



EMPLOYMENT TRIBUNALS

Claimant: Mr Mawuko Wilson

Respondent: Phoebus Software Limited

Heard at: Midlands West Birmingham **On:** 01 September 2026

Before: Employment Judge Hussain

Representation

Claimant: In person

Respondent: Miss G Rezaie (Counsel)

JUDGMENT

1. The claim of unfair dismissal is struck out under Rule 38(1)(a) of the Employment Tribunal Rules of Procedure 2024 because it has no reasonable prospect of success.
2. The claim for wrongful dismissal is dismissed following withdrawal under Rule 51 of the Employment Tribunal Rules of Procedure 2024

REASONS

Background

1. The claimant was employed as a Cloud Engineer, by the respondent, from 30 May 2023 until 14 January 2025. Early conciliation commenced on 14 February 2025, and a certificate was issued on 28 March 2025. The claim form was presented on 28 April 2025.
2. In the claim form, in section 8, the claimant noted that he was unfairly dismissed and made further claims for wrongful dismissal and “Procedural Failures in Capability Hearing Processes”. He did not tick the box referring to dismissal and unfair treatment for whistleblowing.
3. On 28 May 2025 the Tribunal warned the claimant that his claim for unfair dismissal would be struck out, as he did not have the requisite 2-year qualifying service, and was asked to provide reasons why his claim should not be struck out.

4. The ET3 response was presented to the Tribunal on 18 June 2025.
5. On 18 June 2025, the claimant responded to the strike out warning to state that he was pursuing a claim of automatic unfair dismissal based on having made the following protected disclosures:
 - 5.1 "Concerns about the lack of transparency in client cloud infrastructure costs, particularly in relation to using the AWS MAP programme.
 - 5.2 Technical objections to resource-hosting decisions that lacked sound business justification and impeded full automation of critical processes, such as database replication."
6. In addition, the claimant also reiterated that there were procedural irregularities.
7. The claimant omitted to include the respondent in this email correspondence with the Tribunal and forwarded a copy of his submissions to the respondent on 24 June 2025.
8. On 20 June 2025 the claimant sent further correspondence to the Tribunal notifying the Tribunal of errors, in the ET1 form, in relation to his employment start date, his net monthly pay, notice pay and employment end date.
9. The claimant then sent further correspondence to the Tribunal about his claim on 26 June 2026, 03 July 2025, 04 October 2025, 28 November 2025 on 2 occasions, 15 January 2026 and 21 January 2026.
10. A preliminary hearing was initially scheduled to take place on 25 June 2026 for 90 minutes but was postponed on 19 June 2026 and scheduled for a 1-day public preliminary hearing to take place on 01 September 2026.
11. The postponement order directed that the following issues be determined at the hearing:
 - 11.1 "Should the claim or any part of it be struck out because it has no reasonable prospect of success?
 - 11.2 Does the claim or any part of it have little reasonable prospect of success?
 - 11.3 If so, should the claimant be ordered to pay a deposit of between £1 and £1000 as a condition of continuing with it?
 - 11.4 Determine the Claimant's application to amend and any other case management directions."
12. At the hearing, the claimant was not represented but was supported by his partner who also attended the hearing remotely.
13. The respondent was represented by Miss Rezaie, who was accompanied by a representative from her instructing solicitors, (Emily Beech) and a representative from the respondent (Kate Langton).
14. Both parties confirmed they did not require any reasonable adjustments to participate in the hearing. They also confirmed that they were only relying on the 105-page bundle which they could both access throughout the

hearing.

15. The Tribunal proposed that the application to amend be heard and determined before the application for a strike out of the claimant's claims. The respondent opposed this and submissions were heard from both parties on this point.
16. A decision was made to hear the application to amend first. In coming to its decision, the Tribunal had regard to the guidance in *Ezsias v North Glamorgan NHS Trust* [2007] ICR 1126 that strike out is a draconian power which should be exercised with particular caution in cases where the underlying issues require factual evaluation. The Tribunal considered that determining the amendment application first will enable the Tribunal to identify precisely what factual and legal case is before it, before considering whether summary disposal is appropriate. The Tribunal also deemed that this approach is consistent with the overriding objective contained in rule 2 of the Employment Tribunals Rules of Procedure 2024. Determining the amendment application first will likely to assist the Tribunal in dealing with the case fairly and justly, including ensuring, so far as practicable, that the parties are on an equal footing, avoiding unnecessary formality, saving expense, and dealing with the case in ways which are proportionate to its complexity and importance. It was also noted that the amendment application raises a threshold question as to the claims which should properly be before the Tribunal. It was decided that the fair and just course is to determine that question before considering whether any of those claims should be struck out or made the subject of a deposit order. Only once the scope of the proceedings has been established can the Tribunal properly assess the respondent's applications for strike out and, if necessary, a deposit order. For these reasons, the application to amend was heard first.
17. The claimant confirmed that he had been paid notice pay and wished to withdraw the claim of wrongful dismissal.
18. Representations were heard from both parties on the application to amend.

Law

19. Under rule 30 of The Employment Tribunal Rules of Procedure 2024, the Tribunal has broad case management powers and a discretion as to whether to allow an amendment or not. The discretion contained within rule 30 must be exercised in accordance with the overriding objective in rule 2.
20. When considering an application to amend the Tribunal must consider the case set out in the ET1. "The claim, as set out in the ET1, is not something just to set the ball rolling, as an initial document necessary to comply with time limits but which is otherwise free to be augmented by whatever the parties choose to add or subtract merely upon their say so. Instead, it serves not only a useful but a necessary function. It sets out the essential case. It is that to which a Respondent is required to respond. A Respondent is not required to answer a witness statement, nor a document, but the claims made – meaning, under the Rules of Procedure 2013, the claim as set out in the ET1" (per *Chandhok v Tirkey* [2015] ICR 527, in which an issue as to the scope of the claim arose).

21. It will nearly always be necessary that a proposed amendment be reduced to writing before the application is determined (*Remploy Ltd v J Abbott and others* UKEAT/0405/14/DM).
22. In *Chaudhry v Cerberus Service Security and Monitoring Services Ltd* [2022] EAT 172, HHJ Tayler suggested that Tribunal may find it helpful to identify the amendment or amendments sought, which should be in writing, and in express terms and balance the injustice and/or hardship of allowing or refusing the amendment or amendments, taking account of all the relevant factors. Guidance was also given that amendments should ordinarily be identified with sufficient clarity so that the opposing party understands the case it is required to meet.
23. In *Selkent Bus Co Ltd v Moore* [1996] ICR 836 (EAT), the Employment Appeal Tribunal (Mummery J presiding) set out the guiding principles for determining applications to amend claims or responses in the Employment Tribunal. Mummery J identified three principal matters that will usually require consideration:
 - 23.1 The nature of the amendment. In *Abercrombie v Aga Rangemaster Ltd* [2013] EWCA Civ 1148 LJ Underhill stated “The greater the difference between the factual and legal issues raised by the new claim and by the old, the less likely it is that it will be permitted. It is thus well recognised that in cases where the effect of a proposed amendment is simply to put a different legal label on facts which are already pleaded permission will normally be granted”.
 - 23.2 The applicability of time limits. It is essential for the Tribunal to consider whether that complaint is out of time and, if so, whether any statutory extension applies. The significance of allowing a time-barred claim to proceed by amendment is also a relevant factor. In *Abercrombie v Aga Rangemaster Ltd* [2013] EWCA Civ 1148, Underhill LJ stated, “Where the new claim is wholly different from the claim originally pleaded the claimant should not, absent perhaps some very special circumstances, be permitted to circumvent the statutory time-limits by introducing it by way of amendment. But where it is closely connected with the claim originally pleaded – and a *fortiori* in a re-labelling case – justice does not require the same approach”.
 - 23.3 The timing and manner of the application. It is relevant to consider why the application was not made earlier and why it is now being made. Mummery J asserted, “Questions of delay, as a result of adjournments, and additional costs, particularly if they are unlikely to be recovered by the successful party, are relevant in reaching a decision.”
24. Determination of time limit points can be held over to the final hearing where the claimant can show a prima facie case that the primary time limit was satisfied or that there are grounds for extending time (*Reuters Ltd v Cole* EAT 0258/17).
25. The merits of the claims in the application may be of assistance to the Tribunal (*Kumari v Greater Manchester Mental Health NHS Foundation Trust* 2022 EAT 132). This is subject to the proviso that the Tribunal does

so on a reasoned basis and keeps in mind that it does not have the full evidence before it.

26. The Tribunal must consider the injustice and hardship each party is likely to suffer (*Vaughan v Modality Partnership* 2021 ICR 535).
27. The factors are neither intended to be exhaustive nor should they be approached in a tick-box fashion (*Abercrombie v Aga Rangemaster Ltd* [2013] EWCA Civ 1148).
28. The Tribunal must have regard to all the circumstances (*Trimble and anor v North Lanarkshire Council and anor EATS 0048/12*; *Cocking v Sandhurst (Stationers) Ltd and anor* 1974 ICR 650, NIRC).

The amendments sought

29. The claimant sought a number of factual amendments to the ET1. These included correction of his employment start date, salary details, notice arrangements and effective date of termination. The respondent did not materially oppose those amendments and accepted that they were consistent with its pleaded case. Accordingly, in respect of these amendments, the Tribunal allowed the application to amend based on the written representations.
30. The substantive amendment sought by the claimant was permission to amend his claim from one of ordinary unfair dismissal to one of automatic unfair dismissal on the ground that the principal reason for dismissal was the making of protected disclosures contrary to section 103A Employment Rights Act 1996. The claimant contended that this was a re-labelling exercise and that the factual basis for the proposed claim was already contained within the ET1. He relied upon his status as a litigant in person and submitted that he did not appreciate the distinction between unfair dismissal and automatic unfair dismissal when completing the claim form.
31. During the hearing the claimant provided further particulars of the disclosures relied upon. He identified alleged disclosures made during meetings in June, July and August 2024 concerning AWS cloud cost transparency, client billing practices, which he described as involving potential financial irregularities and switching off of resources in the evening amounting to breach of contract. He also provided, for the first time, details of the individuals to whom he said disclosures were made. He explained that the disclosures led to a change in management attitude which ultimately resulted in his dismissal. The disclosures that the claimant wished to rely on were as follows:
 - 31.1 In June 2024, the claimant claims he made a disclosure to Mr Amit Patel (his line manager), Mr David Jones and a technical architect during a Teams meeting. The claimant contended that there was a discussion about switching off client resources in the evenings and he raised the issue that this would amount to a breach of client's contracts.
 - 31.2 In July 2024, the claimant claims he made a disclosure to Mr Amit Patel, Mr David Jones, the CEO, Adam Oatfield and 2 other colleagues whom he cannot recall, during a Teams meeting. The

claimant contended that he told those present that the respondent had a duty to provide details of the bills that are issued to clients, so that there is transparency about the costs of the services provided. The claimant asserted that the respondent's approach to client billing involved financial irregularities, deceptive billing practices and conduct which he believed to be fraudulent.

31.3 In August 2024, the claimant claims that he made the same disclosure, as made in July 2024, again to Mr Amit Patel via a Teams meeting.

32. The claimant claims these disclosures led to a change in attitude from management and ultimately his dismissal. The claimant confirmed that he was only pursuing a claim of automatic unfair dismissal.

Nature of the amendment

33. The Tribunal did not accept the claimant's submission that the proposed amendment is merely a re-labelling exercise.

34. The ET1 advanced a case that the claimant had been unfairly dismissed because the respondent followed a flawed capability process. The factual allegations concerned matters such as the adequacy of performance warnings, notice of meetings, performance objectives, the handling of the capability procedure and the fairness of the respondent's decision-making process. The claimant, in his submissions, relied on the final paragraph in the document accompanying the ET1, as evidence to support his assertion that the factual basis of the automatic unfair dismissal had been included in his pleadings. The paragraph reads, "I request the Tribunal carefully consider these procedural failures and unfair treatment when assessing the fairness of my dismissal". This submission was rejected on the basis that it does not make reference to protected disclosures or whistleblowing or set out any of the facts relied upon as the basis of the automatic unfair dismissal complaint. The pleading referred to the procedures being unfair rather than the reason for dismissal being unfair.

35. By contrast, the proposed automatic unfair dismissal claim depends upon an entirely different factual and legal inquiry. The Tribunal would be required to determine whether the claimant made one or more qualifying disclosures within the meaning of section 43B Employment Rights Act 1996, whether any such disclosures were protected disclosures, whether relevant decision-makers knew of those disclosures, and whether the making of those disclosures was the principal reason for dismissal. Those issues are fundamentally different from determining whether the Respondent acted reasonably in conducting a capability procedure.

36. The Tribunal accepts the respondent's submission that the proposed amendment would substantially alter both the factual and legal basis of the proceedings. The focus of the claim would move from the fairness of a capability process to alleged whistleblowing activity, alleged protected disclosures, motive and causation.

37. The Tribunal further finds that the factual foundation of the proposed whistleblowing claim is not contained within the ET1 or accompanying document. The ET1 and accompanying document did not refer to protected

disclosures, whistleblowing, concerns about AWS billing practices, cloud cost transparency, financial irregularities, client contracts, criminal liability, legal obligations or any allegation that the true reason for dismissal was the making of disclosures. Nor did it identify any dates, recipients, content or circumstances of the alleged disclosures.

38. The claimant accepted during the hearing that he did not specifically state, in the ET1, that he had made protected disclosures.
39. In those circumstances, the Tribunal concludes that the proposed amendment is not a re-labelling of existing allegations, but the introduction of a new claim founded upon materially different facts.

Timing and manner of the application

40. The Tribunal has also considered the timing and manner in which the application arose.
41. The proposed whistleblowing claim did not form part of the original ET1 or accompanying document. It first emerged in correspondence sent after the Tribunal had raised concerns regarding the claimant's lack of qualifying service for an ordinary unfair dismissal complaint.
42. The Tribunal accepts the respondent's submission that the nature of the claim has evolved through correspondence rather than through properly particularised pleadings. Although references to alleged disclosures appeared in correspondence from June 2025 onwards, the factual basis of the proposed claim was only fully articulated at the preliminary hearing when the claimant gave details of approximate dates, individuals present, the matters allegedly disclosed and the alleged causal connection to dismissal.
43. Whilst references to whistleblowing allegations appeared in earlier correspondence, the Tribunal finds that the particulars required to understand the nature of the alleged disclosures were not provided until the preliminary hearing. Matters relied upon at the hearing went materially beyond those identified in the claimant's June 2025 correspondence. The Tribunal distinguishes between notification that a protected disclosure claim is intended and provision of sufficient particulars to enable the respondent to understand and investigate that claim. Whilst the former occurred in June 2025, the latter did not occur until the present hearing. Further, the allegations originally advanced focused on technical concerns about database replication. At the hearing, the claimant additionally relied upon matters described as financial irregularities, deceptive billing practices, criminal liability, breach of contract and failures to inform clients about discounts and switching off resources in the evening.
44. The Tribunal has also borne in mind the guidance in *Chaudhry v Cerberus Service Security and Monitoring Services Ltd* [2022] EAT 172 that amendments should ordinarily be identified with sufficient clarity so that the opposing party understands the case it is required to meet.
45. The development of the claimant's case over time reinforces the Tribunal's conclusion the respondent was not aware, to a sufficient degree of detail, of

the case that the claimant wished to advance, prior to the date of this hearing and that the proposed claim is not simply a different legal label attached to an unchanged factual narrative but the introduction of a new and developing factual case. This is a factor weighing against the grant of permission to amend the claim.

Time limits

46. The Tribunal has taken into account that the proposed whistleblowing dismissal claim was not pleaded within the primary limitation period.
47. The Tribunal accepts that the claimant was acting as a litigant in person. However, the information now relied upon was within his knowledge at the time the ET1 was presented. The claimant could therefore articulate the factual basis of any alleged protected disclosure claim at that stage. The Tribunal considers it would have been reasonable for the claimant to identify in his original claim form that he relied upon protected disclosures and that he alleged dismissal because of those disclosures. At the very least, it would have been reasonable for him to provide the factual particulars upon which he now relies.
48. The claimant's explanation amounts essentially to an error in identifying the legal basis of his claim rather than an inability to plead the relevant facts.
49. The Tribunal also attaches significant weight to the absence of any explanation for the delay in advancing the factual basis of the proposed whistleblowing claim. Whilst the claimant informed the Tribunal in June 2025 that he wished to pursue a complaint of automatic unfair dismissal based upon alleged protected disclosures, he did not at that stage identify with any sufficient particularity the disclosures relied upon, the individuals to whom they were allegedly made, or the factual basis of the asserted causal connection between those disclosures and his dismissal. Indeed, one of the disclosures now relied upon was not referred to in the earlier correspondence at all. It was only at this hearing that the claimant provided the particulars necessary to understand the case he sought to advance. Accordingly, the respondent was not provided with sufficient particulars to understand the case it was required to meet until the preliminary hearing. By that stage, more than two years had elapsed since the alleged disclosures in June, July and August 2024, and approximately sixteen months had elapsed since the expiry of the primary limitation period for presenting a complaint of automatic unfair dismissal. No explanation was advanced by the claimant as to why those particulars, which were necessarily within his own knowledge, were not provided earlier. The Tribunal considers that this delay is a significant factor weighing against the grant of permission to amend.
50. The delay has direct consequences for the respondent's ability fairly to investigate and respond to the allegations and is therefore relevant to the question of prejudice.

Prejudice

51. The Tribunal accepts that refusal of the application will cause prejudice and hardship to the claimant. If the amendment is refused, the claimant will be

unable to pursue a complaint of automatic unfair dismissal under section 103A ERA 1996 within these proceedings. He will lose the opportunity to have determined his contention that the principal reason for his dismissal was the making of protected disclosures. The Tribunal accepts that the claimant regards that allegation as the true basis of his complaint and that refusal of the amendment may therefore deprive him of a potentially valuable statutory cause of action. The Tribunal also accepts that the claimant says that his dismissal has had significant financial consequences, including consequences for his ability to remain and work in the United Kingdom.

52. However, the Tribunal considers that the prejudice to the respondent, if the amendment were allowed, is significantly greater. The respondent has prepared its case on the basis of the claims originally pleaded, namely ordinary unfair dismissal and wrongful dismissal. The proposed amendment would require the respondent to defend an entirely different claim focused not upon the fairness of the capability process but upon alleged protected disclosures, the state of knowledge of particular decision-makers, and the reason for dismissal.
53. The Tribunal also accepts that the respondent has been deprived of the opportunity to investigate the allegations at a time when recollections were likely to have been fresher and relevant evidence more readily identifiable. The proposed claim is an entirely different claim from that originally pleaded and would require investigation into alleged protected disclosures said to have taken place more than two years ago. Even now, the allegations remain broadly framed. The claimant has identified only approximate months rather than specific dates for the alleged meetings, has not identified all participants by name, and relies upon general allegations of financial irregularities, deceptive billing practices, breaches of contract and other wrongdoing, rather than clearly particularised disclosures of information. The claimant contends that recordings or documentary records of the meetings may exist. However, counsel for the respondent was unable to confirm whether such material exists and did not have instructions on that issue. In any event, the absence of specific dates would make any search for potentially relevant records significantly more burdensome and uncertain. The respondent would be required to undertake retrospective enquiries across a potentially large volume of electronic material in an attempt to identify meetings occurring within broad time periods and involving only partially identified participants. The respondent's prejudice does not arise merely from the age of the allegations. It arises from the combination of the age of the allegations and the absence of sufficient particulars which would enable focused investigations to be undertaken. The passage of time is also likely to have adversely affected the memory of those witnesses who have been identified and may make it more difficult to ascertain the circumstances of the alleged conversations, what information was communicated, whether it amounted to a disclosure of information for the purposes of the legislation, and how it was understood at the time. The Tribunal is satisfied that these difficulties amount to substantial forensic prejudice arising directly from the lateness with which the factual basis of the proposed claim has been articulated.
54. The Tribunal has weighed carefully the prejudice that would be suffered by

the claimant if permission were refused against the prejudice that would be suffered by the respondent if permission were granted. The claimant would lose the opportunity to pursue what he contends is the true reason for his dismissal. However, that prejudice arises in circumstances where the facts now relied upon were always known to him and could have been pleaded earlier. By contrast, the prejudice to the respondent arises from the introduction of a substantially different claim after expiry of the limitation period and after significant delay in particularisation. In all the circumstances, the Tribunal concludes that the prejudice to the respondent outweighs that suffered by the claimant. In those circumstances, and having regard to the principles in *Selkent*, the Tribunal concludes that the balance of hardship and injustice falls decisively in favour of refusing the amendment.

Conclusion

55. Having considered all the circumstances, the Tribunal concludes that the proposed amendment is not a re-labelling exercise. It constitutes a new claim based upon materially different factual allegations which were not pleaded in the ET1 or accompanying document.
56. The Tribunal finds that the respondent was not provided with sufficient particulars to understand and investigate the factual case relied upon until the preliminary hearing.
57. The Tribunal further finds that it would have been reasonable for the claimant to include the relevant factual allegations in the original ET1 as they were known to him at the time. Further, no explanation has been given for the substantial delay in particularising the facts relied upon.
58. The balance of prejudice favours the respondent. Permitting the amendment would require the respondent to defend an entirely new claim after the expiry of the limitation period and would give rise to significant forensic prejudice arising from the passage of time.
59. Applying the principles in *Selkent*, *Abercrombie* and *Vaughan*, the application to amend the unfair dismissal claim so as to advance a complaint of automatic unfair dismissal under section 103A Employment Rights Act 1996 is therefore refused.

Approved by:

Employment Judge Hussain

05 September 2026

Notes

All judgments (apart from judgments under Rule 51) and any written full reasons for the judgments are published, in full, online at <https://www.gov.uk/employment-tribunal-decisions> shortly after a copy has been sent to the claimants and respondents.

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 here:

www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/