



Understanding the Selkent Principles

An outline of the key legal considerations from the *Selkent Bus Co Ltd v Michael Moore* case which guide employment tribunals in deciding whether to allow amendment applications.

Romona Morgan

Barrister

St John's Buildings

Understanding the Selkent Principles

Summary

The Selkent Principles play a crucial role in employment tribunals when deciding whether to allow amendments to a claim. These principles were established in the case of *Selkent Bus Co Ltd (t/a Stagecoach Selkent) v Michael Moore* [1996] UKEAT 151_96_0205.

In this case, Mr. Michael Moore, a bus driver, filed a claim for unfair dismissal against his employer, Selkent Bus Co Ltd. Initially representing himself, Mr. Moore expressed that he lost trust in the company due to its overtime policies and that he was dismissed for coercive and intimidating behaviour.

Selkent responded, arguing that Mr. Moore was summarily dismissed for serious misconduct after an investigation and two appeals. The second appeal resulted in him being dismissed with notice and paid in lieu of notice.

Later, Mr. Moore obtained legal representation. His representative applied to amend his claim, arguing that he was dismissed due to his involvement in pay negotiations and or his suspected role in organising a voluntary overtime ban. The amendment sought to introduce claims under the Trade Union and Labour Relations (Consolidation) Act 1992, in addition to the existing claim under the Employment Protection Act (later replaced by the Employment Rights Act).

The tribunal granted the amendment request, without waiting for a response from Selkent. Selkent objected on three grounds:

1. The amendment introduced a completely new legal claim.
2. The new claim relied on different facts than the original application.
3. The claim was now outside the tribunal's three-month time limit.

Since the tribunal had already granted the amendment, Selkent sought and was granted permission to appeal. The substantive hearing was postponed until the appeal was resolved.

The Appeal

On appeal, Selkent argued that:

1. The tribunal breached natural justice by not allowing them to present their objections before granting the amendment.
2. While tribunals have discretion to allow amendments, they should also consider whether the amendment introduced a new claim and whether it could have been brought within the tribunal time limit.
3. The amendment changed the nature of the claim because Mr. Moore's original case made no mention of trade union involvement.

In response, Mr. Moore's representative argued that:

1. The tribunal was not required to hear both sides before deciding on an amendment.
2. The amendment did not introduce a new claim but simply provided further details.
3. The tribunal acted within its discretion and followed legal principles.

Tribunal Rules on Amendments

The Employment Appeal Tribunal (EAT) outlined key rules for tribunals considering amendments:

- Tribunals have discretion to allow amendments.
- They are not strictly required to hear both parties before deciding, but relevance, reason, fairness and justice should guide their discretion.
- The tribunal may refuse an amendment without representations if the request is clearly without merit.
- If an amendment is likely to be disputed or significantly alters the claim, both parties should be allowed to make representations.

Factors to Consider in Amendment Applications

The EAT emphasised two key considerations when deciding whether to allow an amendment:

1. **All relevant circumstances at the time of the request**
2. **The balance of injustice and hardship**

Examples of relevant circumstances include:

- **Nature of the amendment** – Simple changes (e.g., fixing errors, adding factual details) are more likely to be allowed than major changes (e.g., introducing new legal claims).
- **Time limits** – If the amendment introduces a new claim, the tribunal must consider whether it is out of time and whether an extension is justified under the relevant law.
- **Timing of the request** – There are no set deadlines for amendments, but delays can be a factor. For example, if new information emerges after disclosure, a late amendment may be acceptable.

The EAT considered that the balance of injustice and hardship was paramount in deciding whether to refuse or grant an amendment. If allowing the amendment would cause delays, increase costs, and require new witnesses, then that would be a factor relevant to the decision on whether the application to amend should be granted.

The Final Decision

The EAT ruled in favour of Selkent and overturned the employment tribunal's decision to allow the amendment. Key reasons included:

- The amendment introduced a new legal claim for automatic unfair dismissal based on trade union involvement.
- Mr. Moore gave no explanation for why he had not mentioned his trade union involvement in his original claim.
- Denying the amendment would not cause undue hardship to Mr. Moore, as he could still pursue his original unfair dismissal claim.
- Allowing the amendment would have caused delays, increased costs, and required additional witnesses without necessarily changing the outcome of the case.

Conclusion

The Selkent case established that tribunals must carefully balance fairness and procedural efficiency when considering amendments. While amendments can be allowed, they must

not unfairly disadvantage the other party or introduce entirely new claims outside the time limits. The case remains a key authority on amendment applications in employment tribunals.

Romona Morgan

7 February 2025

clerk@stjohnsbldings.co.uk