

THE INDUSTRIAL TRIBUNALS

CASE REF: 16066/18

CLAIMANT: Gary Owens

RESPONDENTS: 1. Anne Clarke
2. Newry Filling Station Ltd t/a Niall Clarke Oils

DECISION ON A PRE-HEARING REVIEW

The oral decision, with reasons, of the tribunal was to allow the amendment of the claim to include a claim of alleged unlawful direct discrimination contrary to the Disability Discrimination Act 1995 in relation to the incidents set out in the claim form.

CONSTITUTION OF TRIBUNAL

Vice President (sitting alone): Mr N Kelly

APPEARANCES:

The claimant was represented by Mr Gerard O'Neill.

The respondents were represented by Mr M Quigley, Barrister-at-Law, instructed by Luke Curran & Co Solicitors.

1. The Pre-Hearing Review was listed to determine:

“Whether leave should be granted to the claimant to add a claim of direct disability discrimination pursuant to the Disability Discrimination Act 1995?”

An earlier application to include an amendment in relation to alleged protected interest disclosure detriment had been withdrawn.

2. The claimant had notified the tribunal in an email dated 16 December 2018 that:

“I should have ticked the disability box on the tribunal form -”

3. The tribunal responded to that email to state that it was been treated as *“an additional information to your claim”*.

4. It appears that the claimant had taken that response as an acceptance of an amendment to his claim to include a claim of direct disability discrimination in relation to the matters pleaded in the claim form. That explains why the claimant

had not raised the issue during the Case Management process.

5. It appeared to be a relabelling exercise and given the content of that email, it was just and equitable to extend the time limit as necessary to enable that additional claim to be added as an amendment.
6. The parties were reminded that the papers disclose a potential criminal prosecution in this matter. I asked that the respondent solicitor should double check, insofar as is possible, with the PPS to find out whether the criminal prosecution was still potentially live. I stressed that if a criminal prosecution was still possible, this matter would have to be stayed.
7. Subject to that that, the directions were:
 - (i) The amendment of the claim to include a claim of alleged direct disability discrimination contrary to the 1995 Act (not a reasonable adjustments claim) in respect of the items pleaded in the claim form was allowed.
 - (ii) The disability alleged by the claimant is degenerative disc disease.
 - (iii) The claimant shall provide **signed and dated** witness statements in respect of liability and remedy to the respondent's solicitor *by first class post or by email no later than 5.00 pm on 27 September 2019.*
 - (iv) The respondent shall provide **signed and dated** witness statements in respect of liability and remedy to the claimant's representative *by first class post or by email no later than 5.00 pm on 11 October 2019.*
 - (v) The claimant shall provide medical evidence to substantiate the claim of alleged disability for the purposes of the 1995 Act to the respondent's solicitor *by 5.00 pm on 18 October 2019.*
 - (vi) The claimant's representative shall provide four copies of the exchanged witness statements and four copies of the exchanged documentation (without duplication and with an Index) to the tribunal **five working days** before the hearing.
 - (vii) The hearing is listed for **14, 15 and 16 January 2020.**
 - (viii) The parties shall agree between themselves a timetable for the cross-examination and brief re-examination of each witness, allowing time for final submissions within the time allotted for hearing.

Vice President:

Date and place of hearing: 12 September 2019, Belfast.

Date decision recorded in register and issued to parties: