



EMPLOYMENT TRIBUNALS

Claimant: Miss D Trench

Respondent: (1) Mr H Patel
(2) Performance Bar Limited

Heard at: Nottingham (in Chambers) **On:** 21 September 2021

Before: Employment Judge Victoria Butler (sitting alone)

Appearances:

For the Claimant: written representations

For the Respondents: written representations

JUDGMENT

The decision of the Employment Judge is:

1. The Claimant's application to amend her claim is refused.
2. The claim against the 1st Respondent, Mr H Patel, is dismissed.

REASONS

1. The Claimant presented her claim to the Tribunal on 4 November 2020 following a period of early conciliation between 3 November 2020 and 4 November 2020. She claims unfair dismissal and was unrepresented at the time of submitting her claim.
2. The parties attended a closed telephone preliminary hearing before me on 14 July 2021. By this stage the Claimant had secured legal representation who e-mailed the Tribunal prior to the hearing to confirm that the Claimant also claims automatically unfair dismissal for whistleblowing under section 103A Employment Rights Act 1996 ("ERA") and victimisation under s.27 Equality Act 2010 ("EQA").
3. The Claimant's position is that the claims of automatically unfair dismissal and victimisation are merely further particulars of matters already contained within the

narrative in the originating claim, but I noted the following in my case management summary:

“However, the Tribunal listed the claim as an ‘ordinary’ unfair dismissal only and, whilst the Claimant ticked the box ‘if claiming discrimination, a recommendation’ in section 9 of the claim form (which asks Claimants what they want if they are successful in their claim), she did not tick any of the discrimination boxes at Section 8, nor does she mention whistleblowing in her narrative. I was of the view, therefore, that the new claims should be subject to an application to amend and I will determine it.

Importantly, the question of whether Mr Patel can be dismissed as a Respondent to these proceedings can be determined once I have heard the application to amend - as the claim stands, there is no live discrimination claim against him”.

4. The Claimant’s representative suggested that the Claimant was also pursuing a whistleblowing detriment claim against Mr Patel, but I saw nothing within the narrative of the email dated 24 February 2021 to indicate this to be the case.
5. The parties were agreeable to me hearing the application to amend on the papers and I made an order that the Claimant submit the application by 30 July 2021.

The application

6. The application to amend was received late on 3 August 2021 due to issues with the Claimant’s representative’s e-mail server the week before. I have no reason to doubt the explanation for the slight delay.
7. The application to amend consisted of an amended Grounds of Claim but no submissions addressing the considerations in *Selkent Bus Company Ltd v Moore 1996 ICR 836* as incorporated into the ‘*Presidential Guidance on General Case Management – amending the claim or response*’. Absent those submissions, I am unable to consider all the circumstances and balance the injustice and hardship of allowing the amendment against the injustice and hardship of refusing it. Accordingly, the application is refused.

Mr Patel

8. At it stands, the Claimant’s claim is for unfair dismissal under ss.94 and 98 ERA. Given that there is no claim for discrimination or whistleblowing detriment in existence, the Tribunal has no jurisdiction to hear a case against Mr Patel and the proceedings against him are, therefore, dismissed.

Employment Judge Victoria Butler

Date: 21 September 2021

Sent to the parties on:

23 September 2021

.....

For the Tribunal:

.....