



## **EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No. 8002641/2025**

**Held in Aberdeen on 30 March 2026  
Hearing 1 April 2026 in Chambers**

**Employment Judge Hendry**

**Mr Kingsley Eboh**

**Claimant  
In Person**

**Enoda Limited**

**Respondent  
Represented by:  
Sacha Carey,  
Solicitor**

### **JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

1. The claimant raised proceedings on 2 November 2025 in the Employment Tribunal against his former employers. He indicated that he was making claims for unfair dismissal, race discrimination and for reimbursement/payment. He set out the background to his case in the attachment to the ET1. He had worked as a senior procurement officer for the respondents from 9 October 2024 until his dismissal on the ground of capability on 1 August 2025.
2. The claimant indicated that he was put on a performance improvement plan on 7 February 2025. He writes:

*“Despite raising concerns about systemic complaints and discriminatory treatment, no reasonable adjustments or support were provided. I was denied equal access to training or opportunities or reimbursements, contrary*

*to the employer's duty under the Equality Act 2010, section 13 (direct discrimination and section 19 indirect discrimination)."*

3. The claimant narrated that he appealed receipt of a final written warning issued on 13 June 2025 and that the appeal which took place on 27 June which was unsuccessful. **The ET1 makes no reference to claims for victimisation.**
4. The grounds of resistance provided a detailed chronology of the respondent's position and set out the capability and appeal process. Their position was that no race discrimination had taken place. It was also stated at paragraphs 24 and 35 that it was only at the appeal on 27 June 2025 that allegations of discrimination had been made.

### **Claimant's attempts to add to case**

5. The claimant sought to respond to the grounds of resistance in a document headed "Reply to the Respondent's Request for Further and Better Particulars". That document appears to have been received by the Tribunal on or about 8 December 2025.
6. This document in December is the first occasion that reference is made to victimisation in these terms. Victimisation (s.27):-  
  
"Protected Act: race discrimination concerns during appeal 27 June 2025  
- Disadvantage dismissal and ignored appeal grounds."
7. At the preliminary hearing which took place before Judge Doherty on 9 February 2026 it was brought to the claimant's attention that he had tried to supplement the ET1 by adding information contained in his case management Agenda (and also in the "Reply" document). It was explained to the claimant that these were not before the Tribunal and would require an application to amend.
8. In the Agenda the claimant had expanded on the factual allegations already contained in the ET1. The claimant indicated that the detriments he had suffered after the protected acts were:
  - a) Escalation of my capability process;
  - b) Refusal to reimburse expenses;
  - c) Refusal to pay overtime;
  - d) Dismissal;
  - e) Hostile behaviour;
  - f) Failure to investigate complaints

At the end he added "***These detriments occurred before I complained.***"

9. The claimant had also indicated that he had made protected acts by reason of raising concerns about racial discrimination and unequal treatment and hostile conduct. He said he had suffered hostility during the PIP process (February to August 2025) and denial of reimbursement and overtime (April 2025 onwards), increasingly harsh and unfair evaluations (June – August 2025), failure to investigate his discrimination complaints culminating from PIP to dismissal and dismissal being upheld by evidence provided by him. He suggested that there was an escalation of "negative treatment" closely following his internal race complaints and that the timing "creates a clear causal link".
10. Following the advice given in the Note by the Judge, the claimant lodged documents headed "Amendment Pack" to add a claim of victimisation the grounds given here were: "denial of training, denial of overtime, denial of reimbursement, inappropriate comments in one-to-one meetings, and inconsistent treatment. Following these protected acts the respondents subjected the claimant to detriment, including escalation of the capability process, hostile conduct, harsh scrutiny, refusal of time off, overtime pay, refusal of reimbursement and dismissal. The detriments were materially influenced by the protected acts".
11. The claimant expanded the harassment complaint to include: "all one-to-one meetings with line manager were conducted in a hostile, intimidating and belittling manner; and that the capability process was applied in a degrading, humiliating and oppressive way violating the claimant's dignity and creating a hostile environment.
12. He expanded the direct discrimination claim seeking to add: "further acts of less favourable treatment include unequal workload allocation, denial of support and supervision, inconsistent enforcement of expense and overtime policies, denial of training provided to colleagues and failure to investigate discrimination complaints."
13. The claimant also wanted to add "clarification" of PCPs including a requirement to undertake warehouse/logistics duties, a requirement to meet PIP objectives/training, inconsistent reimbursement approval, inconsistent overtime approval, requirement to meet capability standards without equal support.
14. He indicated that all the amendments arose from the same factual matrix already pleaded. He then set out his submissions as to why the amendment should be granted.

### Respondent's position

15. The amendment was opposed. Because of the fast approaching final hearing, parties agreed that the amendment process would be dealt with “on the papers”, in other words on the basis of the written material before the Tribunal rather than at a face-to-face hearing. Prior to the 1 April 2026 the respondents lodged a detailed response to the application where they set out their position which was that the amendment lacked detail and, given it's timing it would be prejudicial to them to have to reconsider the pleadings, the documents lodged and witnesses causing additional preparation expense.
16. The respondent opposes the claimant's application to amend the ET1 to add a victimisation claim under section 27 of the Equality Act 2010 and to expand the existing claims under sections 13, 19 and 26. The respondent submits that each amendment is substantive, not merely clarificatory, and therefore requires permission. The respondent emphasises that the Tribunal must apply the **Selkent** principles and the overriding objective.
17. The proposed victimisation claim introduces an entirely new cause of action. It does not identify any protected act or acts, refer to the respondent's knowledge of any such acts, or any causal link between Protected Acts and detriment. The respondent highlights the absence of dates for the alleged acts, the absence of any engagement with limitation under section 123, and the absence of any explanation for lateness. Any victimisation claim appears wholly or substantially out of time.
18. In relation to harassment, the respondent submits that the claimant seeks to transform a broadly pleaded allegation that “the process created a hostile environment” into an extensive, cumulative course of oppressive conduct over many months. The respondent contends that this is a significant expansion, involving new factual allegations about one-to-one meetings, capability processes and interactions across multiple individuals. The respondent further notes that the claimant again fails to identify dates or to address limitation.
19. Turning to direct discrimination, the respondent accepts that some particulars elaborate matters already referred to in the ET1 but asserts that the proposed amendment goes far beyond this, seeking to introduce multiple new allegations of unfavourable treatment across various decisions and time

periods. The respondent contends that this would materially expand the factual and evidential case it must meet.

20. The respondent submits that the claimant seeks to replace the original pleaded PCPs with multiple new and distinct PCPs. The respondent argues that each would require separate justification analysis, significantly widening the scope of the claim and increasing the respondent's evidential burden.
21. Finally on timing and prejudice, the respondent stresses that the application is made after the Preliminary Hearing and shortly before the Final Hearing. It notes the claimant provides no explanation for not applying earlier. The respondent states that it would require to amend its ET3 and that this, together with the expanded scope of the claims, would disrupt existing case-management orders, create delay, and result in avoidable cost. The respondent submits that these consequences weigh against granting permission.

#### 1 April

22. In anticipation of the full hearing parties had lodged what was titled the Final Hearing Bundle. As the history made reference to some important documents which had not been provided with the submissions, I was able to access a copy in the Bundle.
23. The claimant had submitted a document headed "My Submission" to the respondents on 22 June 2025 which is in effect his appeal against the final written warning that was issued to him as part of the PIP process.
24. Starting at page 174 there is a heading "Direct Discrimination". Both the respondent and the claimant appear to have taken the later appeal hearing which took place on 27 June as being the first time discrimination is raised. That is factually incorrect. That document ends (at page 177) with the sentence **".....thus, I am worried that the company policies or procedures being applied along racial lines or based on my race"**.
25. I have also had the opportunity of reading the minutes of the appeal meeting (page 179 - 242). Mr Eboh was asked to give examples of less favourable treatment on the ground of his race.
26. The Bundle did not contain any further correspondence after the appeal from the claimant raising issues that could be described as amounting to a detriment with the respondents.

## Discussion and Decision

27. The Tribunal has wide powers of amendment. To allow amendment or to refuse it is a matter for the discretion of the Tribunal. The Tribunal has to have regard to its rules particularly the overriding objective.
28. In considering amendment the starting point is still the leading case of **Selkent Bus Co Ltd v Moore** [1996]. The approach set out there has since been affirmed by the Court of Appeal, for instance in the case of **Hammersmith and Fulham London Borough Council v Jesuthasan** [1998] ICR 640.
29. In **Selkent**, the EAT confirmed that the Tribunal should take into account all the circumstances and should balance the injustice and hardship of allowing the amendment against the injustice and hardship of refusing it. While the court observed that it was impossible and undesirable to attempt to list all the circumstances, the EAT considered the following to be relevant: “(a) The nature of the amendment which can cover a variety of matters such as: i) The correction of clerical and typing errors; ii) The additions of factual details to existing allegations; iii) The addition or substitution of other labels for facts already pleaded; or iv) The making of entirely new factual allegations, which change the basis of the existing claim. (b) The applicability of time limits – if a new complaint or cause of action is proposed to be added by way of amendment, it is essential for the tribunal to consider whether that complaint is out of time and, if so, whether the time limit should be extended under the applicable statutory provisions. (c) The timing and manner of the application – it is relevant to consider why the application was not made earlier and why it is now being made: e.g. the discovery of new facts or new information appearing from documents disclosed on discovery.”
30. The claimant argues that the amendment is a relabelling exercise and based on the original “factual matrix”. I think that this submission is overly optimistic. I cannot see its basis as the ET1 that was lodged is silent in relation to victimisation. There is no reference to a Protected Act or to any change in behaviour after race discrimination is raised by the claimant in his letter of appeal. The claimant was on a Final Written Warning by this stage.
31. Indeed, victimisation first appears in the claimant’s papers in December. It is a new claim. By that point such a claim is out of time. The claimant also says (see paragraph 8) in his Agenda that the detriments occurred before the protected act. This would mean they could not be regarded as detriments as they predate the Protected Act. To be fair to the claimant two detriments he recorded occurred, if they occurred at all, after the issue of race discrimination

was raised namely dismissal and possibly the alleged failure to investigate his complaints if he is referring to the refusal to uphold the appeal.

32. It is up to the claimant to convince the Tribunal that the equitable power to allow late claims should be invoked. There is also no explanation as to why the claim for victimisation comes at this stage some months after the submission of the ET1 and crucially no pleadings to support an application under Section 123 of the Equality Act (EA) as to why it is just and equitable to hear the claims out of time. Granting an extension is not a foregone conclusion. It has been observed that time limits exist for a reason (*Humphries v Chevler Packaging Limited* UKEAT/0024/06/DM and *Robertson v Bexley Community Centre* 2003 EWCA Civ).
33. The claimant also faces a number of difficulties not least the form of the proposed amendment. I had regard to the case of *Remploy Ltd v. Abbott & Others* UKEAT/0405/14. The EAT in that case confirmed that in deciding whether or not to allow an amendment to a claim, Judges must consider issues such as the reason for the delay and the impact of the amendment. They also stressed “it is essential before allowing an amendment it must be properly formulated, sufficiently particularised, so the respondent can make submissions and know the case it is required to meet.”
34. The claimant says: “all one-to-one meetings with line manager were conducted in a hostile, intimidating and belittling manner”. He does not go on to explain what about the meetings that were hostile, intimidating and so forth. As the respondent’s solicitors comment there are no dates or details. In paragraph 12 he refers to “unequal workload allocation” but gives no examples.
35. In paragraph 13 he seeks to add new PCP’s despite a lack of a factual basis to justify them. Some are clearly not PCPs that relate to the way in which the work is organised but rather the alleged PCP is attached to a complaint being made. The claimant puts: “such as inconsistent reimbursement approval, inconsistent overtime approval”. It is stretching credibility to suggest that there is a deliberate policy of inconsistent management behaviour. If this is what is being suggested then it would be inconsistent for everyone. It would impact everyone and not amount to less favourable treatment on the grounds of race.
36. I take into account that the claimant is not legally qualified and is a party litigant. Nevertheless, the claims here have evolved from the claims made in the ET1 and it is noticeable that some of the particular allegations have been used more than once as claims for direct discrimination, indirect discrimination and now for detriment.

37. The Judgment of Mr Justice Langstaff in *Chandok v. Tirkey* makes it clear that raising a claim was not simply something done to “get the ball rolling” and that “parties must set out the essence of the respective cases on paper.” He indicated that such a restriction was needed to keep litigation within sensible bounds and that “a degree of informality does not become unbridled licence”.
38. The respondent’s solicitors argue that allowing the amendment would be prejudicial to the respondent and would increase the scope of the claims (adding a new claim for victimisation) and requiring the defence to the proceedings to be reviewed. The PIP process and dismissal did not involve a cast of many actors. The main witness appears to be the claimant’s line manager, against whom the allegations are principally made, and the senior manager who dealt with the appeal. In such circumstances I would not have been persuaded, without more practical detail of the likely additional time and expense that would be incurred, to have put much weight on this submission if the amendment had been clearer in its terms. However, as the amendment stands the addition of wide and vague allegations is undesirable making it impossible for the respondent’s solicitors to know exactly what case their client is facing.
39. I am also conscious that the claimant has claims which are proceeding to a hearing. The balance of prejudice both because of the late stage at which the amendment is made and the difficulties in properly responding to it without more detail tells against allowing the amendment. It is accordingly refused.

**Date sent to parties: 2 April 2026**