



# EMPLOYMENT TRIBUNALS

**Claimant:**  
Mr A Martinez Lopez

v

**Respondent:**  
SIG Trading Limited

## PRELIMINARY HEARING

**Heard at:** Watford

**On:** 23 June 2017

**Before:** Employment Judge Bedeau

### Appearances

**For the Claimant:** In person

**For the Respondent:** Ms T Burton (Counsel)

## JUDGMENT

1. The claimant's application to amend his claim form by adding direct disability discrimination based on his dismissal and failure to make reasonable adjustments as well as further acts of direct race discrimination is refused.
2. The claimant's unfair dismissal claim based on section 98(4) Employment Rights Act 1996 is struck out as he does not have two years' continuous service with the respondent.
3. The claimant's direct race discrimination claim in his claim from 3300223/2017, is dismissed upon his withdrawal.
4. The respondent's application for a strike out order or deposit order is refused.

## REASONS

1. In the claimant's claim form, case number 3300175/2017, presented to the tribunal on 26 December 2016, he made claims of breach of contract in respect of not being paid company sick pay while on sick leave and direct race discrimination, in that an English employee was paid company sick pay for eight months whereas he only received it for three months.
2. In his second ET1 claim, 3300223/2017, presented on 1 February 2017, the claimant ticked the boxes in respect of race, notice pay and other payments and in section 8 stated that he was claiming wrongful dismissal, that the procedure leading up to his dismissal and during the dismissal hearing was

unfair. He also stated in section 9 of the form that he was claiming unfair dismissal and was seeking compensation.

3. Nowhere in his claim forms did he make reference to his disability, namely the injury to his knee impairing his mobility. In both claim forms, in answer to the question in section 12 whether he had a disability, he ticked the 'No' box.
4. It was not until 4 April 2017, when he applied to amend his claims to add disability being the reason for his dismissal in place of race discrimination. In the second claim form, he repeated his claim for company sick pay while on sick leave instead of statutory sick pay.
5. From March 2017, the claimant regularly sent email correspondence to the tribunal and to the respondent's representatives setting out what he claimed to be further acts of discriminatory treatment. The respondent's representatives were not able to fully understand the case the respondent had to meet as the claimant's account kept changing with each correspondence.

### **Submissions**

6. It is the respondent's case that the claim of disability discrimination, namely direct disability discrimination and failure to make reasonable adjustments, were new claims, therefore, the Selkent principle applies.
7. The claimant told me that following his accident at work in June 2016 that he received company sick pay from 20 June 2016 to 1 September 2016. From June, he had been in contact with a firm of legal advisers who, on payment of £20, was prepared to give brief advice. He initially sought advice with regard to his accident at work in June and latterly in respect of his employment. They thought that he had a case of disability discrimination but, according to the claimant, advised him against it. Later, their advice was that he should pursue such a claim. With that in mind, he applied to amend his claim form to add disability discrimination being the reason for his dismissal as he suffered damaged ligaments to his knee.

### **The law**

8. I took into account the approach in Selkent Bus Co Ltd v Moore 1996 ICR 836, a judgment of the Employment Appeal Tribunal, namely the interests of justice and the relative hardship that would be caused to the parties by either granting or refusing the amendment. In particular, the nature of the amendment; the applicability of time limits; and the timing and manner of the application.

### **Conclusion**

9. As regards the nature of the amendment, the direct disability discrimination is, in my view, a new claim not referred to in either the first or second claim form.
10. Even if the claimant is right that he had been told by the respondent's human resources business partner on 25 December 2016, that he was dismissed at a hearing on 31 October 2016, there was still a delay in putting in his application

to amend on 4 April 2017. It was an application which, in my view, should have been made in mid to late February or early March 2017, as he had been taking legal advice and was told by the respondent, according to him, on 25 December 2016, that his employment was terminated. If he believed that his dismissal was because of his claimed disability, then there was nothing that prevented him from stating that in his second claim form. From his account to me of the limited legal advice he received, it appears nothing more than a suspicion that he was dismissed because of his alleged disability.

11. In relation to the manner of the application, I do take into account that the claimant sent a large number of emails running into several pages to the respondent's legal representatives and to the tribunal. There was a lack of coherency in terms of the content and his case kept on changing as well as expanding. He told me that that was because he would think about different issues at different times and would put those in writing and forward them to the respondent's representatives and to the tribunal. This was what he did from early March 2017. Based on the volume and frequency of the emails, the respondent does not understand how the claimant put these additional matters against it. For my part, I do share their concerns.
12. Were I to allow the discrimination claims based on the claimant's disability, the respondent would require a separate preliminary hearing to determine the issue of disability. In so doing, they would incur further costs in preparing for such a hearing, possibly calling witnesses. The claimant already has a race discrimination and breach of contract claim against the respondent.
13. On balance, I concluded that the prejudice likely to be suffered by the respondent in granting the claimant's application outweighs the prejudice the claimant is likely to suffer were I to refuse it.
14. Accordingly, I refused the claimant's application to amend.
15. As the claimant decided to withdraw his direct race discrimination claim and to apply to amend by adding in its place disability discrimination, I dismissed his direct race discrimination claim.
16. The claimant did not have two years' continuous service. Therefore, there was no basis to apply to amend to add that claim as a valid claim and it was struck out.
17. The claims against the respondent are in respect of the first claim form, breach of contract and direct race discrimination. In the second claim form, wrongful dismissal.

---

Employment Judge Bedeau

Date: 26 September 2017.....

Judgment and Reasons

Sent to the parties on: .....