



EMPLOYMENT TRIBUNALS

Claimant

Mr D Ludhra

v

Respondent

Morgan Sindall Construction Infrastructure
Limited

RECORD OF A PRELIMINARY HEARING

Heard at: Watford (CVP)
Before: Employment Judge R Wood

On: 24 May 2022

Appearances

For the Claimant: Mrs Sharma (mother)

For the Respondent: Miss Wheeler (Counsel)

JUDGMENT

1. The application to amend the ET1 has been granted.

REASONS

1. In brief, the claim involves a Claimant who was engaged by the respondent in 2019 as an apprentice. It is the status of the apprenticeship contractor which is likely to be the primary issue between the parties at the final hearing. The claimant was dismissed from that apprenticeship on 15 July 2020. The ET was submitted on 12 November 2020, which is made up of the pro-forma ET 1 form, as well as an extensive particulars of claim to which the form makes express reference. I am invited to look at both documents together as constituting the claimant's pleadings in this case. No issue is taken by the respondent in respect of this approach. In terms of the pleadings, nothing further happens until there is an application to amend the ET1 by the claimant (or what is subsequently treated as an application to amend) on 3 November 2021, which is in the days preceding the case management hearing on 5th November 2021. This meant that the application was submitted about 12 months after the ET1. The claim, in summary, is for breach of contract and/or wrongful dismissal. What is said by claimant is that he was dismissed in a way which did not comply, either by the mere fact of dismissal, or by reason of the procedure adopted, with the terms of his engagement as an apprentice. There is no issue that the claimant was engaged, ostensibly at least, under an approved English apprenticeship under ASCLA. I say ostensibly, because I understand that ASCLA is referred to expressly in the relevant contract

documents, although I have not seen them. This point is not disputed by the claimant. Therefore, on its face, the contract seeks to apply ASCLA. The point that the claimant makes, and which forms the subject of the amendment sought, is that the contract doesn't comply with the various requirements of ASCLA. As a result, it is submitted that the contract should be construed as a common law contract of apprenticeship. This is potentially significant since the terms under which an apprentice can be dismissed prior to the full term of their contract under a common law arrangement are much more restrictive than they would be under ASCLA. This might have a significant impact on the outcome of the case, and in particular on the scope of the remedy sought.

2. Any application to amend a claim in this context is to be subject of the exercise of a judicial discretion, which is guided by the matters set out in Selkent Bus Co Limited v Moore [1996] IRLR 661. Such a discretion should be exercised in a manner which satisfies the requirements of relevance, reason, justice, and fairness inherent in all judicial discretions. In particular, I am required to look at the nature of the amendment sought, the applicability of statutory time limits, and the timing and nature of the application.
3. I also have regard to the Tribunal overriding objectives including saving expense, avoiding delay, avoiding unnecessary formality, and seeking flexibility in the proceedings, and so on.
4. My view is that this is an application properly made and I allow the application. It is not an easy decision. My provisional view had been that the proposed changes did not amount to an amendment requiring the permission of the Tribunal. I regarded it as a clarification of the existing cause of action, namely breach of contract, which is clearly pleaded in the ET1. The extended particulars of claim spend a lot of time examining and pleading certain breaches of the apprenticeship agreement. However, on reflection, Miss Wheeler is correct, in that what the ET1 does not do is to allege the claimant's contract fails to comply with the requirements of ASCLA, and that by reason of any breaches, the agreement must constitute a common law apprenticeship agreement. In the application to amend, that is more specifically dealt with. On balance, that does amount to a different type of complaint, albeit a breach of contract, the original ET1 having limited itself to a criticism of the procedure adopted in dismissing the claimant. Having said that, the amendment sought is a relatively minor one. In my view there would be in any event a likelihood that any tribunal required to look at the nature of the contract and the alleged breaches, would be required to look at the implications of any breach, and might be required of its own volition to look into the possibility that by reason of the way the contract should properly be construed, that it is a common law contract of apprenticeship. The proposed amendment is not significant in the sense that compliance with ASCLA was likely to have been a matter which the tribunal would have wished to, and as a matter of law been required to, look at in any event. So, I take this into account when exercising my discretion.
5. Looking at the other factors I am required to consider, I have regard to the applicable time limits for this sort of claim. There is no doubt that the

amendment falls well outside the statutory time limits of 3 month from the date of the dismissal (the alleged breach of contract in this case). It is in the region of 12 months out of time. Nonetheless, I find that it was not reasonably practicable for the amendment to have been made within time, and further that it is reasonable to extend time to encompass this application. As I have already stated, this is a difficult area of law. The question of the nature of a contract of apprenticeship, and the implications as a matter of law that flow from the proper construction of such an agreement, is not well trodden territory even for experienced lawyers. I therefore have some sympathy for a representative and/or litigant who is not legally trained, when attempting to properly particularise a breach of contract case not this type. The extent that the claimant has failed to properly state his claim in the ET1 is, in my view, limited and subtle. It is a failing which relates as much to the effect of the breach of contract, as it is to the nature of the breach. In my view there is significant mitigation for a non-legally trained party who gets that wrong. I do exercise caution when it comes to applying different standards to those without legal training. However, in my judgement, it is something which I can properly take into account in this case.

6. Looking at other the other issues raised by the respondent in its submissions, I cannot find that there are no reasonable prospects of success for the way the case is put if amended. I have not seen the contract of apprenticeship. It is therefore impossible for me to come to any view about the merits of claim. I have not taken this into account. I should also add, that in relation to prejudice, there is always some potential prejudice to a respondent who is the subject of an amended claim, if there is a new cause of action or, as in this case, one whose scope is expanded to some extent. However, I do not think prejudice is significant in this case. There is some prospect of a slightly longer hearing. However, as I have said, most of the issues would have been touched upon in any event. There will be no need for additional witness evidence as a result of the amendment. There may be some broadening in the scope of compensation. However, having taken all of the issues relevant to Selkent in the round, I take the view that it is appropriate to allow the claimant's application to amend."

Employment Judge R Wood

Date signed 17 June 2022

Sent to the parties on:

...18 June 2022.....

For the Tribunal Office:

.....GDJ.....