



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8000238/2025

Hearing held at Dundee on 18, 19, 20 May 2026

Employment Judge McFatridge

Mr J Oosthuizen

**Claimant
In person**

Metaltech UK Ltd

**Respondent
Represented by:
Mr Fakunle,
Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Tribunal is that the claims of breach of contract and race discrimination are not well founded. All claims are dismissed.

REASONS

1. The claimant submitted a claim to the Tribunal in which he claimed that he had been unfairly dismissed and that he had suffered unlawful discrimination on the basis of race. He also submitted a claim of breach of contract. The respondent submitted a response in which they denied the claims. They pointed out that the claimant did not have sufficient qualifying service to bring a claim of unfair dismissal. They denied discrimination and denied that they were in breach of contract. The case was subject to a degree of case management. At the preliminary hearing which took place on 25 March 2025 the Employment Judge went through the claims with the claimant and helpfully produced a series of tables setting out the detailed claims. Following this the claim of unfair dismissal was withdrawn and dismissed.
2. Subsequently, a preliminary hearing took place to deal with the respondent's application that the claim be struck out. This application was

refused and a further application was made for a deposit order. This was also refused following a further hearing. The case came before me for a final hearing to commence on 18 May 2026. Shortly prior to the hearing the claimant had submitted an application that the response be struck out and an Employment Judge had decided that this would be dealt with at the commencement of the final hearing. I duly heard argument from both parties in relation to this application before deciding to refuse it. I will set out my full reasons for this later in the judgment. The claimant then gave evidence on his own behalf. The respondent led evidence from Walter Milne the owner and Chief Executive Officer of the business, Graeme Millar the respondent's Chief Operations Manager, Michael Verrall a Site Supervisor, Conner Craig a Tradesman Welder, Martin Mudie a Project Manager with the respondent and Ross Crockart a Site Supervisor with the respondent. A substantial joint bundle of productions was lodged. On the first day of the hearing the claimant with consent was permitted to lodge further documents. He had intended to submit more documentation however did not have sufficient copies for the Tribunal on that day. On the following day the claimant sought to lodge further documentation. The respondent objected to this. I decided that in order to save time on arguments which might not be relevant at the end of the day that it was appropriate to admit the new documents under specific reservation as to their relevancy. At the end of the day the respondent accepted that of the bundle submitted by the claimant some four or five pages were relevant. My final view was that none of the other pages were relevant and again I will set out my reasons for this in the judgment below. On the basis of the evidence and the productions I found the following essential matters relevant to the claim to be proved or agreed.

Findings in fact

3. The respondent is a fabrication business which specialises in fabricating metals for the construction industry. They design, build, manufacture and supply fabricated metal items and also deal with profile cutting. The respondent's principal Mr Walter Milne (also known as Wattie) established the firm originally in 1980 as "Wattie's Welders". The name was changed to Metaltech when the business was incorporated in 2008. They have two bases in the UK and around 40 employees. Over the years many of their employees have hailed from outwith the UK, many from Latvia or Poland but in the past they have also employed South Africans.
4. The claimant is South African. Whilst in South Africa he was employed as a welder principally in the oil and gas sector and he obtained various welding qualifications which were valid in South Africa. These qualifications tended not to be recognised in the UK and in addition the type of welding carried out in the oil and gas sector is different from the type of

welding carried out in the construction sector which the respondent were involved in.

5. In early 2024 the claimant was living in the Dundee area and was in contact with Dundee City Council's Discover Work Partnership which is an organisation run by Dundee City Council which aims to support people into sustainable employment and is part of the "Discover Work Service" run by the council. On 16 January 2024 Kirsty Beaumont of this service contacted the respondent stating:-

"I'm reaching out from Dundee City Council's Employer Support team – we support local business in Dundee hire those who are actively seeking work at no cost to either party. I am currently working with an experienced Welder/Fabricator in my service who has almost 20 years experience in the industry mainly in South Africa. He has worked in a variety of powerplants, mines and petrochemical sites before setting up his own renovations and maintenance company creating bespoke projects such as furniture, fences and doors. However now he has moved to the UK he is looking find similar work in Dundee and I am supporting him to find his new role.

We can potentially provide funding to support the recruitment of this client through our Employer Recruitment Incentive, which can be up to £8,000 for a full time employee."

The email was lodged (page 202).

6. The respondent replied on 21 January asking for sight of the claimant's CV (page 203). On 22 January Kirsty Beaumont responded to say that they had secured a work trial for the client. She also said

"We do have a number of clients we are in the process of putting through their CSCS cards, the majority have experience in a construction setting so we are helping them find their next role if you happen to be looking for semi-skimmed staff."

The respondent then asked where the employee was placed (page 205) and Ms Beaumont responded to say that he was up in a small firm in Tealing making bespoke fences and gates for clients.

7. A few days later Ms Beaumont wrote again to the respondent stating that the claimant had done a few days at the firm in Tealing but due to the travel to site for labouring rates he decided it was not for him. She explained that Discover Work were putting him through his CSCS test and that they would be seeing him on Friday when he was sitting the IOSH part with them. Mr Milne responded on 25 January suggesting a meeting (page 208). On 26 January Mr Milne emailed Ms Beaumont suggesting Monday 29th at 10am (page 210). Ms Beaumont agreed. On 29 January

the claimant attended at the respondent's premises and met with Mr Milne. The claimant was shown round the premises. Mr Milne looked at the claimant's qualifications and realised that he would not be able to work for the respondent as a fabricator welder since he did not have the appropriate UK recognised qualifications. He felt however that the claimant might be of use as a labourer working to assist the fabricators/welders working on site at several construction jobs the respondent had at that time. Mr Milne emailed Ms Beaumont to say that the claimant needed to get a CSCS card and a driving licence but that they might have a position for him (page 212). Mr Milne then spoke to Ms Beaumont on the telephone and explained to her what would be on offer. On 30 January Ms Beaumont sent the respondent an information pack together with an application form so that the respondent could apply for the financial assistance which had previously been mentioned.

8. On 7 February Ms Beaumont contacted the respondent to advise that she had been in touch with the claimant and that he was prepared to accept the offer which had been made. The offer was in respect of a labourer job paying minimum wage which at that time was £12.50 per hour (page 215).
9. On 16 February Gregor Marshall of Dundee City Council contacted the respondent to chase up the application form for financial assistance. This was duly submitted by the respondent on or about 20 February (page 219). On 22 February Mr Marshall of the Adult Employability Service emailed the respondent stating:-

"Hi Wattie,

Sorry I'm a bit late coming back to you. Only just received word back from the Fraud team who carry out the due-diligence before granting access to public funds.

Unfortunately, after the checks the team carried out I can't make the offer of ERI funding to the position.

I hope Jason's position can still go ahead without the ERI."

10. There was then an email and telephone correspondence between the respondent and the Employability Service in relation to why the funding application had been refused. At no time did either the claimant or the respondent receive a categorical answer as to why the application had been refused. In particular, neither was told whether the issue was with the respondent or with the claimant.
11. In any event, Mr Milne decided that he would proceed to employ the claimant without the benefit of the financial assistance. He contacted the claimant and discussed it with him. He made it clear that the claimant would be employed in a labouring position. He did say that the respondent would be putting the claimant through various courses and that if and when he obtained the relevant UK qualifications there was every chance that he would be promoted to a more senior role. The respondent's

position is that they have quite a number of their employees who have come to the company in this way and over time have found themselves promoted.

12. The claimant duly commenced work for the respondent with a start date of 1 April 2024. He completed a staff record and induction checklist which was signed by him on 1 April (pages 177-178). The induction checklist confirmed that he had received a job description and a copy of the employee handbook. The handbook was lodged (pages 96-168).
13. At that time, it was not the respondent's usual practice to provide a contract of employment to employees immediately when they started work. Their usual practice was to fix a probationary period and a contract of employment would be provided at the end of that probationary period if their employment was continuing. In the claimant's case the claimant was told that his probationary period would last three months. As will be noted below the claimant was consequently told that this period would be extended. As a result the claimant at no time received a formal document which amounted to employment particulars as is required by section 1 of the Employment Rights Act. The respondent did lodge a copy of the contract which they normally use for apprentices (pages 169-176). Neither this contract nor any other contract containing a detailed statement of the claimant's terms and conditions was ever provided to the claimant by the respondent. The only documents which the claimant received were those mentioned in the checklist which did include the staff handbook which contained a considerable amount of relevant information relating to the claimant's employment.
14. Initially the claimant worked in the respondent's workshop. He carried out various tasks under supervision. During this period whilst the claimant believed that he was working to an appropriate standard Mr Milne believed that the claimant was not. He believed that the claimant had difficulty taking instructions and listening to advice. Mr Milne formed the view that the claimant was fairly obstructive in some of his day to day interactions with other members of staff. He decided that he would extend the claimant's probationary period. The claimant was called into the office and told that his probationary period was being extended. There was little if any discussion as to the reasons for this.
15. Shortly after this the claimant started working on site. The arrangement was that where the respondent was carrying out work on a construction site the work would be carried out by site supervisors. These were tradesmen welder/fabricators who had control of the job. If there was more than one site supervisor on site one would be designated as the senior supervisor for that site. The site supervisor would be assisted by a semi-skilled labourer. This was the role which the claimant was to carry out. The claimant worked on various sites along with various site

supervisors. Some of these were in the Dundee area and the claimant would simply make his own way there. Others were further afield such as Edinburgh or south Fife and for these sites an arrangement would be made for the respondent's workmen to travel to the site together in a works vehicle.

16. During the trips to and from site there were often conversations between the workmen involving the claimant and sometimes banter was used where insults were traded. The claimant took part in these interactions. At no time did any of these interactions refer in any way to the claimant's South African nationality or his ethnic background. At no time did the claimant raise any issues that he felt he was being picked on due to his South African background. At no time did he raise the matter either with those around him or with management. One issue which arose was that the claimant considered that he should be treated as a semi-skilled welder/fabricator rather than as a labourer. He would object when the site supervisors told him for example to tidy the van.
17. There was a minor incident which the claimant captured on video involving Conner Craig a welder fabricator who was working with the claimant at the time on a site. A video was shown to the Tribunal. It shows the claimant sitting in one vehicle and Mr Craig in another. Mr Craig who is in his late twenties can be heard telling the claimant that he should clean the van and that the condition of the van was a mess. He then is heard muttering dog breath. He then gets out of the vehicle and flexes his muscles in a non-threatening way. Mr Craig had recently started attending the gym and the way he flexed his muscles would be the way that someone in that situation would do to impress someone with his musculature. It was not in any way threatening.
18. As is normal the respondent has a fairly clear cut process which has to be gone through if an employee wishes to ask for time off work or annual leave. The claimant was aware of this. The process for applying for the various types of leave are set out in the company handbook (page 98-101). The procedure for time off had also been discussed with the claimant at induction and was ticked off in the induction checklist. The claimant completed a holiday request form in or about July 2024 for the respondent and knew the procedure. In or about October 2024 the claimant wished to take time off so he could attend at his flat whilst a heating engineer came to check the gas installation and provide him with a gas safety certificate. The respondent would not usually permit additional time off (other than annual leave) for anything other than medical or dental appointments, bereavement leave etc. They would not as a rule allow time off so that an employee could wait in for a tradesman at their house. An employee would require to use annual leave for this. The claimant told one of the site supervisors that he was intending to take the day off but did not seek to formalise this in any way. On 22 October

the claimant did not attend at the place where the site supervisor he was working with was due to pick him up in the morning. During the course of the day Martin Mudie who was the respondent's Project Manager attended the site where the claimant was supposed to be working and noticed that he wasn't there. There were four people on site and should have been five. He spoke to the site supervisor who simply said that the claimant had not appeared. Mr Mudie tried to call the claimant but his telephone was off. Mr Mudie sent the claimant a message. The message was sent on a WhatsApp group which the respondent used for communicating with employees on site. Around 16 employees were in this WhatsApp group. They would have been able to read the message. The message stated:-

"hi Jason, is there a particular reason you are not working today? No body knows about your absence ... not really the way it works as you are aware"

This message was lodged (page 239). The claimant responded around 20 minutes later. He stated:-

"I did advise Timo when asked about my leave. It was done weeks ago. Tuesday October 8th to be exact."

19. At some point either before or after this message the claimant and Mr Mudie spoke on the telephone. Mr Mudie told the claimant that he had behaved inappropriately. He did not raise his voice. The claimant's girlfriend who was in the room at the time but did not hear the call considered that he was being "aggressive". Following this call at 11:39 Mr Mudie sent a further message to the claimant which stated:-

"As discussed Jason, there is a protocol to follow which involves filling out a request for time off form. No reason for that not to be done (that's your responsibility), please follow the simple guidelines as it ensures everyone is aware and additional labour is available if required"

No further action was taken by the respondent in respect of the matter and the claimant returned to work on the next day he was scheduled to work.

20. On or about 13 November 2024 the claimant was working on a site with Michael Verrall and Ross Crockart. Ross Crockart was the lead hand on the site and Mr Verrall was another site supervisor who was a qualified welder/fabricator. At some point around 4pm that day Mr Verrall went to check on the claimant who had been asked to carry out a welding job which Mr Verrall and Mr Crockart considered to be fairly straightforward and within his capabilities. Mr Verrall was annoyed to find that the job was not complete. Mr Verrall was of the opinion the job should have taken around half an hour and the claimant had been working on it all day and it still was not correct. Mr Verrall remonstrated with the claimant. He

compared his work to that of a first year apprentice. The claimant took umbrage at this and an argument ensued. The claimant raised his voice and started shouting at Mr Verrall. He said that he was going to see Mr Milne in the morning. Mr Verrall told him that he should do this and at the same time explain why it had taken him eight hours to do the job. The claimant told Mr Verrall that he should not speak to him like that. Mr Verrall had the impression that the claimant was simply unhappy that his work was being checked by someone else. He felt the claimant was getting aggressive and loud, Mr Verrall was trying to calm things down and be professional. At no time during the argument was there any mention of the claimant's South African nationality.

21. Shortly afterwards the three workers on site finished for the day and travelled back to Dundee in one van. Mr Verrall drove to just outside Dundee where he had left his own van. After that Mr Crockart drove. Mr Crockart had seen the argument between Mr Verrall and the claimant.
22. Mr Crockart stopped the van in the vicinity of the claimant's house. Up to that point there had been no discussion of matters. The claimant then raised the matter with Mr Crockart saying that Mr Verrall was lucky otherwise because the claimant had a boxing licence which he wanted to keep. He said that otherwise he would have been fighting with Mr Crockart. He made it clear that he did not agree with what Mr Verrall had said about the quality of his work. The claimant did not tell Mr Crockart that he felt that he was being harassed by Mr Verrall. He made no reference to any suggestion that this had anything to do with his South African nationality or anything else. He did not repeat his threat to go to see Mr Milne. There was no further discussion of the matter.
23. Shortly after this the claimant returned to working in the workshop. This was something which happened from time to time if there was fabrication work to be done in the workshop which had to be completed urgently and there was not the same need for people to go on site. The claimant continued to work in the workshop until around 20 November 2024.
24. The position at that time was that the respondent had appointed a part time Chief Financial Officer starting in November. They had reported to Mr Milne that the company needed to trim some expenditure. Mr Milne decided that he would look at making sure that there were the right people in the right roles. He decided to get rid of Timo Henkel who at that time had been Contracts Manager. He also decided that he would get rid of the claimant. He made the decision without any reference to the claimant. He had not been told about the incident with Mr Verrall on 13 November and was entirely unaware of it. He was aware that Mr Mudie had had occasion to speak to the claimant about him being absent on or about 22 October without having completed the necessary paperwork. His main concern was however financial. He was aware from when the claimant had been

working in the workshop that the claimant's work was not what he had been looking for. Whilst the respondent had paid for the claimant to be put through various courses he did not feel that the claimant was going to develop in the way that he had hoped at first. His understanding was that because the claimant had been there for less than two years then there was no need to go through any process. He discussed the matter with Mr Millar his Operations Manager who agreed. Mr Millar was aware of the various training courses which the respondent had put the claimant on. At this point the claimant had never at any time raised any issue regarding harassment or bullying nor that South African nationality was being highlighted in any way. No formal procedure was carried out. The claimant was simply called into the office and told that he was being let go for financial reasons. In terms of his contract of employment the claimant was entitled to one week's notice. The claimant said he wished to work his notice and it was agreed between himself and Mr Milne that in fact he would be given two weeks' notice and be paid for this. The claimant worked his notice and his last day of employment was 5 December. At no time either during the meeting or in the notice period which he was working did the claimant raise any issue relating to racial harassment nor did he make any mention that he considered that his dismissal was in any way tainted by discrimination.

25. Following the termination of his employment the claimant was successful in obtaining work as a roofer in or about January 2025. This work was considerably better paid than the work he had been undertaking with the respondent and the claimant received around £500 per week for this. The claimant left this work towards the end of February. He felt pressure to do so because of rumours which were circulating about him on social media. Since then the claimant has set up a limited company with a view to finding work in the oil and gas sectors.
26. During the claimant's employment the claimant was registered to make pension contributions to a Royal London pension scheme via the respondent. The claimant's contributions to the scheme were deducted from his wages. In addition to this the respondent made further contributions. The various contributions made on behalf of the claimant were contained in a Schedule which was lodged (page 265-266). The specific contributions made for the claimant and other employees is also shown suitably redacted in the documents at pages 267-268. In or about April 2025 an issue arose when the respondent discovered that there had been an administrative error with the direct debit mandate which transferred contributions to Royal London who administered the respondent's pension. It came to light when Royal London wrote to various employees advising they had not received payments. The issue affected all of the respondent's employees. The situation was immediately rectified and the outstanding payments were transferred to Royal London. Mr Milne wrote a letter to all employees and also to the claimant confirming

what had happened and the steps which had been taken to rectify matters. There was no evidence before me of any loss having occurred to the claimant or indeed any other employee as a result of the administrative error which had delayed part of the payments for several months.

Matters arising from the evidence

27. During submissions the claimant made the point that he believed that all of the respondent's witnesses were telling the truth. I have to say that I had already formed the view that the respondent's witnesses were being truthful and that their evidence was credible and in the main reliable. There were a couple of points where Mr Milne simply could not remember what had happened on a particular date. He made appropriate concessions in relation to this and I felt that this strengthened rather than weakened his evidence. For example he and the claimant had both said that the original meeting in February had lasted some time. I put it to him that this was contradicted by the timing of an email which showed him telling Discovery Jobs that he had just met with the claimant around 20 minutes after the time fixed for the appointment. He could not give any explanation for this but neither could the claimant. I decided that this was something which was not relevant and it was likely that both the claimant and Mr Milne were correct in saying that the meeting had lasted some considerable time and the claimant had seen round the workshops. Mr Milne also could not remember whether he or one of his managers had told the claimant about the extension of his probation. The claimant's memory was that it had been Mr Milne and Mr Milne was prepared to accept that.
28. With regard to the other witnesses for the respondent I considered that they were truthful. Mr Craig accepted that the video did not show him in a particularly good light and that the way he conducted himself was not the way he would conduct himself on site if managers were present. That having been said they were all quite adamant that whilst there was banter this was nothing whatsoever to do with the claimant's race or nationality. His race or nationality was never mentioned. The claimant had taken part in this banter and had not raised any issues about it. All of them indicated in their evidence that the claimant was a difficult personality who would sometimes make threats. I accepted Mr Verrall's evidence that when he spoke to the claimant about the job and compared his work to that of an apprentice he was doing this honestly and in a way which he would do with any other workmen who provided similarly shoddy work.
29. With regard to Mr Mudie I accepted his evidence that he had spoken to the claimant in the same way as he would speak to any other employee who appeared to be absent without leave. Mr Mudie's evidence was that he had not shouted or behaved aggressively towards the claimant. The claimant's evidence was that he had behaved aggressively and in this the

claimant was backed up by his partner who had also been present during the call. I decided at the end of the day that I preferred Mr Mudie's evidence. The claimant's partner was not a particularly useful witness since with regard to practically all of her evidence she was simply repeating what the claimant had told her. She was unclear how much of the call she had heard. Looking at the messages which were sent contemporaneously there is absolutely nothing untoward there. It did not appear to me likely that Mr Mudie would behave inappropriately on a phone call and send perfectly reasonable messages. Even if I am wrong in this however there was absolutely no evidence to suggest that there was any discriminatory motive behind anything that Mr Mudie said.

30. With regard to the claimant I considered that he was someone who was prepared to embellish matters with a view to assisting his case. On occasions during cross examination he was non-responsive and instead of answering the question he was asked he would seek to highlight some other issue. It was his position that the conversations while travelling in the van were of a racial nature and that remarks were made such as that Scotland could beat South Africa in a war and that "you are just tribal people still hunting with spears". All of the other witnesses vehemently denied that this had ever been said. In the circumstances I preferred their evidence to that of the claimant. The claimant can provide no explanation as to why, if these things were being said, he did not raise the matter with management. It appeared to me quite clear that the claimant was well able to speak up for himself and his failure to raise these matters with Mr Milne at the time is inexplicable. What is even more inexplicable is his failure to raise these matters either at the final meeting when he was dismissed or during the notice period which he worked after this. It appeared to me most likely that the claimant had decided that he would add these references to South Africa as a way of beefing up his claim and that they had no factual basis.

Preliminary issue – strike out

31. As noted above the claimant at the outset of the hearing made a request that the response be struck out. His reason for doing so was that he believed that the respondent had behaved unreasonably at the prior preliminary hearings on strike out and or deposit order. In particular he considered that they had made allegations about his private life which were based on things being said in social media. He referred to a witness statement which had been lodged by them from the claimant's ex partner which referred to him being convicted of an assault on her. It was his position that this was factually incorrect and that in fact whilst he had been charged with an offence in relation to her this had not yet come to trial.
32. The view was that there was nothing in what the claimant said which would prevent a fair trial of his case taking place and nothing which led me to

believe that the response should be struck out. I had not been the Employment Judge conducting the earlier proceedings and was unaware of the context which the witness statement of the claimant's former partner had been lodged. In the application for strike out there is reference to the claimant displaying offensive and discriminatory posts online for the public to view and that in the social media posts the claimant has been referred to as "displaying threatening language". They also note that the claimant's character and background brings into question the integrity and motive behind the claims. It is stated that the claimant's name and photo is currently on a database of convicted sex offenders, domestic abusers and child abusers within the UK. It says this refers to the claimant having a criminal conviction for domestic violence resulting in the death of a foetus. It is also noted that the claimant failed to disclose this during his employment with the respondent.

33. In the judgment issued following the hearing to deal with the strike out application there is little detail provided other than in paragraph 7 which simply repeats what the respondent said in their submissions.
34. At the end of the day it appeared to me that if there was any issue about the inappropriateness of the respondent raising these matters at the strike out hearing this ought to have been dealt with at the strike out hearing itself or indeed formed the subject to an application made soon after the strike out judgment was issued of 9 July 2025. I also could see nothing in any of this which related to the subject matter of the hearing. The position is that the claimant was alleging that he had been discriminated against during the course of his employment which ended in December 2024. Events which appear to have happened considerably after this would not be relevant.
35. I also indicated to the claimant during the course of the hearing that his schedule of loss appeared to refer to losses which he considered flowed from the social media posts rather than losses which had anything to do with the subject matter of the claim. The claimant's schedule of loss was a peculiar document in which he claimed compensation of some twenty four million pounds. His position put briefly was that he had set up a limited company which he believed had a very bright future in the oil and gas industry and after a period of 25 years would have been worth around seventy million pounds. He sought compensation from the respondent for the fact this was now not going to happen. I note that despite being asked to produce a more logical and conventional schedule of loss on various occasions the claimant entirely failed to do so.
36. The claimant indicated that he was unsatisfied with my ruling that I did not consider any of the matters relative to the social media posts to be relevant to the hearing before me. I said that I would set out my reasons in the judgment and I have done so. In short, the hearing was to deal with the

claim which was before the Tribunal. That was the claim set out in the claimant's original ET1 as clarified and amended by the Employment Judge at the first open preliminary hearing in March 2025. Nothing to do with social media posts which appear to have appeared after this date are in any way relevant to that. I considered the claimant's attempt to link his compensatory award for his Tribunal claim to the social media posts to be far fetched and incoherent. Whilst it is still unclear as to why the respondent wished to refer to the social media posts and the witness statement from the claimant's partner during their application for strike out I do not consider that this was in any way something which should lead to the response being struck out. It was perhaps unwise of the respondent and even if there were no issues about the factual accuracy of the social media posts I do not see why these would lead to a claim being struck out but at the end of the day I did not hear the respondent's full argument at the time and I am not in a position to make any comment other than what I already have said.

37. As noted above, the claimant sought to lodge a number of documents on the last day of the hearing. I accepted them subject to relevancy. I subsequently indicated that I would accept the documents relating to courses he had undertaken whilst in the employment of the respondents. These courses were completed at the respondents expense and I accepted that these were courses which were necessary and appropriate for the job the claimant was doing on construction sites for the respondent. They did not show more than this and I have not felt it necessary to refer to them in greater detail in my judgement. If they show anything at all they tend to indicate that the respondent was prepared to spend money on training the claimant. The remaining documents were not referred to in evidence and appeared to be documents relating to the company the claimant intended to set up and internet downloads about work which could be done in the oil and gas sector. I did not consider them relevant and did not accept them as additional productions.

Issues

38. The list of issues in the case were helpfully set out by Employment Judge Sutherland in her note following the hearing on 25 March 2025. The claimant was asked at the time to advise the Tribunal if there were any other issues not covered in this note and did not do so. The claimant made claims of breach of contract and race discrimination. The race discrimination claims were claims of direct discrimination, victimisation and harassment. The direct race discrimination claims relied on the incidents set out in the box on paragraph 22 of the note. The claims of harassment were set out in the box in paragraph 24 of the note. The claimant also claimed victimisation, the protected act being set out in paragraph 24.2 and the detriment comprising his dismissal as set out in

the box in paragraph 24.3. As noted above the claimant had originally claimed unfair dismissal but this claim was withdrawn and dismissed prior to the hearing. In advance of the hearing the claimant confirmed that the second matter complained of in his complaint of direct discrimination namely that he had been paid less than apprentice welding fabricators per hour was not a claim that he was persisting with. He confirmed during the course of the hearing that he now accepted that he was paid more than the apprentices and that he no longer insisted on this part of his claim. I shall deal with each of the matters in turn below. I could say that both parties made submissions I will not repeat these at length but refer to them where appropriate in the discussion below.

Breach of contract

39. The claimant claimed that the respondent's decision in August 2024 to extend his probationary period was in breach of the contractual duty owed to him as a third party beneficiary to an alleged contract between Dundee Adult Employability and the respondent. The claimant did not lead any direct evidence regarding this claim during the course of the hearing although I did not understand him to formally withdraw the claim. In any event, it was absolutely clear that there had been no such contract between Dundee Adult Employability and the respondent. Initially, the respondent had hoped to obtain financial assistance from Dundee Adult Employability however this was not forthcoming and at the end of the day the contract was made directly between the respondent and the claimant with no involvement of Dundee Adult Employability. Given that there was no contractual obligation the claim of breach of contract in this respect must fail.
40. The claimant also asserted that the respondent's failure to pay employer pension contributions to the pension provider for the last five months of his employment was in breach of a contractual duty owed to him. The factual position would appear to be that the respondent's payroll system credited the employer pension contributions to the claimant however due to an error in the direct debit the employer contributions for the claimant and all of the other employees was delayed for a time. On the basis of the evidence the respondent then took steps to pay the arrears as soon as the error was identified. Accordingly, at the time of the hearing all of the pension contributions which the employer was obliged to pay in terms of the contract had been paid. There was no evidence before me to suggest that the claimant had suffered any loss as a result of any delay in paying these contributions. There was also no evidence before me that there was any contract saying precisely when these contributions needed to be paid although it could readily be implied that they should be paid within a reasonable time. It therefore appeared to me that the claimant had not

proved that there was a breach of contract and in any event had not proved that he suffered any loss. As a result this claim also fails.

Direct race discrimination

41. With regard to the discrimination claims I am required to approach the matter using the reverse burden of proof provisions which are set out in section 136 of the Equality Act 2010 as these have been found and interpreted by the higher courts. Essentially I am required to adopt a two stage approach. I first of all require to look at all of the facts which I have ascertained from the evidence and decide whether I could decide in the absence of any other explanation that the claimant was unlawfully discriminated against. I have to consider whether there are sufficient facts from which I can draw an inference that the treatment complained of by the claimant was in any way at all linked to his South African nationality. If, and only if, I decide that there are such facts then the burden of proof shifts to the respondent to show that there is a non-discriminatory explanation for the claimant's treatment.

1. Incident on 22 October 2024

42. The claimant claimed that Martin Mudie sending him a message amounted to a public chastisement of him for having taken a day off. He stated that this was direct race discrimination and invited the Tribunal to make the inference on the basis that no-one else was chastised for not following protocol for taking one day off for a domestic issue (annual gas check). The evidence was that Mr Mudie had indeed sent two WhatsApp messages to the claimant relating to the fact that the claimant had taken a day off without going through the appropriate process. On the basis of the evidence I was satisfied that the claimant had in fact taken the day off without going through the appropriate process. I accepted that the messages were posted on WhatsApp. Although the evidence was unclear I was prepared to accept the claimant's assertion that they were posted as part of a WhatsApp group which contained the site workers and that others may have had access to these messages. I have to say that given the background I can see nothing whatsoever untoward in these messages. The claimant also referred to the telephone call however apart from the claimant's partner no-one else was privy to this and on the basis of the evidence I do not find that Mr Mudie said anything inappropriate during this call. Even if he had however the glaring problem with the claimant's case is that there is absolutely no evidence to suggest that there was any linkage between the claimant's treatment by Mr Mudie and his South African nationality. He did not offer any evidence to the effect that a comparator in the same circumstances was treated differently. There was no suggestion that Mr Mudie had made any reference to his South African nationality at any point. There was absolutely nothing to suggest that this was a discriminatory act. For this reason my view is that

the claimant has failed at the primary stage with this claim and that there is absolutely no basis for the Tribunal to draw an inference that the claimant's treatment was in any way due to his race and this claim must therefore fail.

43. The claimant also complains that his dismissal was an act of direct race discrimination.
44. In this case I heard evidence from Mr Milne and also from Mr Millar the Operations Director as to the reason the claimant was dismissed. Although it had been the claimant's position in his pleadings that his job had been readvertised, this was not in any way borne out by the evidence. There was nothing even alleged by the claimant which linked the decision to dismiss with his South African nationality.
45. I considered the evidence of Mr Millar and Mr Milne in regard to the reasons for dismissal to be both credible and reliable. I noted that not only was there absolutely no evidence to suggest that they were unfavourably disposed to people of South African heritage the evidence was that they had continued to employ the claimant even after the decision was made by Employability Dundee not to offer financial assistance.
46. The claimant in his evidence referred to the fact that the respondent had not adopted any procedure whatsoever before dismissing him. He was simply called into the office and dismissed. I accepted the respondent's explanation for this which was that their understanding of the law was that since the claimant did not have two years' service they could basically proceed as they wished and there was absolutely no need for them to carry out any procedure whatsoever. I considered it was absolutely clear from the evidence that this was the sole reason for their decision not to carry out any disciplinary or capability process before dismissing the claimant. I did not consider that there were facts from which I could draw any inference that the claimant had been unlawfully discriminated against on grounds of his nationality. Whilst I consider the claim of race discrimination has absolutely no merit I do observe that in a situation where an employer dismisses an employee without carrying out any procedure whatsoever then it is perhaps understandable in a human sense that the employee is likely to feel aggrieved and start looking for other sinister reasons for his treatment. This is the reason why many employers still apply their disciplinary policy to all employees no matter how short their period of service and it is something which the respondent may well wish to consider doing in the future. I repeat however that there is absolutely no basis on which the burden of proof could transfer in this case and the claim of direct discrimination must fail.

47. The claimant's claim referred in general terms to collective comments being made when travelling in the works van, travelling to work and also when working on site. He named Conner Craig and Mike Verrall who both gave evidence as well as a welder supervisor called William who was a self-employed contractor who worked with the respondent's workmen on occasions and who did not give evidence. In this case I preferred the evidence of Mr Craig and Mr Verrall to that of the claimant. Both of them clearly accepted that there had been banter going on in the van and on site and that all of the parties engaged in this. I accepted their evidence that at no point was the claimant's South African nationality mentioned and that nothing was said to him based on his South African nationality. Both Mr Verrall and Mr Craig readily accepted that things were said which were inappropriate and it was clear from the detailed evidence that Mr Craig using the term dog breath and the claimant effectively threatening to fight with Mr Verrall came into this category. On the basis of the evidence I came to the view that the factual position was that there had been banter between the workmen which had absolutely nothing to do with the claimant's nationality. Accordingly, it was my view that the burden of proof did not shift in this respect and the claim of harassment should fail.

Victimisation

48. It was the claimant's position that he had carried out a protected act by complaining to Ross Crockart about being racially harassed by Mr Verrall in a conversation which took place in the van just before he was dropped off at home on 13 October. Mr Crockart's position was as set out in my findings in fact above. I preferred Mr Crockart's evidence because it coincided with the evidence of Mr Verrall and was also much more internally consistent than the claimant's evidence. Mr Verrall and Mr Crockart both stated that during his argument with Mr Verrall the claimant had threatened to go to Mr Milne. Mr Crockart's evidence was that when the claimant raised the matter with him he was more interested in threatening what he would do to Mr Verrall if he did not have to consider his boxing licence than making it up. At the end of the day I was not prepared to make a finding of fact that the claimant had complained about racial harassment to Mr Crockart.
49. Given that there was no protected act the claim of victimisation must fail. That having been said even if I was wrong about the claimant not having made a complaint of harassment to Mr Crockart the claim would fail in any event since it was absolutely clear from the evidence that at the point where Mr Milne dismissed the claimant he was entirely unaware of the altercation which had taken place between the claimant and Mr Verrall and was entirely unaware of any conversation which had taken place between the claimant and Mr Crockart. Accordingly the claim of victimisation also fails.

50. At the end of the day the claimant's claim fails. I should say that had the claimant's claim succeeded then any compensatory award made would have been considerably less than the sum of many million pounds claimed by the claimant. The claimant stated at various points that he considered that he was in a Chagger situation in that his ability to carry on work in his chosen profession had been fatally compromised. There was absolutely no evidence whatsoever to suggest that this was the case. The evidence was that the claimant had in fact suffered minimal wage loss having obtained work at a higher rate of pay fairly quickly. He had left that work for reasons which had nothing to do with the subject matter of this claim. The suggestion that in some way the respondent had prevented him from setting up a successful company which would have been worth tens of millions of pounds in the future is not supported in any way by the evidence. All of the claims are dismissed.

Date sent to parties

25 June 2026