



EMPLOYMENT TRIBUNALS

Claimant: Mr Jatinder Singh Badyal

Respondents: Her Majesty's Prison and Probation Service

Record of a Preliminary Hearing heard by CVP at the Employment Tribunal

Heard at: Nottingham **On:** 15 December 2021

Before: Employment Judge Hutchinson (sitting alone)

Representation

Claimant: In person
Respondent: Patrick Keith, Counsel

JUDGMENT

The Employment Judge gave Judgment as follows:

1. The Claimant's application to amend his claim is refused.

REASONS

Background to this Hearing

1. The Claimant presented his claim to the Tribunal on 5 November 2020. He had notified ACAS under the early conciliation procedure on 1 October 2020 and ACAS had issued its early conciliation certificate on 9 October 2020. The only Respondent

named on the conciliation certificate is the Respondent.

2. The Claimant had been employed at HM Prison Gartree as a Prison Officer from 1 January 2017 until 30 September 2020 when he was dismissed.
3. His claims against the Respondent are:
 - Unfair dismissal.
 - Discrimination on grounds of religion or belief.
 - Discrimination on grounds of race.
 - Discrimination on grounds of disability.
 - Breach of contract.
 - Harassment.
 - Victimisation.
4. In his claim form the Claimant provided little detail of his allegations. The claim form did explain how he had been the subject of allegations of misconduct on two occasions. He did not make any mention in his claim form that the person who had complained about him had been motivated by his religion or belief or his race. On receipt of the claim it was listed for a 3-day hearing commencing on 14 February 2022. Case Management Orders were made, and the case was also listed for a Case Management Preliminary Hearing which was conducted by my colleague Employment Judge Brewer on 14 May 2021. At that hearing he extended the length of the hearing to 5 days.
5. At that hearing he said for the first time that he wished to add two allegations to his claim which had not been referred to in the claim form. The Judge noted that until that date the Respondent had been unaware of any such allegations. These were:
 1. That in early 2018 Prison Officer, Laura Henson made allegations against him because of his race.
 2. That in early 2018 Prison Officer, Laura Henson made the allegations against him because of his religion.

His was told by Judge Brewer that he should write by 11 June 2021 to apply to amend his claim form.

On 11 June 2021 he made that application but apart from making the allegation he provided no details at all about why he thought that Laura Henson had been motivated by either his race or religion or belief.

On 22 June 2021 the Respondent set out their objections to his application. They pointed out that it had been brought outside the 3-month time limit and it would not be just and equitable to extend time for a number of reasons:

1. He had not previously made any complaint of racial or religious discrimination to the Respondent in relation to these allegations.

2. His claim was now made more than 2 years out of time.
3. The Respondent is prejudiced by the late notification of these complaints because:
 - a) He had not provided any reason for the delay. When he had raised his grievance, he had not mentioned anything about this complaint.
 - b) The cogency of any evidence would be significantly affected by the delay.
 - c) He had not acted promptly in bringing these two new allegations and there was no reason why they were not included in the original ET1.
 - d) He would still be able to maintain his claims in relation to the alleged way in which the Respondent undertook his investigation and so there would be not significant prejudice to him.

The Hearing Today

6. The first part of my hearing today was to deal with this application to amend. I heard from the Claimant and from Mr Keith for the Respondents.

The Law

7. Mr Keith referred me to the well know case of ***Selkent Bus Company Limited v Moore [1996] IRLR661.***
8. As Mr Justice Mummery in that case said;

“Whenever the discretion to grant an amendment is evoked, the Tribunal should take into account all the circumstances and should balance the injustice and hardship of allowing the amendment against the injustice and hardship of refusing it”.
9. He went on to say;

“Whenever taking any factors into account the paramount considerations are the relative injustice and hardship involves in refusing or granting an amendment”.
10. Mr Keith went on to describe the three issues that are “certainly relevant”. They are;
 1. The nature of the amendment.
 2. The applicability of time limits.
 3. The timing and manner of the application.
11. Mr Keith then went on to provide me with details of other cases that I should consider namely;

- **Chandhok v Tirkey UKEAT/0910/14/KN**
- **Hendricks v Commissioner of Police for the Metropolis [2003] ICR530**
- **British Coal Corporation v Keeble [1997] IRLR336**

12. He reminded me of the burden of proof in discrimination cases provided in section 136 of the Equality Act 2010 which states;

“(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

(3) But subsection (2) does not apply if A shows that A did not contravene the provision”.

13. Mr Keith referred me to the case of **Madarassy v Nomura [2007] ICR867.**

14. With regard to the question of the Claimant being a litigant in person Mr Keith also referred me to the case of **Hunwicks v Royal Mail Group Plc UKEAT/003/07/ZT.**

My Conclusions

15. I agree with Mr Keith that the claim form is not just something to “set the ball rolling” and to allow the application to amend his claim would be to understand the claim as being “far wider than that which is set out in the ET1”. To enable him to make a claim there must be some reference to it in the ET1. In this case there was no reference to it at all.
16. I am satisfied that although the litigant in this case does not have legal representation, he did not need legal representation in respect of this matter. He simply at no stage referred to any discrimination by his accuser until the Telephone Case Management Preliminary Hearing two years after the event.
17. I am satisfied that the amendment here is a substantial one and it is not simply a relabelling of the existing claim. It is an entirely fresh claim against a Claimant who was not even named in the ET1 and has had no knowledge of it for some two years.
18. I see that although he has alleged that his accuser discriminated against him on the grounds of his race and/or religion he has provided no grounds for saying as such.
19. He says that he had referred to his claim against his accuser in his grievance, but I have now seen the grievance document and there is no reference to her discriminating against him at all.
20. He says to me that he did not think that he needed to mention it in the ET1 because “he believed it would be covered within the grievance procedure, which

is part of my initial complaint”.

21. Again, as Mr Keith says Miss Henson did not carry out the grievance procedure and had no idea that any grievance was being raised against her.
22. In fact, the Claimant has not provided me with any evidence that he raised any complaint about Miss Henson at any time during his employment or after he left his employment until May 2021.
23. His allegation relates to April 2018 and August 2018 and he did not make his application until June 2020.
24. The allegations therefore are significantly out of time.
25. I am also satisfied that the cogency of the evidence is likely to have deteriorated and even now he has failed to provide any information about the basis of his complaint against Miss Henson.
26. Throughout the time he has known that his accuser made the allegations against him he has not raised any issue about it at all.
27. This is a case that is listed for hearing in February 2022. If I granted the application there would have to be a postponement of that hearing. The parties have already been waiting for a considerable period to have their case heard.
28. I am satisfied that the Respondents would face significant injustice and hardship if I agreed to the application and would have a great deal of difficulty investigating the matter that happened so long ago. It would also involve them expending a great deal of costs which they are unlikely to be able to recover.
29. The Claimant hasn't produced any evidence in support of his allegations and so the only determination would be by oral evidence of what happened three years ago. As we know oral evidence deteriorates over time and the evidence in this case will be significantly decayed and this will present the Respondents difficulties in defending itself against the claim.
30. These allegations against Miss Henson are serious allegations of discrimination and I am satisfied it would put her to considerable hardship if she had to defend herself at such a late stage.
31. So far as the Claimant is concerned, he can still bring the remainder of his claims and the refusal of this application does not deprive him of a remedy.
32. In any case the claims really have no prospects of success. He has not put forward any explanation as to why he alleges Miss Henson made the relevant allegation because of his race or religion.
33. In those circumstances the application is refused.

CASE MANAGEMENT ORDERS
Made pursuant to the Employment Tribunal Rules 2013

1. The Claimant has made an application for specific disclosure which is set out in his letter of 22 November 2021. In his correspondence the Claimant appears to accept the disclosure sought is not relevant to the issues in the case. He says that the relevance is “that there has been a breach of data protection resulting in danger to myself and my family’s safety”.
2. I have seen the long list of disclosure requested and see no basis upon which I could even consider that the huge amount of documentation requested is in anyway relevant to the issues in the case.
3. This is already a case that has a considerable amount of documentary evidence for the Tribunal to consider. There is no justification for making any further disclosure and his application for specific disclosure is therefore refused.

Employment Judge Hutchinson

Date: 4 January 2022

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