn 2021. It is therefore considerably out of time. There is no in time allegation to link it to such as to amount to conduct extending over a period such as to bring it in time. The claimant would, therefore, have to prove that it was just and equitable to extend time in relation to this allegation; the burden of proof is on her. No good reason has been given as to why it could not have been brought earlier. Furthermore, as with the other out of time allegation, I consider that the reason this historical allegation has been brought now is because of the fact that the claimant knew that she was going to be disciplined and quite possibly dismissed. I do not, therefore consider that she has any reasonable prospect of proving that it would be just and equitable to extend time such that the tribunal had jurisdiction to hear this allegation. Accordingly, it is struck out.

50. Whilst that disposes of this allegation, I would add that, in any assessment of whether it was just and equitable to extend time, the tribunal would be likely to take into account the claimant's propensity to conspiracy theory, which undermines the allegations which she makes generally, and for that reason would be even less likely to extend time in relation to an allegation which is considerably out of time.

51. In summary, therefore, all of the three allegations of direct race discrimination are struck out on the basis that they have no reasonable prospect of success.

Whistleblowing amendment application

52. As already identified, there was no whistleblowing complaint set out in the claim form, let alone one in the terms of the complaint eventually identified in my discussion with the claimant on the morning of this hearing. The most that there was in the claim form was a reference to *"the whistleblowing matter"*, with no specifics given. An amendment to the claim would therefore be required for this complaint to be brought.

53. In applying the Selkent test, I note that the alleged detriment is said to have taken place in June or July 2022. Therefore, the allegation is and remains in time and the claimant could, if she put in a claim as at the date of the amendment application on the date of this hearing, bring that allegation as an in time allegation. It was also made at a relatively early stage of the proceedings.

54. However, it was such a tortuous process to actually ascertain what the basis for this complaint was and the discussion was for the most part all about the claimant's obsession with forged documents and with the respondent's employees stealing

things. When I asked the claimant whether or not there was a detriment, the claimant only after a while mentioned the Rachel Jennings alleged comment. Furthermore, despite my explaining how a whistleblowing complaint operated, there seemed to be no understanding or acknowledgement by the claimant of the fact that such a complaint will only succeed if there was a detrimental act which was done because of the alleged protected disclosures. Coupled with the claimant's obsession with forged documents and stealing and the other evidence of the implausibility of allegations which the claimant makes in general and her propensity to conspiracy theory, I consider that the prospects of this complaint succeeding are extremely low. In applying the balance of prejudice test, I note that the claimant already has other extant complaints (her sick pay complaints) which are proceeding and all that she would lose is the ability to bring a whistleblowing complaint which appears to have little prospect of success. By contrast, if I were to allow this amendment, the respondent would be put to considerable prejudice because it would have two defend a complaint which has multiple alleged protected disclosures involving lots of individuals, so a lot of witness evidence would be required to defend it. Furthermore, given the nature of the claimant's approach, the time involved in defending such a complaint would be likely to be extensive and costly. There would, therefore, be enormous prejudice to the respondent if I were to allow this amendment.

55. The balance of prejudice is therefore clearly against allowing this amendment and the amendment application is accordingly refused.

Written reasons

56. I gave my reasons for these decisions orally at the hearing. At the end of the hearing, the claimant asked for the written reasons for my decision.

27 September 2022

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Employment Judge Baty

JUDGMENT and REASONS SENT to the PARTIES ON

28/09/2022

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FOR THE TRIBUNAL OFFICE