



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr T Ogundiran

**Respondent:** Ergea UK & Ireland Ltd

**Heard at:** Midlands West (By CVP)

**On:** 19 December 2024

**Before:** Employment Judge Bansal

**Representation:**

**For the claimant:** In Person

**For the respondent:** Miss R Thomas (Counsel)

## JUDGMENT ON APPLICATION TO AMEND

The Claimant's application to amend his claim to add claims of direct age discrimination and harassment related to race are refused.

### REASONS

1. This case came before me for a public preliminary hearing as directed by Employment Judge Harding at a preliminary hearing for case management held on 19 August 2024. ("Order"). At the hearing Employment Judge Harding also made case management orders and listed the case for final hearing to be held on 4-12 August 2025.
2. At this preliminary hearing, the claimant represented himself and made representations in support of his application. The respondent was represented by Miss Thomas of Counsel.
3. The application is clearly set out at Paragraphs 6-8 of the Order made by Employment Judge Harding. Therefore, the application is not repeated herein.
4. In relation to the amendments the claimant explained he was not familiar with the Tribunal procedures and was unaware that he had to fully plead his complaints in the Claim Form; he has limited financial resources to seek legal advice as he has been unemployed since he was dismissed; that it should be in the interests of justice to allow his amendments even though the alleged incidents relied upon relating to the harassment complaint date back to 2017 to 2023.

5. Miss Thomas opposed the application. She submitted as follows. Firstly, both complaints are new claims not previously pleaded and are significantly out of time; the assertion the claimant was disciplined because of his age is misconceived and lacks any evidential basis; the two claims are weak and lack merit. No compelling reason has been given by the claimant for this late amendment when he could have made these complaints in the Claim Form as the alleged incidents would have been known to him at that time. Miss Thomas asserted the balance of hardship favoured the respondent to refuse the application for the reasons that (i) the dates of the incidents of alleged harassment are vague, (ii) the alleged incidents are based on verbal statements, first allegedly made in May 2017 and then 2019, 2022 & 2023 respectively; (iii) the cogency of evidence is bound to be affected given the passage of time; (iv) the named individuals Mr A Perry and Mr Mullins have only now been identified, hence the cogency of evidence is bound to be affected given the passage of time; and (v) the respondent will incur further costs in defending this case.
6. In determining this application I have considered the well-established legal principles in dealing with amendments. This includes consideration of the leading case of Selkent Bus Company v Moore (1996) UKEAT 151. I have had regard to the circumstances around the application and that I should balance the injustice and hardship of allowing the amendment against the injustice and hardship of refusing it. In this regard I have taken particular note of the nature of the amendment, the issue of time limits and the timing of the application to amend.
7. I refused the application as in my judgment the balance of justice clearly points towards refusing the application for the following reasons. The two claims are new heads of claims and not minor amendments. These were not raised at the time of the disciplinary hearing process or thereafter until this application. The claimant has failed to persuade me why he did not make these new claims when he presented his Claim Form, having known about the alleged incidents. In my judgment these new claims are an afterthought to strengthen the existing claim. The allegations of harassment are historic. The cogency of the evidence is bound to be affected. The costs to be incurred by the respondent will be increased. Further, the timing of the application is substantially out of time. Notwithstanding this decision, the claimant is not caused prejudice as he is able to continue with his pleaded claims of race discrimination and unfair dismissal.
8. Following my decision, I reviewed the pleaded claims and existing case management orders with the parties. By agreement, the additional orders as set out below were made. For the avoidance of doubt, the case remains listed for hearing for **4-12 August 2025**. The hearing will be before a full Tribunal panel.

## ORDERS

1. By **3 January 2025**, the claimant must send to the respondent precise dates for his overtime claim for May & June 2023.
2. By **10 January 2025** the respondent is to produce a final agreed List of Issues and send a copy to the claimant and the Tribunal.

3. By **27 January 2025** the claimant must send a Schedule of Loss to the respondent.  
A copy is to be sent to the Tribunal.

**Signed by Employment Judge Bansal**

**Signed on 14 January 2025**