



EMPLOYMENT TRIBUNALS

Claimant: Dr D Osin

Respondent: Tokamak Energy Limited

Heard at: Watford Employment Tribunal

On: 26 & 27 January
2026

Before: Employment Judge Arullendran

REPRESENTATION:

Claimant: In person

Respondent: Ms Amy Smith (counsel)

JUDGMENT having been sent to the parties on **10 February 2026** and written reasons having been requested in accordance with Rule 60(4) of the Employment Tribunals Rules of Procedure 2024, the following reasons are provided:

REASONS

The hearing

1. The claimant brought a claim of unfair dismissal against the respondent after he was dismissed for not having a valid certificate of sponsorship allowing him to work for this employer in the UK. The respondent defends the complaint.
2. A number of case management decisions were made by the Tribunal at the beginning of the hearing on 26 January 2026. Neither party requested those orders to be identified in the decision announced at the end of the hearing in accordance with Rule 59(3) of the Employment Tribunal Procedure Rule 2024, as amended, and neither party requested written reasons to be provided for the decisions made on 26 January 2026 in accordance with Rule 60(3).

3. The list of issues to be determined by this Tribunal were agreed with the parties at the beginning of the hearing as follows:

Unfair dismissal

- 1.1 What was the reason or principal reason for dismissal: a breach of s.98(2)(d) or SOSR under s.98(1)(b) Employment Rights Act 1996 (ERA)? Either of which the Respondent says are capable of justifying dismissal i.e. are a potentially fair reason for dismissal under the ERA 1996.
- 1.2 Did the respondent act reasonably or unreasonably in all the circumstances, including the respondent's size and administrative resources, in treating that reason as a sufficient reason to dismiss the claimant? The Tribunal's determination whether the dismissal was fair or unfair must be in accordance with equity and the substantial merits of the case.
- 1.3 Did any procedural failings make the decision to dismiss unfair?

Remedy for unfair dismissal

- 1.4 If there is a compensatory award, how much should it be? The Tribunal will decide:
- 1.4.1 What financial losses has the dismissal caused the claimant? The C must give account of any income he has received since date of dismissal.
- 1.4.2 Has the claimant taken reasonable steps to replace their lost earnings, for example by looking for another job? The respondent states the claimant failed to return to the role which had been held open for him.
- 1.4.3 If not, for what period of loss should the claimant be compensated?
- 1.4.4 Is there a chance that the claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?
- 1.4.5 If so, should the claimant's compensation be reduced? By how much?
- 1.4.6 Does the statutory cap of fifty-two weeks' pay apply?
- 1.5 What basic award is payable to the claimant, if any?
4. I heard witness evidence from Jackie Dalziel (respondent's head of talent), Jane Shannon (respondent's director of people), Oliver O'Sullivan (director of Migrate UK) and Hazel Lowe (the claimant's partner). I did not hear oral evidence from the claimant and he asked for his unsworn witness statement

to be adduced into evidence. That evidence has been given the appropriate weight on the basis that the claimant did not give sworn oral evidence and was not cross examined on the contents of his witness statement.

5. I was provided with a joint bundle consisting of over 600 pages. I have only taken into account those docs which were referred to in evidence.
6. The finding of facts has been made on the balance of probabilities.
References to page numbers are taken from the joint bundle of documents.

The facts

7. The respondent organisation is based in the UK with subsidiaries in US and Japan. The respondent has a dedicated HR department and receives immigration law advice from Migrate UK (Migrate). The respondent has a sponsor licence from the immigration services because it recruits globally employees who do not have an automatic right to work in the UK and are subject to the immigration rules which are in force in the UK at the relevant time. The sponsorship management system (SMS) is operated by the Home Office through the UK Visas and Immigration Department (UKVI). Migrate processes the new and renewal visa applications behalf of the respondent through the system operated by UKVI.
8. In order for an overseas worker to apply for a Skilled Worker Visa in the UK the UK employer must hold a valid sponsor licence and must provide a Certificate of Sponsorship (COS). Once that has been received, the worker must then submit an online application using that COS reference number. Where an application was made before 31 December 2024, the worker would be issued with a Biometric Residence Permit (BRP) and this card was used to prove immigration status, however this has subsequently been replaced by the eVisa online system which can be accessed electronically using a unique share code.
9. When a sponsored work resigns from their post, the employer must inform the Home Office via the Sponsorship Management System (SMS) as set out under paragraph C1.13 of Part 3 of the Workers Guidance for Sponsors (page 561). The effect of giving this notice is to withdraw the COS and that means the employer would no longer have sponsorship duties for that worker. Once this has been done the Home Office should then consider whether the worker's leave to remain in the UK should be cancelled and this is an administrative process which requires the Home Office to serve a written notice on the worker specifying the new early expiry date of their permissions. There were significant delays at the Home Office arising out of the impact of the pandemic which meant that the reporting of the withdrawal of

sponsorships were not always followed with the relevant cancellation notices, if at all. Whilst leave to remain in UK may continue, this does not confer the right on the worker to work in the UK without a valid COS and work permit.

10. The claimant first worked for the respondent between 12 December 2019 and 27 August 2021. The claimant's employment was sponsored by respondent and a copy of the Certificate of Sponsorship can be seen at page 139 of the bundle. The claimant was issued with a visa by the UK authorities which was due to expire on 14 December 2024 (page 141). The claimant resigned from that position with the respondent on 26 May 2021 by giving notice and his employment came to an end on 27 August 2021.
11. The respondent, through Migrate, notified the immigration authorities on the SMS on 30 August 2021 that the claimant's employment had come to an end and that the respondent certificate of sponsorship was no longer valid, as set out at page 147 of the bundle. This confirms that the Certificate of Sponsorship terminated on 27 August 2021 because the claimant was returning to the USA. The claimant did not recall receiving written notice from the Home Office notifying him of an early end to his immigration permissions in the UK. The subject access request documents received by the claimant from the Home Office show that his skilled worker Visa was considered on 20 Feb 2025 and that cancellation was not pursued at that time because the claimant had leave to remain in the UK under a different status (page 363). There are no relevant entries from August 2021 on the documents disclosed by the Home Office.
12. A worker's leave to remain in the UK may continue after the COS has been withdrawn but the Visa restrictions in respect of working only apply to the sponsoring organisation and they end when the organisation ceases to sponsor that work. The Appendix Skilled Workers SW 5.1 of the Immigration Rules state that the applicant must have a valid COS for the job they are planning to do which must not have been withdrawn by the sponsor, as set out at pages 59 to 61 of the bundle. The rules, as set out at page 592, states that a person's entry clearance or permission may be cancelled where their sponsorship has been withdrawn.
13. The respondent acknowledges that neither the Immigration Rules nor the Sponsor Guidance cover the claimant's particular situation, however the COS is the foundation on which a Visa is either issued or cancelled.
14. The share code system operated by the Home Office is an online system which can be used to confirm the Visa holder's status, the duration of the Visa and any work permissions. However, that system has to be updated by

individuals at the Home Office and there is the possibility of false positives being provided where the system has not been updated with changes in the worker's circumstances. This system is used to provide employers with a statutory defence if any allegations of a criminal or civil nature are brought against the employer for employing a worker who did not have the necessary right to do so in the UK. The statutory provisions relating to such offences are set out at page 76 of the bundle and it provides that an employer commits an offence if they continue to employ someone where they had reasonable cause to believe that the employee is disqualified from employment by reason of their immigration status on account of the employee's leave to remain being invalid. Prosecution by the Home Office can lead to the loss of sponsorship status which has very wide ranging ramifications as it would necessarily mean that all workers employed under the sponsorship scheme would have to cease working for that employer.

15. The respondent received information on 12 January 2026, as a part of enquiries made in respect of this litigation, from the Home Office helpdesk as set out at page 435C of the bundle. That information was to the effect that individuals do not have the right to continue working for a sponsor from the declared last day of employment regardless of whether the Home Office has yet taken action to curtail the individual's permission. It is not disputed that this was also the position in October 2024.
16. The claimant began a second period of employment with the respondent on 3 October 2022 and he was employed as Head of Spectroscopy.
17. On 3 June 2022 the claimant provided the respondent with a copy of his UK residence permit (BRP) in reply to queries about his right to work in the UK (pages 148, 152 and page 137). The BRP is a hard copy residence permit which bears the claimant's photograph and states that it is valid until 14 December 2024, with the remark that it was subject to restricted work. This was the BRP which had been issued to the claimant in 2021 when he began his first period of employment with the respondent and had not been updated after his resignation in August 2021. Both the claimant and the respondent wrongly concluded that the claimant retained his right to work for the respondent as a result of this BRP. The respondent did not carry out any further checks with UKVI prior to the claimant starting his new job on 3 October 2022. In any event, it is common ground that UKVI failed to action the email at page 147 of the bundle informing them that the claimant's previous employment had come to an end and therefore the information available on UKVI at that time did not reflect that the original certificate of sponsorship was no longer valid.

18. On 26 September 2024 the claimant sent an email to the respondent regarding his visa renewal (page 162). That same day the respondent sent an email to Migrate and instructed them to begin the renewal process (page 163). However, the COS number given in that email refers to the certificate issued in 2021, which later transpired to be out of date.
19. Migrate noted that the COS had been withdrawn in 2021 when the claimant's first employment had come to an end and the emails at pages 163 to 170 set out the exchanges between Migrate and the respondent about the error and advice was given by Migrate at that time which was that the claimant should have received a curtailment notice from the Home Office in 2021 and he should have then left the UK within 60 days. On the basis of this advice it became clear to the respondent that their reliance on the COS had been done in error.
20. The respondent attended a meeting with Migrate on 1 October 2024 to review the information about the out of date COS and it was agreed that Miss Dalziel from the respondent organisation would carry out an investigation. Ms Dalziel met with the claimant that day and explained the respondent's concerns about his right to work in the UK. The claimant was given the opportunity to explain his understanding of his status to work in the UK and he was asked to provide a copy of his passport and travel history. The respondent explained that it was treating this matter as a priority and would continue to communicate with the claimant and provide him with suitable options as soon as possible.
21. On 2 October 2024 the claimant provided the respondent with his passport and details of his travel history since August 2021 (page 178). Migrate sent an email to the respondent as a result of receiving this information explaining that the UK Border Control had failed to act on the withdrawal of the COS and his return to the US and her opinion was that, because the claimant had left the UK thereafter, his leave to remain have also ended (page 174).
22. The claimant attended a meeting with the respondent and Migrate on 3 October 2024 and he was accompanied by his partner, Dr Lowe, who took minutes during that meeting. The respondent did not take any minutes during the meeting. The claimant has failed to disclose the minutes his partner took during this and the subsequent discussions which his partner attended.
23. Migrate explained at the meeting on 3 October 2024 the findings of the review which had been carried out and set out their advice in terms of the proposed next steps for both the respondent and the claimant. It was explained that the COS was withdrawn in 2021 and that a curtailment notice was likely to have been issued to the claimant. The claimant was adamant that he had never

received such a notification either by email or letter. It is unknown whether the immigration authorities sent such a notification to the claimant, or not. Migrate stated its opinion was that the claimant did not have the right to work in the UK when he returned in 2022 and the respondent relied upon that advice because it specifically employed Migrate to give specialist advice on all immigration matters and there was no reason for the respondent to doubt that the advice was not correct. Mrs Shannon asked Migrate if there was any way the claimant's employment could continue with the respondent's whilst they renewed the Certificate of Sponsorship and she also explored the possibility of garden leave or suspension. However, the advice received by the respondent from Migrate was that neither garden leave nor suspension was an option and that the claimant's employment had to be terminated with immediate effect because he did not have a valid right to work in the UK. Migrate advised the respondent that they would help both the claimant and the respondent in any way possible to renew the sponsorship as soon as possible and the claimant was advised of this. The advice from Migrate was that the claimant and his daughter should leave the UK with immediate effect so that they could reapply in the proper way for a work permit.

24. Mrs Shannon listened to all of the participants at the meeting on 3 October 2024 and she genuinely believed that the claimant did not have the right to work in the UK since the withdrawal of the COS in 2021. The claimant said that he did not agree with this, that he had not received a notice of curtailment and that his BRP and his online UKVI account demonstrated that the claimant had the right to work in the UK, however Mrs Shannon disagreed with this because she knew as a fact that the COS had been withdrawn in August 2021 by the respondent and the immigration authorities had been duly notified at that time. As a result of the decision reached by Mrs Shannon about the claimant not having the right to work in the UK since August 2021, she informed the claimant that his employment would be terminated straightaway in accordance with clause 11.3.5 of his contract of employment (page 50), which allowed summary dismissal where the employee became ineligible to work in the UK. She stated that the respondent would work with him to regularise his right to work status in order for him to return to his job with the respondent as soon as possible. Mrs Shannon apologised to the claimant on behalf of the respondent for the error and acknowledged the impact of this news on the claimant and his family. Mrs Shannon offered to help the claimant and discussed with the claimant and his partner other ways in which the respondent could support them throughout this process. Further, the respondent agreed to pay for immigration advice to be provided by Migrate to the claimant in respect of the application process required to regularise his immigration status, however the claimant eventually decided to instruct his own solicitors and did not proceed with Migrate.

25. Mrs Shannon sent a letter to the claimant confirming the outcome of the meeting of 3 October 2024 confirming her decision to dismiss him and a copy of that can be seen at page 196 of the bundle. The respondent did not offer the claimant a right of appeal because Mrs Shannon believed that the claimant did not have the right to work in the UK and that position was not capable of being altered by an internal appeal.
26. The respondent offered to employ the claimant remotely as a contractor until his immigration status could be sorted out. A draft contract was produced by the respondent and the remuneration offered to the claimant was similar to his existing salary. A copy of that draft contract is at pages 195B of the bundle. The respondent continued to correspond with the claimant about this offer after his employment had been terminated.
27. On 16 October 2024, after having taken his own legal advice from his own solicitors, the claimant informed the respondent that he had been advised he could regularise his immigration status without leaving the UK, as set out at page 242. The respondent took further advice from a different adviser and confirmed that this was indeed an avenue that was open to the claimant and this was confirmed with the claimant on 22 October 2024 (page 251). The respondent informed the claimant on 24 October 2024 of the alternative approach of applying for his Visa from the UK and that is set out at the email at page 258 and continued to communicate with the claimant and his partner about how they could help the claimant return to his job as quickly as possible.
28. On 30 October 2024 the claimant wrote to the respondent and informed them that he had decided to apply for a family Visa through his own solicitor and he stated that process would take approximately 12 weeks, after which he would be happy to return to the respondent. The respondent confirmed that it would ask its solicitors to stand down and would await confirmation from the claimant about his visa (page 265).
29. The respondent continued communicating with the claimant and his partner between 3 October 2024 and 26 November 2024 about how they could help him return to work and any other assistance they could provide to him and his family (pages 199, 200, 226, 227, 242, 258, 260, 261, 265 & 273).
30. On 14 November 2024 the claimant started early conciliation with ACAS and they informed the respondent in or around early December 2024 that the claimant did not wish to return to his job with them. The respondent was surprised and disappointed with this decision, particularly given the support

they have offered to the claimant and the efforts they have made to regularise his immigration status so that he could return to work for them.

31. The respondent then advertised the claimant's post in January 2025 and an offer was made to a suitable candidate accordingly. On 10 March 2025 the claimant sent an email to the respondent asking whether he could be reinstated to his previous role as he now had a valid Visa from 19 December 2024 until 19 June 2027. The respondent replied explaining that they had already offered the post to a suitable candidate and understood from ACAS that the claimant did not wish to return to his former post. The claimant did not contact the respondent between 19 December 2024 and 10 March 2025 to say that he now had a valid visa or that he wished to return to his post. The claimant applied for other posts with the respondent in March 2025, but he was unsuccessful.
32. Migrate made enquiries of the Home Office Business Helpdesk as part of this litigation in respect of a worker's right to work in the UK where the sponsorship has come to an end. A copy of their enquiry dated 12 January 2026 can be seen at page 422 and the reply from the Helpdesk can be seen at page 421. The advice from the Helpdesk states "Where a Skilled Worker's employment ends and the sponsor reports the individual's last day of work via the Sponsor Management System (SMS), sponsorship is considered to have **ended from the date the employment ceases**, as declared by the sponsor. From this point, the individual no longer meets the conditions on which their Skilled Worker permission was granted. As a result, the individual does not have the right to continue working for the sponsor from the declared last day of employment, regardless of whether the Home Office has yet taken action to curtail the individual's permission. The requirement to stop working applies from the point at which sponsored employment ends, not from the date the curtailment notice is issued. ... During this period, the individual's leave may remain valid, but this **does not extend or reinstate any permission to work for the former sponsor**. Sponsors must therefore ensure that sponsored workers cease employment on or before the date reported via the SMS and that no work is undertaken after sponsorship has ended."
33. Both parties made closing submissions by reference to written skeleton arguments and they have been taken into account in full, along with the authorities cited therein, but are not reproduced word for word in these Reasons.
34. The claimant submits that he had leave to remain in the UK because the Home Office had not cancelled that leave and that this also meant he had the right to work for the respondent as no documents exist which state he did not

have the right to work. The claimant submits that the respondent did not apply for a new work visa for him in 2022 when he returned to work for them, the claimant did not receive a written notice from the Home Office curtailing his permission, further leave to remain was granted to the claimant on 19 December 2024 and, had the respondent used the share code to check the claimant's status in October 2024, the Home Office online register would have shown that he still had the relevant permissions.

35. The claimant also submits that in the cases of Bouchaala and Klusova the employers had been misled by the immigration authorities but that this respondent did not check the claimant's permissions before dismissing him. He submits that the respondent's mistaken belief that it would have been unlawful to employ him cannot be a SOSR which could be relied on to dismiss him because the respondent did not make enquiries with the Home Office. He also submits that his dismissal was procedurally unfair because the respondent did not provide him with minutes from the meeting which took place on 3 October 2024, the speed with which he was dismissed and the failure to allow him to appeal the decision.
36. The respondent submits that the claimant did not have the right to work in the UK after 30 August 2021 and it was unlawful for the respondent to have continued to employ him. In the alternative, the respondent submits that the respondent held a genuine belief that the continued employment of the claimant would have been unlawful. In particular, the respondent relied on professional specialist advice on immigration from Migrate UK who advised that the claimant did not have the right to work in the UK after the withdrawal of his COS. The share code was insufficient and inconclusive evidence of the right to work in the UK and the claimant was unable to provide any other evidence that he had the right to work. The respondent also submits that the claimant did not challenge any of the respondent's witnesses in cross examination on the reasonableness of their belief.
37. In terms of the procedure, the respondent submits that an appeal would not have changed the position regarding the dismissal and the decision to dismiss was reasonable in the circumstances. The respondent submits that the case of Kelly is to be distinguished as the illegal state of affairs is not disputed on any reasonable or rational basis, the claimant did not have the right to work in the UK, that this was not simply a technical issue and it did not arise from an oversight which could be remedied by the time the appeal would be heard.

The law

38. Section 98 ERA provides:

98 General

(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—

- (a) the reason (or, if more than one, the principal reason) for the dismissal, and
- (b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

(2) A reason falls within this subsection if it—

- (a) relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,
- (b) relates to the conduct of the employee,
- (c) is that the employee was redundant, or
- (d) is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.

39. The reasonableness of that dismissal is to be a judge in accordance with section 98(4) ERA, which provides:

98 General

(4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—

- (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and
- (b) shall be determined in accordance with equity and the substantial merits of the case.

40. Section 15 of the Immigration, Asylum and Nationality Act 2006 states that employers are liable to pay a civil penalty of up to £20,000 per employee, which increased to £60,000 per employee from 13 February 2024, if they employ a person who is subjected to immigration control and who is not legally entitled to work in the UK. If an employer knowingly employs an illegal immigrant, the possible fine is unlimited and the employer can face a jail sentence of up to 2 years, as set out in section 21 of that enactment.

41. Both sides have referred submissions to the case of Kelly v University of Southampton [2008] ICR 357 in which an employer did not give the dismissed employee the right of appeal. The Employment Appeal Tribunal found that the employer would not have been committing an offence by continuing to employ the employee and then went on to find that there is no reason why she should not have been provided with the means to appeal, particularly where the illegal state of affairs is disputed or arises from an oversight which can be remedied by the time the appeal would have been heard. That error rendered the dismissal unfair.
42. Both parties refer to the case of Hounslow London Borough Council v Klusova [2008] ICR 396 in which the employee had applied to extend her leave to remain in the UK but no final decision had been made when the employer dismissed her relying on the statutory ban as the reason for summary dismissal. The Court of Appeal found that the claimant in that case had leave to remain and work in the UK at the time of her dismissal and, therefore, there was no statutory ban. In that case, the employee had made the application to extend her leave before it had expired.
43. The respondent refers to the Employment Appeal Tribunal decision in Bouchaala v Trusthouse Forte Hotels Ltd [1980] ICR 721 where the Department of Employment had told the employer it could no longer legally employ the claimant because of work permit rules. However, the claimant in that case had been given indefinite leave to remain in the UK and therefore did not require a work permit. The EAT held that a genuine belief that continued employment would be illegal could amount to some other substantial reason and the dismissal was found to be fair.

Discussion and conclusions

44. Applying the relevant law to the facts I find that the claimant's witness s is to be given appropriate weight in this matter (i.e. less than that of the respondent's evidence) because he has not given evidence on oath and that evidence has not been tested in cross-examination.
45. It is for the respondent to show the reason for dismissal and I find that the reason for the claimant's dismissal was that he did not have a valid Certificate of Sponsorship from the respondent which entitled him to work for this respondent in the UK after August 2021. Errors were made by the respondent when the claimant was re-employed in 2022 because a new COS was not issued and this situation could have been avoided if the respondent had considered the situation properly when it re-employed the claimant. However,

errors were also made by the Home Office in that they did not action the email sent by Migrate on 30 August 2021, thus failing to update their system with details of the curtailment the claimant's work permit, but that was through no fault of the respondent. Further, neither the claimant nor the respondent could have known that the Home Office had failed to action that email in 2021. However, I find that the claimant must have known that neither he nor the respondent had made a new application for a work permit with a new COS in 2022 when he was re-employed. The claimant knew in 2022 that he was relying on the BRP which had been issued to him before his first period of employment with the respondent came to an end in 2021 and that it had not been renewed after his return to the UK from the USA in 2022.

46. The claimant's reliance upon the incorrect information on the Home Office or UKVI site is not the correct approach. Whilst the claimant is correct in saying that it is the Home Office who makes decisions about which workers are entitled to be issued with a visa and work permits, it is not right to proceed with employment in circumstances where the parties know that there is no valid Certificate of Sponsorship and that the work visa should have been cancelled by the Home Office. The uncontested advice from the Home Office Business Helpdesk (page 421) is that an individual's permission to work in the UK is directly linked to the ongoing employment in the sponsored role, that it ends from the date the employment ceased, that workers do not have the right to continue working for that sponsor after the last declared date of employment and, whilst the claimant had leave to remain in the UK, that does not extend to reinstate any permission to work for the former sponsor.
47. The respondent was correct to be concerned about offences which could be committed as set out on page 76 of the bundle (Chapter 13 of the Immigration, Asylum and Nationality Act 2006) if it continued to employ somebody who is disqualified from employment because of their immigration status and has reasonable cause to believe that the employee is so disqualified. Section 21 of the Immigration Asylum and Nationality Act 2006 sets out at paragraph 1B that a person is disqualified from employment by reason of their immigration status if the person is subject to immigration control and (b) the person's leave to enter or remain in the UK is invalid, has ceased to have effect (whether by reason of curtailment, revocation, cancellation, passage of time or otherwise) or is subject to a condition preventing the person from accepting the employment. In this case I find that the claimant's leave to remain had become invalid after the Certificate of Sponsorship had come to an in August 2021 when the respondent duly notified the Home Office on the SMS and he was therefore disqualified from employment by reason of his immigration status and the employer had reasonable cause to believe that he was disqualified from employment

because of his immigration status. To find otherwise would be contrary to the requirements for a work visa as that would mean people from overseas could leave and restart work as many times as they wished, which is contrary to the rules on immigration and overseas workers. This would also be entirely contrary to the requirement for a sponsor to notify the Home Office when sponsored employment has come to an end.

48. The claimant's situation was not the same as that in the case of Klusova as, whilst the claimant had leave to remain, he did not have leave to work for the sponsor where there was no current Certificate of Sponsorship. Further, at the date of the dismissal, the claimant had not made an application to extend the permission or renew on the work permit.
49. In those circumstances I find that section 98(2)(d) of the Employment Rights Act 1996 was the reason for the claimant's dismissal, i.e. that the claimant could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed under an enactment and this is a potentially fair reason for the dismissal.
50. For completeness, even if I had found that reason was not because the claimant could not continue to work without contravention (either on his part or that of his employer) of an enactment, I would have found that the employer had a reasonable belief that it could not continue to employ the claimant without a valid Certificate of Sponsorship and this was sufficient at the time Mrs Shannon took the decision to dismiss the claimant to amount to some other substantial reason (SOSR) of the kind such as to justify the dismissal of the employee holding the position which he held. That would be a SOSR dismissal for a potentially fair reason under section 98(1)(b) of the Employment Rights Act 1996. The reasons for that finding are that the respondent had received specialist immigration advice from its adviser at the time it made its decision and the uncontested evidence of the respondent was that it was entitled to rely on that specialist advice that they and the claimant would be breaching the law if they continued with their employment relationship and that this could have resulted in criminal and civil penalties because the respondent knew it did not have a valid COS and the claimant did not have the right to work in the UK without this certificate. Further, had the respondent lost its sponsorship status, it would have meant that all its overseas workers employed under the work permit scheme would have to be dismissed.
51. This Tribunal then has to go on to decide whether the respondent acted reasonably or unreasonably in treating the reason for dismissal as a sufficient reason to dismiss this claimant in these circumstances. The uncontested

evidence of the respondent is that they would potentially be in breach of the Immigration and Asylum and Nationality Act 2006, which would have potentially led to both civil and criminal liability, had they continued with the claimant's employment and, in those circumstances, I find that the respondent, having received specialist legal advice on the matter, acted reasonably in treating the reason i.e. (contravention of a statutory enactment or, in the alternative, some other substantial reason) as a sufficient reason to dismiss this claimant who could only work in the UK if he had a valid Skilled Work Visa with a valid Certificate of Sponsorship from the respondent.

52. In terms of the procedure adopted by the respondent, I must examine that procedure in light of the particular reasons for the claimant's dismissal and the size and administrative resources available to this employer. I find that the claimant's criticism that the respondent acted too quickly is not a well-founded criticism given that any prolonged employment of the claimant in the circumstances would inevitably lead to greater risk of both parties being in breach of the relevant immigration provisions, with both civil and criminal ramifications. In those circumstances I can see no procedural failures by the respondent.
53. The ACAS Code on Disciplinary and Grievance Procedures does not apply to dismissals for contraventions of a statutory enactment nor do they apply to situations where somebody is dismissed for a SOSR. The claimant has not adduced any evidence to demonstrate that the respondent failed to follow its own procedures at the time of his dismissal. Therefore, I find that the alleged failure by the respondent to provide the claimant with documents or minutes from the dismissal meeting is not a procedural failing and does not render the dismissal unfair. The respondent provided a full account of what was discussed at the meeting of 3 October 2024 in the letter of dismissal and that was provided promptly to the claimant. The claimant had the benefit of his own notes from the dismissal meeting but he has chosen not to disclose those to the respondent or the Tribunal and neither the claimant's statement or the evidence from Dr Lowe makes reference to anything being expressed incorrectly by the respondent in the dismissal letter.
54. In respect of failing to provide the claimant with the means to appeal the dismissal decision, I find that in accordance with the guidance given in the case of Kelly this is not a case where the respondent had made a mistake about the claimant's legal status to work in the UK. The respondent would have committed an offence by continuing to employ the claimant whereas in the case of Kelly it was found that the University in that case would not have committed an offence by continuing to employ the claimant and therefore that decision can be distinguished from this case. I also take into account that this

respondent continued to have discussions through the claimant's partner after the date of dismissal and continued to work with the claimant to try and regularise his immigration status. This is not a case where once the dismissal had taken effect the respondent ceased to address its mind to the claimant's situation or his dismissal. The purpose of an appeal is to give the worker an opportunity for the decision to be looked at again and, by continuing to have the ongoing discussions with the claimant through his partner and ongoing communication with the claimant to try and resolve the matter, I find the respondent was addressing its mind to the claimant's situation and was trying to find a way to mitigate the dismissal. There was no evidence presented in front of this Tribunal that an appeal would have taken place after the claimant had regularised his immigration status (which we now know was completed on 19 December 2024) or that there had been an oversight which was capable of being remedied on appeal. Looking at all of those circumstances in the round, I find that the failure by the respondent to offer the claimant a formal appeal in this particular case did not render the dismissal unfair.

55. For completeness, had I found that the failure to provide a mechanism to appeal against the dismissal procedurally unfair, I would then find that the chance that the claimant would still have been fairly dismissed had a different procedure being operated by the respondent is 100% given that no evidence has been presented in front of this Tribunal that the claimant would have relied on any different information at an appeal hearing or that the respondent's decision would have been in any way different as a result of the appeal. The claimant could not have been employed by the respondent before 19 December 2024. There is a 100% chance that any appeal hearing arranged by the respondent would have taken place before that date as the respondent was working expeditiously to help the claimant and the outcome would have been that the decision to dismiss had been correct as there was no valid COS. Applying the guidance given in the case of Polkey v A E Dayton Services Ltd [1987] IRLR 503 any compensatory award to be awarded to the claimant if a finding of unfair dismissal had been made would therefore be reduced by 100%. Further, the claimant could have contacted the respondent on 19 December 2024 to recommence work as the respondent had kept his job open for him on the understanding that he would return to his position as soon as his immigration status had been regularised. However, it was the claimant's choice not to return to his old job with the respondent and I find that the claimant failed to mitigate his losses from 19 December 2024 and it is not just and equitable to award any loss of earnings from that date onwards as that loss is not attributable to action taken by the respondent, as provided in section 123 ERA 1996.

56. For all the reasons I have given I find that the claimant's claim of unfair dismissal is not well-founded and it is dismissed.

Approved by:

Employment Judge Arullendran

4 March 2026

Sent to the parties on:

30 April 2026

For the Tribunal:

Notes

Judgments (apart from judgments under rule 51) and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings and accompanying Guidance, which can be found at www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/