EMPLOYMENT TRIBUNALS

Claimant: Mr H Singh

Respondent: K.T.C (Edibles) Ltd

RECORD OF A PRELIMINARY HEARING

Heard at: **Birmingham Employment Tribunal** (in public in person)

On: 17 October 2025

Before: **Employment Judge Boyle**

Appearances
For the claimant: in person; assisted by an interpreter Ms P Malik
For the respondent: Mr P Keith (Counsel)

RESERVED JUDGMENT

1. The application to amend the claim to include claims for automatic unfair dismissal under s103A Employment Rights Act 1996, detriment on the ground of making a protected disclosure under s47B E Employment Rights Act 1996 and unlawful deductions of wages is granted.

2. The application to amend the claim to include claims for automatic unfair dismissal for health and safety reasons, direct race discrimination, harassment related to race, breach of contract and wrongful dismissal are refused.

3. The application to strike out the claim is refused. The application to make a deposit order is refused.

4. The Tribunal will decide at the final hearing whether or not the claims of detriment on the grounds of making a protected disclosures were presented within the applicable time limit.

REASONS

1. The Case Summary notes from the Case Management Hearing (CMH) that took place before EJ Kenward on 27 June 2025 contain helpful background details, which I will repeat here for ease:

2. *"The Respondent is a manufacturer and distributor of edible oils and fats. The Claimant was employed by the Respondent until his summary dismissal with effect from 12 July 2024. The Claimant identifies as being of Indian heritage.*

3. *The Claimant notified ACAS of his prospective Claim on 8 August 2024. On 16 September 2024, ACAS issued a certificate to confirm compliance with the requirements for early conciliation. The ET1 Form of Claim was received by the Tribunal on 18 September 2024.*

4. *The ET1 Form of Claim gives the Claimant's dates of employment for the Respondent as 2 August 2021 to 12 July 2024. The Grounds of Resistance state that this was under a contract of employment dated 2 August 2021.*

5. *In fact, it seems to be common ground between the parties that the Claimant had worked for a far longer period for the Respondent. The Grounds of Resistance states that the Claimant was employed by the Respondent as a Warehouse Operative, from June 2004, "albeit under different identities", until he was dismissed summarily with effect from 12 July 2024. Indeed, the Respondent asserts that this came to light through the Claimant having, of his own initiative, raised and admitted this earlier history, which prompted an investigation and disciplinary process resulting in his dismissal on the basis that "there had been a genuine and irretrievable breakdown in trust and confidence between the Respondent and the Claimant as a result of the information regarding deliberate illegal working that the Claimant had disclosed and been party to".*

6. The claimant presented an ET1 on 18 September 2024. As EJ Kenward describes: "*Although the ET1 Form of Claim had ticked the applicable boxes in respect of in respect of complaining of unfair dismissal, race discrimination and whistleblowing victimisation, the details of the Claim provided at section 8.2 did not refer to the dismissal or the alleged discrimination, but alleged, in very general terms, that the Claimant had been victimised for whistleblowing through being bullied and harassed as a result of making disclosures about food hygiene and / or health and safety. At section 8.2 of the Form of Claim, the Claimant also complained about unpaid wages which appeared to relate to the period of employment from 2 August 2021, with the Claimant claiming that he should have been paid at the rate of a Wrap Machine Operator rather than a Warehouse Operative."*

7. The exact words used by the claimant in his form ET1 are:

"Contract signed for warehouse operative but asked to do the job of Wrap machine operator by production manager - Gurpreet singh walia and Tirath singh supervisor. | raised the concern that | should get paid for wrap machine operator (paperwork signed but not given to me any copy) despite reminding and asking for it from currently operation Manager- G.S.Walia)
Several incident reporting raised but not recorded with regards to food hygiene within packed items, rats infestation withing the food packing area.
Construction work and repairing was done while business was running by avoiding health and safety o femployees on the floor. :
Whisltblowing resulted me into getting bullying and harassed including they challenged me why | abide by it."

8. On 20 September 2024, Legal Officer Parmar ordered that the Claimant provide further information as to the complaint of race discrimination and the complaint of whistleblowing victimisation. The further information requested was eventually provided on 6 March 2025.

9. Again as EJ Kenward noted: "*The first paragraph of the Claimant's further information identified his complaint of race discrimination as being that "I was discriminated against because I am not educated" and was told "I did not know what Health and Safety was". The Grounds of Resistance have contended that this did not disclose a complaint of race discrimination as not being educated was not, in itself, a protected characteristic. However, after discussing the basis for this complaint in the preliminary hearing, the Claimant appeared to be alleging that, when he raised health and safety matters, he was treated less favourably than a white employee would have been, in that he was told that it was not his job and he should just carry on with his work. He suggested in the preliminary hearing that he was told that "you come from India, you do not know anything about it". He seemed unclear about the date although he seemed to suggest that it was when he complained to Mr David. He also suggested that it was said that he was "telling us the law like a white person", when he was "not a white person", but was not specific about when this was said; rather, he seemed to be suggesting that this was the gist of what was regularly said. However, it is to be noted that these alleged comments did not appear in either the ET1 Form of Claim or the further information provided by the Claimant in writing. His case appeared to be that the Respondent was regularly dismissive of such concerns being raised by him. It is to be noted that, at the end of the second paragraph of his further information, which had detailed the dismissive responses to the concerns raised by the Claimant, he stated that the "names of the people who carried out this discrimination were mainly Tirath Singh and Gurpreet Singh".*

10. *Given that some of the alleged comments set out above would appear to be related to the Claimant's race, the complaints being made by way of the further clarification provided, as set out above, would also seem to involve complaints of harassment related to race.*

11. *The second paragraph of the Claimant's further information effectively gave a list of specific dates when he made the disclosures which he is relying upon as amounting to whistleblowing, and the matters raised. Some further details are still needed as identified in the List of Issues at the end of this document.*

12. *In relation to each alleged whistleblowing disclosure listed in the Claimant's further information, the Claimant's further information set out the detrimental treatment to which he claimed he was subjected as a result of the alleged disclosure concerned. As stated above, his case would also seem to be that the various responses to the concerns which he raised amounted to treating him less favourably on the grounds of his race and / or harassment related to his race. Effectively, the details provided by way of further information amounted to new information in relation to the complaint in the final sentence of section 8.2 of the ET 1 Form of Claim where the Claimant alleged that whistleblowing "resulted (in) me getting bullying and harassed including their challenge me why I abide by it (sic)". It is also clear that the Claimant is alleging that this treatment involved a series of similar acts and / or conduct extending over a period, in effect continuing until his dismissal so that his dismissal amounted to discrimination and / or an automatically unfair dismissal on the grounds of having made protected disclosures and / or raised health and safety concerns*."

13. The respondent's response dated 9 April 2025 denied all claims and identified what claims it believed the claimant was bringing.*"The Respondent understands that the Claimant's claims are for:*

    1.1.1 unfair dismissal pursuant to section 94 of the Employment Rights Act 1996 (ERA); and/or
    1.1.2 automatic unfair dismissal pursuant to section 103A of the ERA (confirmation in respect of which we seek, as explained further at paragraph 2.4 below);
    1.1.3 discrimination on the grounds of race pursuant to the Equality Act 2010; and
    1.1.4 detriment pursuant to section 47B of the ERA."

14 The respondent sought further and better particulars of the race discrimination claim and also whether he was bringing an automatic unfair dismissal claim pursuant to s103 A Employment Rights Act 1996. They also sought a strike out of the claimant's claim of detriment contrary to s47B of ERA on the basis that the majority of the claims were presented out of time.

15 As stated above, a Case Management Hearing came before EJ Kenward on 25 June 2025. At that hearing, the claimant gave further particulars and (arguably) raised new claims. EJ Kenward noted: "*In any event, in order to give consideration to whether part of the Claim might be dismissed or struck out on the basis of time issues, or on the basis of having no reasonable prospects of success the Tribunal would need to determine the complaints and issues which are legitimately before the Tribunal and would otherwise fall to be determined on their merits (see Cox v Adecco Group UK and Ireland [2021] ICR 1307, EAT, at paragraphs 28 to 32). Whilst it has been possible, as result of this preliminary hearing, to draft a provisional List of Issues, it still needs to be finalised through the inclusion of further information to be provided by the Claimant, as indicated in bold type in the List of Issues at the end of this document. More pertinently, much of the content of the draft List of Issues derives from the further information provided by the Claimant on 6 March 2025, almost six months after the date of the ET 1 Form of Claim. This means that the issue arises as to whether the Claimant needs permission to amend his Claim to include the complaints made in the further information dated 6 March*

2025 and, if so, whether such permission should be granted. This will need to be determined at a further preliminary hearing. Depending upon the complaints which are before the Tribunal, once any such decisions have been made, the Tribunal would then be in a position to consider any striking out application if there was an arguable basis for it which might be determined at a preliminary hearing. Alternatively, it may be clear to the Tribunal that any such application, if it is based on issues in respect of time limits, may involve the need for evidence to be heard as to whether individual complaints are part of a series of similar acts or conduct extending over a period, in which case it would be within the discretion of the Tribunal to decide that these were issues which were more appropriately determined at the final hearing."

16 It is clear therefore that the claimant gave more particulars in relation to his purported claims at the CMH which EJ Kenward recorded in the CMO. In the draft list of issues, EJ Kenward identified areas where the claimant needed to provide further particulars.

17 EJ Kenward determined there should be a public preliminary hearing to consider the following:

"Subject to the discretion of the Judge at the preliminary hearing to decide that it is in the interests of justice not to determine any of these issues, the preliminary hearing will consider the following issues:
(1) whether the Claimant needs permission to amend his Claim in order to pursue the complaints set out in his further information dated 6 March 2025 and / or in the List of Issues;
(2) if so, whether such permission should be granted;
(3) whether all, or any part of, the Claimant's Claims should be struck out as having no reasonable prospect of success on the basis of being out of time; and / or
(4) whether all, or any part of, the Claimant's Claims has little reasonable prospect of success on the basis of being out of time, and so should be subject to an Order that a deposit is payable by the Claimant as a condition of continuing the Claims."

18 The claimant submitted further "Particulars of Claim" on 20 August 2025. Based on the claimant's presentation at the hearing before me, this must have been prepared with the assistance of a representative. This included the following headings with particulars set out under each heading:

18.1 Unlawful deductions from wages/breach of contact
18.2 Unfair dismissal under s98 ERA
18.3 Automatic unfair dismissal under s103A ERA
18.4 Failure to pay the national minimum wage
18.5 Discrimination on the grounds of race under the Equality Act
18.6 Detriment by reason of making protected disclosures.

19 It is noted that these particulars did not provide the specific information requested by EJ Kenward following the CMH.

20 The claimant produced more particulars again on 15 October 2025 in a document entitled "the Claimant's Reply to the Respondent's amended Grounds

of Resistance". In this document, the claimant maintained that he was bringing the following claims:

20.1 unfair dismissal,
20.2 automatic unfair dismissal (by reason of whistleblowing and raising health & safety concerns),
20.3 detriment
20.4 ,direct race discrimination,
20.5 harassment,
20.6 unlawful deductions,
20.7 breach of contract and
20.8 wrongful dismissal.

21 As preparation for the hearing I received a 139 page bundle with documents from the parties. I also received the document referred to in paragraph 20 above ("the October submissions") and written submissions from the respondent's representative. I considered all of these documents in making my decision.

22 During the hearing, the claimant was supported with the aid of an interpreter. The interpreter interpreted all that was said at the hearing and the claimant indicated that he understood the process. He confirmed that he had paid for the October submissions to be prepared by a solicitor and that he wanted to rely on them at this hearing. He confirmed that he was aware of the contents of the October submissions and that it had been translated for him by the solicitor preparing it.

23 The respondent made oral submissions based on its written submission. This was only given to the claimant on the day of the hearing. Via the interpreter, the respondent read from several parts of this document, and the interpreter translated the "chronology" section in its entirety to the claimant.

24 Following the CMH on 27 June 2025, various case management orders were made (both in relation to this Public Preliminary Hearing and for a Full Hearing). A Full Hearing has been listed for 5 days on 5, 6, 7, 8 and 9 October 2025.

25 I applied the following law when considering this application.

Legal principles for amendment applications

26 A party's case should be set out in its original pleading (the claimant's ET1 and the respondent's ET3). In Chandhok v Tirkey [2015] ICR 527, in which an issue as to the scope of the claim arose, the EAT said:

"The claim, as set out in the ET1, is not something just to set the ball rolling, as an initial document necessary to comply with time limits but which is otherwise free to be augmented by whatever the parties choose to add or subtract merely upon their say so. Instead, it serves not only a useful but a necessary function. It sets out the essential case. It is that to which a Respondent is required to respond. A Respondent is not required to answer a witness statement, nor a document, but

the claims made – meaning, under the Rules of Procedure 2013, the claim as set out in the ET1."

27 The very recent case of Moustache v Chelsea and Westminster Hospital NHS Foundation Trust [2025] EWCA Civ 185 serves as a reminder of the following principles:

"that proceedings in the ET are adversarial. The range of claims that may be brought and the range of substantive or procedural answers that may be raised to those claims are defined by law, principally by statute. In any given case the primary onus lies on the parties to identify, within those ranges, which claims they wish to bring and which answers they wish to advance." Para 34

" Secondly, the issues raised by the parties are those which emerge clearly from an objective analysis of their statements of case. Identification of the issues does not involve reference to other documents which do not have the status of pleadings and come later. Nor should the process be a complex or difficult one. As Eady, P said in X v Y [2024] EAT 63 [49] "That pleadings matter, including in Employment Tribunals, is not a novel or controversial point". The EJ should not be expected to analyse a party's case by reference to documents which come after the pleadings and do not have the same status, such as a witness statement, or by reference to submissions. " Para 35

"…Fourthly, however, the ET's role is arbitral not inquisitorial or investigative. It must perform its functions impartially, fairly and justly, in accordance with the overriding objective, the law, and the evidence in the case. It may consider it appropriate to explore the scope of a party's case by way of clarification. That may, in particular, be considered appropriate in the case of an unrepresented party. Whether to do so is however a matter of judgment and discretion which will rarely qualify as an error of law such that the EAT can interfere. The ET has no general duty to take pro-active steps to prompt some expansion or modification of the case advanced by a party where that might be to their advantage. These propositions emerge clearly from a series of decisions of this court and the EAT." Para 37

28 In Cocking-v-Sandhurst (Stationers) Ltd and anor [1974] ICR 650 NIRC, Sir John Donaldson laid down a general procedure for Tribunals to follow when deciding whether to allow amendments to claim forms involving changes to the basis of the claim or adding or substituting respondents.

29 The key principle was that, in exercising their discretion, Tribunals ought to have regard to all the circumstances, in particular any injustice or hardship which would result from the amendment or a refusal to make it.

30 The test was approved in subsequent cases and restated by the EAT in *Selkent Bus Company Ltd-v-Moore [1996] ICR 836 EAT*, which approach was also endorsed by the Court of Appeal in Ali-v-Office of National Statistics [2005] IRLR 201 CA.

31 The EAT held in Selkent that, in determining whether to grant an application to amend, the Tribunal must always carry out a careful balancing exercise of all the relevant factors, having regard to the interests of justice and to the relative hardship that would be caused to the parties by granting or refusing the amendment.

32 Mummery J, as he then was, explained that **relevant factors** would include:

32.1 **The nature of the proposed amendment**; applications to amend can range, on the one hand, from the correction of minor clerical and typing errors to, on the other, the making of entirely new factual allegations which change the basis of the existing claim. The tribunal has to decide whether the amendment sought is one of the minor matters or a substantial alteration pleading a new cause of action. A distinction may be drawn between (i) amendments which are merely designed to alter the basis of an existing claim, but without attempting to raise a new distinct head of complaint; (ii) amendments which add or substitute a new cause of action but one which is linked to, or arises out of the same facts as, the original claim (often called "relabelling"); and (iii) amendments which add or substitute a wholly new claim or cause of action which is not connected to the original claim at all.

> Mummery J in Selkent suggested that this aspect ought to be considered first (before any time limitation issues are brought into the equation) because it is only necessary to consider the question of time limits where the proposed amendment seeks to adduce a new complaint, as distinct from "relabelling" an existing one. If it is a purely relabelling exercise than it does not matter whether the amendment is brought within the timeframe for that particular claim or not (see Foxtons Ltd-v-Ruwiel UKEAT/0056/08).
>
> The fact that there is a new cause of action does not of prevent an amendment from being made. The Court of Appeal stressed in Abercrombie and ors-v-Aga Rangemaster Ltd [2013] IRLR 953 CA that Tribunals should, when considering applications to amend that arguably raise new causes of action, focus "not on questions of formal classification but on the extent to which the new pleading is likely to involve substantially different areas of enquiry than the old: the greater the difference between the factual and legal issues raised by the new claim and by the old, the less likely it is that it will be permitted". Where the effect of the proposed amendment is simply to put a different legal label on facts that are already pleaded, permission will normally be granted.

32.2 **The applicability of time limits;** if a new claim or cause of action is proposed to be added by way of amendment, whether or not it arises out of the same facts as the original claim, it is "essential" (per Mummery J in Selkent) for the Tribunal

to consider whether that claim or cause of action is out of time and, if so, whether the time limit should be extended. It was crucial to remember that it has been held that the doctrine of 'relation back' has been held to no longer apply to Employment Tribunal proceedings following Galilee-v-Commissioner of Police for the Metropolis UKEAT 0207/16/RN. Accordingly, the date of that the new claim is brought is the date of the amendment application, not the date of the claim form is the amendment is permitted. The use of the word "essential" should, however, not be taken in an absolute sense and applied in a rigid and inflexible way so as to create an invariable and mandatory rule that all out of time issues must be decided before permission to amend can be considered. The judgments in both Transport and General Workers' Union v Safeway Stores Limited UKEAT 009207 and Abercrombie-v-AGA Rangemaster Limited [2014] ICR 209 CA emphasised that the discretion to permit amendment was not necessarily constrained by limitation.

> Thee fact that an application to amend is made in time is, also not determinative of the application being granted. All factors have to be considered. It is no trump card (see paragraph 44 of Marrufo-v-Bournemouth, Christchurch and Poole Council UKEAT/0103/20/BA).

32.3 **The timing and manner of the application; an** application should not be refused solely because there has been a delay in making it. Amendments may, in theory at least, be made at any stage of the proceedings. Delay in making the application is, however, a discretionary factor. It is relevant to consider why the application was not made earlier and why it is now being made: for example, the discovery of new facts or new information appearing from documents disclosed on discovery. Delay may count against the applicant because the overriding objective requires, among other matters, that cases are dealt with expeditiously and in a way which saves expense. Undue delay may well be inconsistent with these objectives. The later the application is made, the greater the risk of the balance of hardship being in favour of rejecting the amendment (Martin-v-Microgen Wealth Management Systems Ltd EAT 0505/06). However, an application to amend should not be refused solely because there has been a delay in making it, as amendments may properly be made at any stage of the proceedings. This is confirmed in the Presidential Guidance on General Case Management for England and Wales (2018).

> The EAT gave guidance on how to take into account the timing and manner of the application in the balancing exercise in Ladbrokes Racing Ltd-v-Traynor EATS 0067/06: a Tribunal will need to consider (i) why the application is made at the stage at which it is made, and why it was not made earlier; (ii) whether, if the amendment is allowed, delay will ensue and whether there are likely to be additional costs because of the delay or because of the extent to which the hearing will be lengthened if the new issue is allowed to be raised, particularly if these are unlikely to be recovered by the party that incurs them; and (iii) whether delay may have put the other party in a position where evidence relevant to the new issue is no longer available or is rendered of lesser quality than it would have been earlier.

33 The key words to consider in an amendment application are the "balance of injustice and/or hardship of allowing or refusing the amendment". It is not, of itself, an error of law for a tribunal to fail to use those words, but if they are not used it will be more difficult for an appellate court to be satisfied that the tribunal applied the correct test, particularly if its reasoning is brief. On the other hand, if the tribunal identifies the correct test and shows that it has been applied, taking into account the relevant factors on both sides of the balance, possibly giving only brief reasons, that will generally be sufficient". Vaughn v Modality Partnership UKEAT 0147 20 BA.

34 These factors were not exhaustive and there may be additional factors to consider.

35 For example, it may have been appropriate to consider whether the claim, as amended, had reasonable prospects of success or that the claimant has an alternative route (presenting a new claim and asking for it to be joined with the previous claim).

Legal principles for strike out/deposit orders

36 Rule 3 of the Employment Tribunal Procedure Rules 2024 ("the ET Rules") provides: *Overriding objective*

The overriding objective of these Rules is to enable Employment Tribunals to deal with cases fairly and justly. Dealing with a case fairly and justly includes, so far as practicable—

(a) ensuring that the parties are on an equal footing;

(b) dealing with cases in ways which are proportionate to the complexity and importance of the issues;

(c) avoiding unnecessary formality and seeking flexibility in the proceedings;

(d) avoiding delay, so far as compatible with proper consideration of the issues; and

(e) saving expense.

A Tribunal shall seek to give effect to the overriding objective in interpreting, or exercising any power given to it by, these Rules. The parties and their representatives shall assist the Tribunal to further the overriding objective and in particular shall co-operate generally with each other and with the Tribunal.

37 Rule 38 of the ET Rules provides:

Striking out

(1) At any stage of the proceedings, either on its own initiative or on the application of a party, a Tribunal may strike out all or part of a claim or response on any of the following grounds—

(a) that it is scandalous or vexatious or has no reasonable prospect of success;

(b) that the manner in which the proceedings have been conducted by or on behalf of the claimant or the respondent (as the case may be) has been scandalous, unreasonable or vexatious;

(c) for non-compliance with any of these Rules or with an order of the Tribunal;

(d) that it has not been actively pursued;

(e) that the Tribunal considers that it is no longer possible to have a fair hearing in respect of the claim or response (or the part to be struck out).

(2) A claim or response may not be struck out unless the party in question has been given a reasonable opportunity to make representations, either in writing or, if requested by the party, at a hearing

38 Rule 40 of the ET Rules provides:

Depost Orders

(1) Where at a preliminary hearing the Tribunal considers that any specific allegation or argument in a claim response or reply has little reasonable prospect of success, it may make an order requiring a party … to pay a deposit not exceeding £1000 as a condition of continuing to advance that allegation or argument.

39 I was referred to the cases of Anyanwu v South Bank University and South Bank Student Union [2001] ICR 391, Chandhok v Tirkey, Hemdan v Ishmail [2017[IRLR 228, Van Rensburg v Royal Borough of Kingston-upon-Thamas [2007] UKEAT/0095/07 and Wright v Nipponkoa Insurance (Europe) ltd [2014] UKEAT/0113/14.

40 In hearing the application, I reminded myself of the Draconian nature of the strike out power; the importance of taking into account the overriding objective and of asking whether a fair trial is possible in the future and whether any alternative to strike out is proportionate. Also that there is a less rigorous test for the provision of deposit orders, which by their nature are less Draconian that a strike out.

Conclusions and decisions

41 I applied these factors to the amendment application. With each section – where I have allowed an amendment or decided that no amendment is required, it is now set out in the amended List of Issue set out in a separate updated Case Management Order. If the amendment has not been added, my decision is that the

amendment application has been refused and has been removed the List of Issues As will be seen below, I have determined that some claims were already contained in the ET1. I don't believe my findings will lengthen the final hearing listing.

42 I will consider the separate claims in turn but will make some overall comments to explain how I dealt with this lengthy application.

43 I have considered the nature of the claims and identified where I think these are either existing claims or new claims based on stated facts or new claims based on new facts. I have considered time limits for any new claims and the timing and manner of the claimant's amendment application.

44 I have taken into account the fact that claimant is unrepresented, speaks very little English, reads no English and has had limited access to assistance. He also says he is suffering from depresson and has hearing issues. The claimant has on his own admission used the services of paid legal advisors at strategic parts of this claim and has therefore not been completely unassisted.

45 I believe that the claimant was served well at the First CMH. His claims were identified by Judge Kenward in the way you would expect a Judge to do at a case management hearing.

46 The claimant has over several occasions now submitted further details regarding his claim. There has been no disclosure between the parties and therefore the detail in this claimant's various documents is such that this must have all been in the claimant's knowledge at the time he submitted her ET1. This is not new information that has come about following a disclosure exercise. What is more likely is that the claimant in presenting his claim at the Tribunal focussed on the issues that were key to him.

47 I have considered the prejudice injustice or hardship to either party which would arise by an agreement or refusal to allow the claimant's amendments. On balance, I believe the claimant suffers less prejudice or hardship here by the refusal to accept all of his amendment application as he already has claims before the Tribunal which are already going to take 5 days to be heard. On balance I found that the respondent would be more prejudiced and subject to more hardship by being put to the time and expense of making new enquires on new claims if I granted all of the claimant's amendment application.

48 I have applied the law that the main place to look for claims is in the ET1 and not in any further documents (either from before or after the presentation of the ET1). In doing so, I have attempted to give the ET1 a fair reading based on the fact that it was presented by an unrepresented litigant. I have also considered the information given by the claimant when he was requested to provide it by Tribunal. It is not clear to me why the claimant failed to first provide information, but when prompted by the Tribunal, he readily did so. I find the information that the claimant has supplied following the CMH (namely in August 2025 and October 2025) less persuasive and more of an attempt to add matters that were nor originally there. It cannot be the case that the claimant, albeit unrepresented but clearly taking legal advice at strategic parts of this claims, keeps getting the opportunity to add more

and more to his claims: there has to be some finality so that the respondent knows the case it is defending.

49 In reading the claimant's claim it seems clear me that the essence of the claimant's claim is that he was being underpaid in his role of wrap machine operator, that he made some protected disclosure and suffered detriment as a result and was dismissed.

50 In summary even before this amendment application, the claimant has a significant claim against the respondent which will need be heard over multiple days. I do not believe the claimant is being deprived of bringing the claim that he wishes to bring.

51 I have considered as part of this application the overall effect that the addition of claims would make to the current listing of a full hearing in just under a year. I have found this a relevant factor that the effect of any amendments should not be to interfere with the current listing as an increased listing would undoubtedly mean this case being moved for consideration in 2027. This is an unacceptable delay for both parties, and would cause both parties equal prejudice.

52 For completeness, there was no challenge from the respondent that the claimant's claim included one for unfair dismissal and therefore this did not form part of this amendment application. For all over claims I have adopted the approach of either making a finding that the claim is contained in the original ET1 (and that further particulars have now been provided) or that it was not in the ET1 and an amendment application is required.

Automatic Unfair Dismissal under either s103A or s100 ERA or both

53 The claimant says he is bringing claims for automatic unfair dismissal (by reason of making protected disclosures and raising heath and safety concerns). Some protected disclosures were contained in the original ET1 and some, once clarification was sought by the Tribunal, by the claimant on 6 March 2025.

54 It is not necessarily the case that I would expect a litigation in person to differentiate between protected disclosures leading to a dismissal under S103A ERA (which can of course involve matters of health and safety) and a separate claim based on Health and Safety under s100 ERA. These claims are quite separated with different legal tests.

55 The claimant, in my judgment, is clearly bringing an automatic unfair dismissal claim under s103A but a claim under s100 is not clear and has only development (albeit, still not clearly) over time. The respondent identified a claim under s103A in its response and has responded to it. Therefore I find that a claim for automatic unfair dismissal under s103A was contained in the original claim and the claimant

has provided further particulars since this time. Therefore this is the claimant providing further particulars of an existing claim.

56 I find that a claim for automatic unfair dismissal under s100 ERA is a new claim not contained in the original ET1. It has its own legal test, is based on new facts and would involve the respondent in significant lines of enquiry. Further, this claim has never sufficiently been particularised for the respondent to be able to answer this. Despite several further attempts, the claimant has failed to do so, and it is unlikely that, even with time, the claimant will be able to articulate this claim. Taking into account the fact that the claimant has a protected disclosure claim (involving health and safety), I find no prejudice here by not allowing him to proceed with this claim. Applying the law and principles above, I am not allowing an amendment to include an automatic unfair dismissal claim under s100 ERA.

Detriment on the ground of making protected disclosures s47B ERA

57 For the reasons set out above in relation to automatic unfair dismissal, I am satisfied that this was set out in the original ET1 with further particulars have been provided by the claimant. Any time issues in relation to these detriments will need to be determined at the Final Hearing. Therefore this is the claimant providing further particulars of an existing claim.

Race Discrimination/ Harassment

58 I am looking at these claims together. Despite ticking a box for race discrimination, the claimant did not provide any particulars of this claim, until the CMH following questioning by EJ Kenward. It is still the case, that despite being ordered to do so the claimant has still not provided important particulars relating to these potential claims. It is the case that if the claimant cannot provide these this casts doubts on the merits of these claims. In any event, it is very difficult for the respondent to defend an unparticularised claims.

59 I find that these are new claims which were not presented in the ET1 based on new facts Both these claims are presented significantly out of time (harassment allegedly took place on 3 August 2023 and 27 October 2023 and direct race discrimination took place last on 5 July 2024). They will require witnesses and evidence and new lines of enquiry for the respondent. The claimant would have known the information he is seeking to rely on now at the time he presented his ET1 and has failed to give any explanation as to why he did not provide this information before. I am not satisfied that it is reasonable on balance to allow these to proceed as claims.

Unlawful deductions of wages

60 On a fair reading of the ET1 the claimant is alleging underpayment in his role as wrap machine operator however no specifics were pleaded nor what type of claim this was. No further particulars are supplied until August 2025 when, with assistance, the claimant alleges underpayments since 2004 and up to 2021. These are historic allegations and do not appear to relate to the specific claim brought in the ET1. Further the schedule of loss produced by the claimant on 20 August 2025 describes the last deduction being made in August 2021.

61 Applying a fair reading of the ET1, I have determined that it does contain an unlawful deduction of wages claim which is limited to the most recent issue – was the claimant paid at the correct rate for his role at the time of dismissal. The claimant can seek back pay limited up to 2 years only.

62 Any claims relating to 2021 and backwards are new claims based on new facts, significantly out of time and would place significant burden on the respondent to prepare this. I am not allowing any amendment to include these claims to proceed.

Breach of contract/Wrongful dismissal

63 These are new claims not contained in the ET1 based on new facts. They were they discussed at the CMH and the claimant has provided no explanation for his delay. They have only appeared in recent documents produced on behalf of the claimant and would place significant burden on the respondent to defend them I am not allowing any amendment to include these claims to proceed.

61. As a result of this judgment, I have now amended the List of Issues, which is now final. I have also made some amendments to the Case Management Orders with some change of dates. This is contained in a separate document attached.

Strike out/deposit orders

64 Whilst I can understand why the respondent has made applications for strike out and deposit orders, I would hope that the outcome of the amendment application would assist them considerably in defending the claim. They are defending the claims they thought they were defending and no new claims have been added. The claims have been narrowed. Further the respondent applied for strike out of the claims that have not been permitted to proceed (namely race discrimination, breach of contract and wrongful dismissal.) Therefore any applications in relation to those matters are redundant.

65 I am not persuaded that strike out or deposits should be granted here for the remaining claims. Based on the various particulars provided by the claimant (which gives the respondent a full picture of what the claimant is likely to say in a

witness statement), it cannot be said that there are no or little prospects of success in his claim.

Employment Judge Boyle

26 October 2025