



EMPLOYMENT TRIBUNALS

Claimant: Mr P Kuchniewski

Respondent: Blachford UK Ltd

Heard at: Nottingham **On:** 7 May 2026

Before: Employment Judge Michael Butler (sitting alone)

Appearances

Claimant: In person

Respondent: Mr A Tembe, Legal Counsel

JUDGMENT

The judgment of the Tribunal is that the claims of automatic unfair dismissal and detriment for raising health and safety concerns are not well founded and are dismissed.

REASONS

Oral judgment having been given at the conclusion of the hearing on 7 May 2026, the Claimant requested written reasons by email dated 8 May 2026. I apologise for the fact that there was a delay in referring his request to me but I provide these written reasons as soon as my workload would permit.

Background

1. The Claimant presented his claim on 30 November 2025 following early conciliation between 22 September and 3 November 2025. He was employed as a Quality Engineer from 27 May 2025 until his dismissal on 22 July 2025 which was confirmed in writing on 29 July 2025.
2. He brings claims of automatic unfair dismissal under s. 104 of the Employment Rights Act 1996 ("ERA") for asserting a statutory right not to work hours which would constitute a breach of the Working Time Regulations 1998 and under s.44 ERA for suffering detriments for raising health and safety concerns.

3. The Respondent denies the claims and asserts that the Claimant was dismissed on capability grounds for failing to properly manage his time and complete his duties.

The issues

4. The issues in this case are straightforward. I must decide whether the Claimant asserted a statutory right and whether his dismissal was because he refused to work overtime for health reasons.

The Evidence

5. I heard evidence from the Claimant and, for the Respondent, from Mr Wayne Nortje, Operations Director and the Claimant's line manager. They both provided statements and were cross-examined. There was an agreed bundle of documents.

The facts

6. In relation to the issues, I find the following facts on the balance of probabilities:

6.1 The Claimant is an experienced quality engineer who commenced employment with the Respondent on 27 May 2025. His contract of employment required him to work 37 hours per week and the Respondent's handbook provided that employees could be asked to work outside those hours if required to fulfil business needs. His employment was subject to a probationary period during which he could be dismissed at any time during it.

6.2 The Respondent provides noise and vibration control solutions and manufactures acoustic and thermal insulation. Mr Nortje was the Claimant's line manager and held weekly one-to-one meetings with him. It quickly became apparent that the Claimant was struggling to complete his quality control duties due to attending too many meetings. He complained to Mr Nortje that he had 20 emails which he had not had time to reply to and Mr Nortje suggested that the Claimant might consider staying behind one day for an hour to deal with them. The Claimant abruptly refused saying that he had worked too many hours at his last job and it had affected his health.

6.3 During his employment, the Claimant was never asked to work excessive hours. It is clear from his evidence that his view was that, having allegedly seen others working long hours, he would be expected to do the same.

6.4 The Claimant's performance did not improve and he continued to fail to properly prioritise his work in order to complete his duties. These issues had been discussed with him by Mr Nortje at their weekly meetings and accurate notes of the meetings were kept. The notes clearly set out what the Claimant needed to achieve in prioritising his work but he failed to do this.. At their meeting on 22 July 2025, Mr Nortje terminated the Claimant's employment and a payment in lieu of notice amounting to a week's wages was paid. The reason for the dismissal was capability.

Submissions

7. Both parties made oral submissions. I do not rehearse them here but confirm I took full account of them in reaching my decision.

Conclusions

8. I firstly consider the claim of automatic unfair dismissal for asserting a statutory right. The Claimant did not set out precisely which statutory right was asserted. He made a rather vague reference to the Working Time Regulations 1998 but did not focus on any of the rights contained within the Regulations. He said his claim arose because it was suggested by Mr Nortje that he work excessive hours over his core hours of 37 per week.

9. The Claimant's evidence before me was, however, somewhat different. He accepted that at no time was he specifically asked to work excessive hours. Rather, he says, he saw other employees at the Respondent working long hours and presumed this would apply to him in the future. It is accepted by both parties that the Claimant justified his refusal to work an extra hour to catch up on emails because at his last job he worked 60-70 hours per week which adversely affected his health. Apart from this one "suggestion" by Mr Nortje, "suggestion" being a term accepted and used by the Claimant in his evidence, the Claimant has provided no evidence at all from which I can find that he had been or would be asked to work excessive hours. Indeed, I accept Mr Nortje's consistent evidence that working from home was allowed in some cases, including the Claimant on at least one occasion, as was the ability to take time off in lieu of additional hours worked. I also note the Claimant's own evidence that it was not unreasonable to be asked to work for an extra hour.

10. This conclusion is supported by the judgment in **Mennell v Newell and Wright (Transport Contractors) Ltd** where HHJ Richardson said that for the purposes of s.104 ERA there must be an allegation by an employee that there has been an infringement of a statutory right, not merely that the employer may, or will, or threatens to infringe such a right.

11. In relation to the s.44 ERA claim, the Claimant must persuade me that he brought the Respondent's attention by reasonable means circumstances connected with his work which he reasonably believed were harmful to health or safety and that he suffered a detriment or detriments as a result – in this case he says this was his dismissal. Firstly, it is clear from the Claimant's own evidence that there were no circumstances relevant to him that were harmful to his health and safety. A suggestion that he work an extra hour on one occasion does not come within the scope of s.44 ERA nor, in any event, does working an extra hour. I find there is no basis for the Claimant's alleged belief that he would be required or expected to work excessive hours.

12. Further, the Claimant accepted that the notes of his meetings with Mr Nortje were an accurate summary of the discussions at those meetings. These notes set out clearly the issues with the Claimant's failure to prioritise his work and

what he might do to correct this. Mr Nortje's evidence was calm and convincing throughout and I accept his view that the Claimant had not proved himself capable of completing his tasks in a timeous manner. Accordingly, I conclude that the decision to dismiss the Claimant was for capability reasons and not because he raised any health and safety issues.

13. I consider it likely that the Claimant has totally misunderstood the legal provisions he seeks to rely on. This is confirmed by his own evidence which was extremely inconsistent, most notably in claiming on the one hand that it was suggested he work excessive hours and, on the other hand, that this did not happen and he only thought it might happen at some time in the future.

14. For the above reasons the claims are dismissed.

Approved by:

Employment Judge M Butler

On: 14 July 2026

JUDGMENT & REASONS SENT TO THE PARTIES ON

25/08/2026

J. Woolley
FOR THE TRIBUNAL OFFICE