



EMPLOYMENT TRIBUNALS

Claimant: Ms N Heidari
Respondent: Conventional Ltd

RECORD OF A PRELIMINARY HEARING

Heard at: London South Employment Tribunal by video
On: 2nd October 2026
Before: Employment Judge Philip

Appearances

For the Claimant: In Person
For the Respondent: Ms E Godwins (solicitor)

JUDGMENT

It is the decision of the Tribunal that:

1. The Claimant's unfair dismissal complaint is permitted to proceed as an automatic unfair dismissal complaint under Section 104 of the Employment Rights Act 1996 (referred to as ERA hereinafter).
2. The Respondent's application for a deposit order in respect of that complaint is refused.

REASONS

The Hearing

3. This was an Open Preliminary Hearing (OPH) listed following a Rule 28 Notice to consider whether the Claimant's unfair dismissal complaint should be permitted to proceed and, if appropriate, to give case management directions.
4. The Respondent's late response has been accepted by this Tribunal. The Respondent therefore participated fully in these proceedings.

The issue

5. The Claimant commenced employment on 23 June 2025. Her employment ended on 29 September 2025. She therefore had less than two years' service.
6. The issue for determination was whether the Claimant's unfair dismissal complaint should be permitted to proceed as an alleged automatic unfair dismissal complaint under section 104 ERA, notwithstanding her short service.
7. These reasons concern permission to proceed and the deposit application only. This hearing was not to determine liability for dismissal. In particular, for avoidance of doubt, the OPH was not to determine the merits of the Section 104 complaint or the reason for dismissal. No findings of fact were made on those matters.

Documents and Submissions

11. The Tribunal considered the ET1, the Respondent's ET3, the Rule 28 notice, the Claimant's written response to the Rule 28 notice, the documents at pages 51 to 54 (of the Claimant's bundle), the Claimant's clarifications and the Respondent's oral submissions.
12. The Claimant clarified that for the purposes of Section 104 complaint she relied on two matters: i) the absence of written particulars, a contract, handbook or related employment documentation and ii) the discussion about whether day off on Friday, 26th September 2025 would be treated as paid holiday from her annual leave allowance, after she had been told that short notice would affect pay. The Claimant also said that she had raised these matters verbally with administrative staff. The Claimant's Rule 22 representation says that when she returned to work on Monday, 29th September 2025, she was dismissed with immediate effect without any warning.
13. The Respondent submitted that the email communications relied on by the Claimant were requests for information and did not allege that a statutory right had been infringed. The Respondent denied that the dismissal (on 29th September 2025) related to any assertion of a statutory right and its pleaded position in the ET3 is that the reason for Claimant's dismissal was unsatisfactory performance during probationary period.

Rule 28

14. Under Rule 28 of the Employment Tribunal Procedure Rules 2024, where the Tribunal considers that it may lack jurisdiction over a claim, or that a claim may have no reasonable prospect of success, it must give notice of that view. If the Claimant makes written representations, the Tribunal must consider them and either permit the claim to proceed or fix a hearing to decide that question. If the claim is permitted to proceed, the Tribunal must make a case management order.

15. The Claimant had less than two years' continuous employment at the effective date of termination. Accordingly, section 108 ERA 1996 prevents the Claimant from pursuing an ordinary unfair dismissal complaint under section 94 ERA 1996 unless an exception to the qualifying period applies. The Claimant contends that the exception in section 104 ERA 1996 applies in her case.

16. Section 104 provides for automatic unfair dismissal where the reason or principal reason for dismissal is that the employee brought proceedings to enforce or alleged that the employer had infringed a relevant statutory right. The claim to the right and the allegation of infringement must be made in good faith. It is immaterial whether the employee actually had the right or whether it was infringed. It is sufficient if the employee made reasonably clear to the employer what right she claimed had been infringed even if she did not specify that right by reference to a statutory provision.

17. The Claimant's case, as clarified at this hearing, is that she raised concerns about written employment particulars and the treatment of her holiday as paid leave before her dismissal. The right to written particulars is provided for by section 1 ERA. Regulation 16 of the Working Time Regulations 1998 provides for payment in respect of periods of annual leave. The Claimant also said that she had raised this verbally with the administrative staff. The Tribunal makes no determination at this stage as to whether either matter satisfied the statutory requirement of section 104 ERA.

18. The Respondent submitted that, for Section 104 to apply, the Claimant had to allege that the Respondent had infringed or was intending to infringe a relevant statutory right. The Respondent submitted that the email correspondence of 25th September 2025 contained no such allegation. The Claimant had not said that she had been denied annual leave, holiday pay or that the Respondent had infringed her right to receive written particulars. The Respondent described the correspondence as requests for information rather than allegations of infringement and submitted that the correspondence did not, of itself, satisfy Section 104 ERA.

19. The Tribunal accepted that the meaning of the communication relied on was arguable and contested. The relevant email sent on 25th September 2025 at 1:29 pm, referred to the absence of written employment documentation and asked about the treatment of the proposed leave day. The context included a preceding communication, from the Respondent, in the same email chain that short notice might affect pay. The communication was capable of more than one interpretation. Its

meaning and effect require consideration in the full factual context, including the Claimant's account of what was said verbally. The Tribunal did not determine that question at this hearing.

20. The Respondent's ET3 expressly addressed automatic unfair dismissal, alleged assertions of statutory rights, the written particulars issue and the alleged connection between those matters and dismissal. The ET3 states, amongst other things, that insofar as the Claimant seeks to advance a claim for automatic unfair dismissal, such allegations are denied and further denies that dismissal had any connection with any alleged assertion of a statutory right including but not limited to any request for written particulars of employment under Section 1 of the ERA.

21. The Tribunal is satisfied that the Respondent understands the case which the Claimant sought to advance and the case Respondent had to meet. That was relevant to whether the complaint was sufficiently identified and whether it could be managed fairly. The Tribunal also considered whether permitting the section 104 complaint to proceed would cause procedural unfairness to the Respondent. No specific prejudice arising from permitting the complaint to proceed was identified by the Respondent.

22. The Tribunal did not determine whether the email or verbal communication relied upon amounted to an allegation that a statutory right had been infringed or whether any such allegation was made in good faith or whether it was the reason or principal reason for dismissal.

23. Those matters require findings of fact and application of the relevant legal principles at the final hearing. Reading the ET1 and the Claimant's Rule 28 representations together, and taking account of the Claimant's clarification, the Tribunal was satisfied that there was a sufficiently identified and arguable complaint under section 104 ERA to permit it to proceed.

24. In reaching that conclusion, the Tribunal balanced the need to prevent a claim that is legally unavailable or has no reasonable prospect of success from proceeding against the need to avoid finally determining disputed matters without the evidence required to do so. The Claimant identified section 104 and the communication on which she relied. The Respondent had answered that case. The Tribunal considered that determination of disputed facts and merits at a final hearing were proportionate.

Overriding objective

25. The Tribunal has applied the overriding objective in Rule 3 of the Employment Tribunal Procedure Rules 2024. The Tribunal reminded itself that it must deal with cases fairly and justly, including, so far as practicable, ensuring that the parties are on an equal footing, dealing with the case proportionately to the complexity and importance of the issues, avoiding unnecessary formality, avoiding delay and saving expense.

26. The Claimant was unrepresented. The Tribunal has therefore sought to identify and understand the substance of her case from the ET1, the Rule 28 representations and her clarification at the hearing, while ensuring that the Respondent had a fair opportunity to address it.

27. The Tribunal considered whether the Section 104 issue could fairly and proportionately be determined at this preliminary hearing. The meaning and context of the communications, and the reason for dismissal, are disputed and may require findings of fact. Determining those matters finally today would risk turning a hearing listed to consider permission and case management into a merits hearing. The Tribunal considered it fairer and more proportionate to decide whether the complaint should proceed and if so, to leave disputed facts and merits issues for determination at the final hearing.

Conclusion

28. The complaint is therefore permitted to proceed her unfair dismissal claim as an automatic unfair dismissal complaint under Section 104 ERA. For avoidance of doubt, the Tribunal has not determined any separate ordinary unfair dismissal complaint under Section 94 ERA.

Deposit application

26. Following the Rule 28 decision, the Respondent applied for a deposit order.

27. Under Rule 40, the Tribunal may make a deposit order where a specific allegation or argument has little reasonable prospect of success. A deposit may be ordered only after the Tribunal has considered the specific allegation or argument and made reasonable enquiries into the proposed depositor's ability to pay, having regard to that information when deciding the amount.

28. The Respondent submitted that the section 104 allegation has little or no reasonable prospect of success because the communications relied upon by the Claimant were requests for clarification and did not amount to allegations that any statutory right had been infringed. The specific allegation for which the Respondent sought a deposit order was that, before dismissal the Claimant asserted a relevant statutory right and that the assertion was the reason or principal reason for dismissal.

29. The Respondent's application for a deposit order is refused. The wording of the email, the preceding communication concerning pay in relation to holiday, the Claimant's mention of verbal discussion/follow up with administrative staff and the surrounding circumstances had not been tested by the findings of fact. Based on the material considered for the PH, the Tribunal was not satisfied that Claimant's Section 104 complaint had little reasonable prospect of success.

30. This is not a conclusion that the allegation has reasonable prospect of success, rather, it is a conclusion that the Tribunal was not satisfied that the threshold for a deposit order had been met.

31. The Tribunal considered proportionality and the overriding objective. In the given circumstances, determination of disputed Section 104 issues at the final hearing, where full factual context can be considered, was proportionate.

32. As the Tribunal declined to make a deposit order, it was not necessary to make reasonable enquiries into the Claimant's ability to pay a deposit

Case Management

33. The Section 104 ERA complaint will proceed to a final hearing.

34. The issues for determination and consequential directions are set out separately in the Tribunal's case management order.

Approved by,

Employment Judge Philip

Date: 8th October 2026

Sent to the parties on:

15 October 2026

For the Tribunal Office:

P Wing