



EMPLOYMENT TRIBUNALS

Claimant

Dr O Oginni

Respondent

v Greenbrook Healthcare (Hounslow) Ltd

Heard at: Huntingdon (by telephone)

On: 11 February 2022

Before: Employment Judge Ord

Appearances

For the Claimant: In person.

For the Respondent: Mr J England (Counsel).

JUDGMENT ON APPLICATION TO AMEND

The claimant's application to amend his claim to add a claim of detriment for having made protected disclosures is refused.

REASONS

1. This matter came before me for a preliminary hearing as directed by Employment Judge Maxwell. The case was originally listed for a three day hearing with today as the last of those three days but that hearing was postponed and this preliminary hearing was listed as a result of the further and better particulars lodged by the claimant on 10 May 2021 which made two references to what could potentially be a claim for detriment for making protected disclosures.
2. The claim form set out the details of the alleged discriminatory treatment about which the claimant complains all of which were attributed to the basis of his race. There was no mention in the claim form whatsoever of any protected disclosure. When the claimant was ordered to provide further and better particulars he responded and the further particulars included these words:

“Since I expressed my concern about the organisation’s lack of clear support for staff particularly regarding the provision of PPE ... in April 2020”

and

“There is no doubt that the antecedent event regarding PPE as well as my race as a black African impacted the decision to suspend me.”

3. The claimant had been suspended from work on 17 June 2020, his claim form was presented on 14 October 2020 and those particulars were provided on 10 May 2021.
4. I note in particular that the claimant did not ask for an amendment, this was highlighted by the respondent to the tribunal and hence today's hearing.
5. The question for me is whether or not to allow the claimant to amend his claim to add a claim of detriment for making protected disclosures. I have had regard to the principals set out in the case of Selkent Bus Company Limited v Moore [1996] UKEAT151. In particular I have had regard to the nature of the amendment, this is a substantial alteration pleading a new cause of action. The respondent has hitherto been responding to an allegation only of race discrimination.
6. I have had regard to the time limits in this case. The matters the claimant complains of as relevant to his alleged disclosures pre-date in part his suspension. He refers to ostracism and to the terms of a letter he was unwilling to put his name to. These claims are significantly out of time, the suspension was on 17 June 2020 and the earliest possible date I could consider as being an application to amend although no application was made at the time was the date of the further particulars, the 10 May 2021 which puts the application as at least eight months out of time.
7. As well as timing I have had regard to the manner of the application because in truth this was not made by the claimant at all, the respondent identified the potential issue.
8. Having regard to those matters I must also consider the balance of prejudice in this case. It is a completely new head of claim which the claimant seeks to add. Although it is referred to in the claimant's grievance meeting which took place on 11 November 2020 it was not I am told part of the original grievance which he lodged.
9. The individuals involved in the matter complained of at the time are I am told no longer employed by the respondent, the length of the hearing is likely to be extended if the amendment was allowed, there will have to be further disclosure and further witness evidence not only from the respondent but also from the claimant all which will add to the delay which has already been apparent in this case.
10. The balance of prejudice clearly points towards refusing the amendment, the complaints to date have been squarely put on the basis of race and there has been no reliance at all on any protected disclosures, the

application is substantially out of time, it would involve a new head of claim, the respondent would be severely prejudiced in dealing with that new claim and for those reasons the application is refused.

Employment Judge Ord

Date: 23 February 2022

Sent to the parties on: 3/3/2022

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For the Tribunal Office