



## EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

**Miss E Gonzalez**

**v**

**Peter Harrington Ltd**

**Heard at London Central**

**On: 14 December 2018**

**Before: Employment Judge Gordon**

### **Appearances**

**For the Claimant:** No appearance

**For the Respondent:** Nathaniel Caiden (counsel)

## JUDGMENT

1. The application by the Claimant to amend the claim to add a claim that she was discriminated against on the grounds of age is refused.
2. Upon the Claimant having indicated that the existing claims for notice pay and harassment are withdrawn, the claim is dismissed in its entirety under Rule 52 of the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013 in Schedule 1.

## REASONS

1. On 1 August 2016, the Claimant started working for the Respondent which runs two rare book shops in London. The Claimant was dismissed on 17 April 2018.
2. Having been to ACAS and been given a certificate on 27 July 2018, the Claimant lodged a claim in the Tribunal on an ET1 claim form. In that claim she ticked the box for “notice pay” and also ticked the “another type of claim” box and stated “Harassment at Work”.
3. After the Tribunal had sent the claim to the Respondent, the Claimant asked the Tribunal to delete from the claim that she was owed notice pay and to delete the claim for Harassment at Work but to add that she was discriminated against on the grounds of “age”. This was on 20 September 2018.
4. The Claimant did not send her request to amend to the Respondent. This meant that the Respondent responded to the original claim. In its Response (filed on 11 October 2018), the Respondent requested the Tribunal to consider striking out

the claim because the Claimant was paid in lieu of notice and because "Harassment at Work" was not a claim which could be brought in the Tribunal.

5. The Claimant's application to amend and the Respondent's strike out application were listed before me today. Ms Gonzalez did not attend today. The building was searched in the usual way but she was not found. Counsel for the Respondent confirmed that there was contact with her yesterday by email, and she had been sent his skeleton argument yesterday. A voicemail was left on her telephone by the Tribunal clerk today. It appeared from all practicable enquiries that the Claimant had simply decided not to attend today. In the circumstances it was appropriate for me to proceed to hear the matter today.
6. There is nothing in the Claimant's material to indicate what the proposed age discrimination claim is about. It could refer to her dismissal, or something which happened prior to the dismissal. Either way, it is out of time as of today, and was out of time when it was first raised with the Tribunal on 20 September 2018. Recent case law suggests that if an amendment is granted it could be made subject to a time issue, but I must still have regard to whether it would be just and equitable for the tribunal to hear the claim despite it being out of time.
7. In the Claimant's absence there is no explanation available as to why the proposed claim was not in the original ET1 claim form.
8. Further, there is nothing before the Tribunal showing that it would be just and equitable to hear the claim bearing in mind it is out of time.
9. In addition to this there is nothing to show that there is a prima facie case in the proposed age discrimination claim. Hence it would appear that to refuse an amendment would result in little prejudice to the Claimant but to allow it would cause unnecessary inconvenience and expense to the Respondent in having to defend it.
10. In the circumstances the application to amend is denied. I regard the existing claims in the ET1 claim form as withdrawn in the email of 20 September 2018, and therefore I shall dismiss the claim presented to the Tribunal in its entirety.

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Employment Judge Gordon

Date: 14 December 18

JUDGMENT SENT to the PARTIES ON

17 December 2018

FOR THE TRIBUNAL OFFICE