The Employment Tribunal cannot determine a claim that has not been properly put before it

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Walsall Metropolitan Borough Council V Christine Oliver [2024] EAT 193

Emma Greening considers the case of Walsall Metropolitan Borough Council v Christine Oliver [2024] EAT 193 in which it was held an Employment Tribunal was wrong to determine a complaint that had not been part of the Claimant's original claim.

The Claimant ("C") was employed as a Care Manager. While C was on maternity leave the Respondent ("R") undertook a restructuring exercise and C was made redundant. C brought a maternity discrimination claim. At the Employment Tribunal ("ET") hearing of C's case, the ET considered that through her cross-examination of R's witnesses, C was advancing a case under Regulation 10 of the Maternity and Parental Leave etc. Regulations 1999. Regulation 10 provides that an employee on maternity leave is entitled to be offered any suitable alternative vacancy if their role is made redundant. On this basis, the ET found that C's dismissal had been automatically unfair under section 99 of the Employment Rights Act ("ERA") 1996.

R appealed to the Employment Appeal Tribunal ("EAT"), arguing that the Regulation 10 claim had not been properly put before the ET as it was not part of C's original claim. R also argued that the ET should have treated it as an application to amend with the necessary consideration of time limits.

The ET only has jurisdiction to consider a complaint made to it (*Qureshi v Victoria University of Manchester [2001] ICR 873*). The EAT concluded that even with the necessary focus on substance rather than form, C's pleadings had not been sufficient to advance such a claim. Further, the ET itself had noted that the only complaint recorded at the preliminary hearing was one of maternity discrimination.

Where a litigant seeks to pursue a new, additional cause of action this should take the form of an amendment (*Ladbrokes Racing Ltd v Traynor UKEATS/0067/06*). Further, the precise terms of that amendment must be clear to the Tribunal so that the Respondent can properly respond to

the application and the Tribunal can properly apply the principles relevant to amendment applications as laid out in *Selkent Bus Co Ltd t/a Stagecoach v Moore [1996] IRLR 661 EAT*.

One of the elements considered in any application to amend is the applicability of time limits. When dealing with an unfair dismissal claim the issue of time limits goes to jurisdiction rather than simply limitation. The ET does not have jurisdiction to hear an unfair dismissal claim unless it was presented in time or in such a time as the ET considers reasonable where it was not reasonably practicable for the complaint to be presented in time.

The EAT therefore concluded that the ET had erred in law by formulating a claim of automatic unfair dismissal that was not before it and by failing to consider whether it had the jurisdiction to determine such a claim which on its own understanding had been presented out of time.

Analysis

Requiring an application to amend is not simply a technical hoop to jump through. The process ensures that the parties address crucial issues and that the Tribunal engages with those issues. For amendment applications made during final hearings, usually held many months after the acts complained of, this will more often than not include a very necessary consideration of whether the Tribunal has jurisdiction because of time issues.

Further, an application to amend should require the amending party to formulate with some precision the claim it now wishes to bring. In this case, the EAT went on to find that even if a claim of automatic unfair dismissal had been presented, the ET did not make the necessary factual findings and had not grappled with the arguments advanced by each party. While the EAT could not conclude whether these failings were because the ET were relying on findings focused on the original maternity discrimination claim, it seems reasonable to suggest that both the ET and the parties are more likely to grapple with the correct factual disputes when the claim has been precisely formulated during an amendment application.

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