



EMPLOYMENT TRIBUNALS

Claimant: Mr M Skorek

Respondent: Encirc Ltd

Heard at: Manchester (in private; by CVP)

On: 11 September 2024

Before: Employment Judge K M Ross (sitting alone)

REPRESENTATION:

Claimant: Mr Kinsey, Counsel

Respondent: Mr Mohamed, solicitor.

JUDGMENT

The judgment of the Tribunal is that:

1. The claimant is permitted to amend his claim to include a claim that he was automatically unfairly dismissed pursuant to section 103A Employment Rights Act 1996 by reason of the protected disclosures set out in his further and better particulars of claim document.
2. The claimant is permitted to amend his claim to bring a claim that he suffered a detriment when he was subject to disciplinary proceedings by the respondent on 6 March 2023 for having made a manoeuvre in his private vehicle that was common practice among the respondent's workforce and the reason for the treatment was the disclosures set out in his further and better particulars document.

REASONS

The Relevant Law

1. I reminded myself I have an inherent discretion in rule 29 of the Employment Tribunal Rules of Procedure 2013 to permit an amendment to the claim. I reminded myself of the Presidential Guidance on Case Management 2014 which gives detailed information about the considerations to be borne in mind in relation to the amendment of claims.

2. I reminded myself of the well-known principles of **Selkent Bus Company v Moore [1996] ICR 936** and **Cocking v Sandhurst [1974] ICR 650**.

3. The guidance and case law reminds me that I must consider whether an application to amend is actually required. In some cases where the same facts are relied upon but with a different legal label it is no more than a relabelling exercise and no amendment is required.

4. If an amendment is required I must consider the nature of the proposed amendment, the relevance of time limits, the timing and manner of the application, the balance of injustice and hardship between the parties in terms of granting or not granting the amendment and any other relevant factors.

Conclusion

5. I determined, that an amendment was required and having regard to the relevant factors, that the balance of injustice and hardship weighed in favour of the claimant. If the claimant was not permitted to amend he would not have the benefit of a hearing where his public interest disclosure dismissal and detriment claims could be heard. The remedy he was entitled to was also affected, as was the composition of the panel who would hear the case. By contrast, the prejudice to the respondent was limited. The additional claims would require some further investigation. The allegations occurred in the relatively recent past and although memories fade, the relatively short time which has elapsed means a fair hearing would still be possible.

6. In terms of the nature of the application, I was aware that the claimant's original claim form appeared to potentially include a claim for automatic unfair dismissal for making protected disclosures when reading the narrative in box 8.2. However, I was not satisfied that the information was sufficient to amount to a relabelling exercise.

7. However, in terms of the section 103A ERA 1996 claim, the information that was new was the protected disclosures under s43B ERA 1996. The fact that the claimant wished to bring a section 103A claim was not new. The detriment claim was new but it is inextricably linked with the unfair dismissal claim because the claimant is relying on being subject to disciplinary proceedings as being a detriment.

8. I reminded myself that the claimant is a litigant in person, or was when he presented these proceedings, and he speaks English as a second language. It is in the interests of the respondent and the Tribunal to have a claim which is clearly and succinctly pleaded, which the claim now is.

9. I turn to the timing of the application.

10. There has been a delay in this application being heard due to a backlog of cases in the Employment Tribunal. That is not the claimant's fault. I also accept that the claimant believed that once he had appointed legal representatives his claim was simply being particularised and so no formal application was necessary. I therefore discount the fact that it has taken some time for this application to be heard.

11. Finally, I turn to the issue of time limits. Although arguably there is an issue in relation to time limits, not with regard to the unfair dismissal claim but with regard to

the detriment claim, I reminded myself that time limits are just one aspect of all the matters that I should take into account. The detriment claim is inextricably linked with the claimant's original claim, and I do not consider that the issue of time limits is sufficient to defeat the amendment application when considering the big picture. Accordingly, I am satisfied that the balance of injustice and hardship is in favour of the claimant. A fair trial is still possible. The amendment is allowed.

Employment Judge K M Ross
Date: 16 September 2024

JUDGMENT AND REASONS SENT TO THE PARTIES ON
23 September 2024

FOR THE TRIBUNAL OFFICE

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<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>