



## **EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 4107591/2019**

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**Held via telephone conference call on 9 March 2020**

**Employment Judge R Gall**

10 **Mr E Veizi**

**Claimant  
Represented by:  
Mr Elesinnla -  
Barrister**

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**Glasgow City Council**

**Respondent  
Represented by:  
Ms Ross -  
Solicitor**

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### **JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

The Judgemnt of the Tribunal is that the application to amend made on 14 February 2020 by the claimant is allowed. The hearing set down for 10 days, commencing on 12 March 2020 is postponed. No Order is made in respect of expenses. The  
25 respondents are permitted 28 days in which to respond to the amendment. Fresh hearing dates will be set.

As stated at the PH, in terms of Rule 62 of the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013, written reasons will not be provided unless they are asked for by any party at the hearing itself or by written request presented  
30 by any party within 14 days of the sending of the written record of the decision. No request for written reasons was made at the PH. The following sets out what was said, after adjournment, at conclusion of the PH. It is provided for the convenience of parties.

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**REASONS**

1. In this case a Preliminary Hearing (“PH”) was set down for 9 March in order to determine whether the application for amendment submitted on behalf of the claimant on 14 February 2020 would be permitted.
- 5 2. I heard arguments on the telephone conference call from Mr Elesinnla for the claimant and Ms Ross for the respondents. The PH drew to a close and I confirmed that I would reconvene it just over an hour later, giving me a chance to reflect on the arguments and principles involved and to reach a decision. I was conscious that the hearing is set down to commence on 12 March. I  
10 therefore regarded it as extremely important that parties were aware of the decision in relation to the amendment and the position with regard to the hearing scheduled to commence on 12 March as soon as was possible.
3. The principles applicable to consideration of an application to amend are well-known. There are set out in the case of *Selkent Bus Co v Moore* 1996 IRLR  
15 661. The decision is one for exercise of discretion on the part of the Tribunal, applying those principles.
4. The application to amend arises, in the main, from documents made available by the respondents. Those documents were submitted in response to an Order made. Information was also provided in relation to an Order made. An  
20 extension of time was sought by the respondents for production of the documents and information. That was granted by the Tribunal. The documents were submitted on 5 February 2020, that being within the extension of time permitted by the Tribunal to the respondents for submission of documents. As detailed above, the application to amend was submitted on  
25 14 February 2020.
5. It is the claimant’s position that the documents disclosed ought to have been disclosed at an earlier point. The reality is however that they were disclosed in response to the Orders and almost entirely within the time ordered, as extended.

6. In my view the amendment pleads much which is for cross examination. The claimant is not able to speak to many of the documents referred to in the proposed amendment. They were outwith his field of vision. The pleadings as now proposed do however give the notice of what it is that the claimant says supports this case.
7. It is true that some material in the proposed amendment was known to the claimant prior to 20 February. An example of this appears in paragraph 67 of the proposed amendment when there is reference to a letter received by the claimant on 5 November 2019.
8. In exercising its discretion, a Tribunal must keep in mind the principles applicable to consideration of amendment applications.
9. The timing and manner of the application is of relevance. The application was made very close to the anticipated dates of hearing. There is however an explanation for that in that the documents have only relatively recently been made available to the claimant.
10. A Tribunal must also look at the prejudice if on the one hand the amendment is allowed and if on the other hand it is not allowed. Here, it may be that if the amendment is not allowed, the claimant might not be able to raise some points. I see "may be" as this would be a matter which required to be determined at the hearing in that many of the points are, as mentioned above, potentially the type of points which would be explored by way of cross examination. If the amendment is not granted, there could however be an argument that these points were not in the pleadings and indeed potentially that an attempt to include them in the pleadings had been rejected when the amendment had been refused. It is recognised that there is prejudice to the respondents if the amendment is allowed in that some matters which were not until now part of the claim might be before the Tribunal. The case would be extended. To an extent that prejudice is offset however by the fact that the documents which have triggered the amendment application are the respondents' own documents. I recognise nevertheless that the respondents will require to take statements from parties who had not been referred to thus

far in the pleadings. There will be a need for the respondents to answer the proposed amendment. The prejudice in allowing the amendment is less than prejudice which might be said to occur if these matters were raised “cold” at the hearing and potentially allowed to become part of the case at that point, in that cross-examination questions were permitted. Allowing an opportunity for precognitions to be taken and answers to be lodged and indeed postponement of the hearing will mitigate this potential prejudice.

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11. I had regard therefore to the interests of justice, the overriding objective and the principles of *Selkent* in reaching the view which I have.
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12. It was recognised by the claimant that any issue as to time-bar arising from points now raised can be reserved. That would allow the facts to be established at the hearing and then submissions can be made as to whether time-bar applies to any element of the claim and whether, if it does, time is permitted to be extended on the basis either that it was just and equitable that this occurred or, if in relation to the unfair dismissal claim, that it was not reasonably practicable for these points to have been raised prior to the time which saw them being raised.
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13. Mr Elesinnla sought to argue that no new allegations were made or that if they were, they arose from the respondents’ own correspondence. It seems to me that there are some new matters raised. One example of this appears in paragraph 30 of the claim as is now proposed to be amended. That relates to the actions of Mr Francis Scott. It is said that he made racist and defamatory statements. I recognise however that it is only possible to make that allegation having seen the correspondence recently produced by the respondents.
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14. Mr Elesinnla opposed any postponement of the case. It was his view that the respondents had disclosed documents at a leisurely pace and had, he said, participated in a charade. My view was however that an application had been made by the claimant seeking documents and information. That had been determined and the Order issued. It had been complied with, save for production of a couple of documents as mentioned below, by the time limit
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stipulated, as that time limit was extended. There is no duty of general disclosure.

15. I concluded that, having allowed the amendment, fairness and application of the overriding objective required that the hearing be postponed.

5 16. Whilst Mr Elesinnla sought that expenses of the postponed diet be awarded to the claimant, I do not regard that as being appropriate. It seems to me that any issue of expenses should be reserved, it being noted that the application had been made by the claimant. I understand Mr Elesinnla's point it was that late production, as he sees it, of the documents by the respondents had triggered the amendment. As mentioned above however the timeframe in terms of the Order of the Tribunal, as that time limit was extended, for production of documents and information was met for all but 2 documents, those being submitted on 28 February.

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17. The Clerk to the Tribunals is asked to bring the file back before me after the 28 day period for the response from the respondents. It is likely that a case management PH will be arranged then to set up the hearing and to deal with issues such as productions, date and length of hearing and the issues for determination by the Tribunal.

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20 Employment Judge:

R Gall

Date of Judgement:

09 March 2020

Entered in Register,

Copied to Parties:

16 March 2020

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