**EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case Number: 8002565/2025**

**Final Hearing held in Dundee on 22 and 23 September 2026**

**Employment Judge Fellows**

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| **Mr T Kosicky** | **Claimant**<br>**In person,**<br>**Assisted by:**<br>**Interpreter** |
| **Ben Alder Estate Limited** | **Respondent**<br>**Represented by:**<br>**Mr Stalker,**<br>**Solicitor** |

**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

The decision of the Tribunal is that the claims of (i) automatic unfair dismissal contrary to section 104 of the Employment Rights Act 1996; (ii) victimisation contrary to section 27 of the Equality Act 2010; and (iii) direct race discrimination contrary to section 13 of the Equality Act 2010 are not well-founded and are dismissed. The claimant withdrew his breach of contract claim at the commencement of the hearing and therefore that claim is also dismissed.

**REASONS**

**Introduction**

1. This was a Final Hearing of claims brought by the claimant. The claimant represented himself and gave evidence through a Slovak interpreter. The respondent was represented by Mr Stalker, solicitor.

2. The claimant presented his claim to the Tribunal following his dismissal on 5 August 2025. In the ET1 he alleged automatic unfair dismissal under section

104 of the Employment Rights Act 1996, victimisation contrary to section 27 of the Equality Act 2010, direct race discrimination contrary to section 13 of the Equality Act 2010 and breach of contract.

3. At the outset of the final hearing, the claimant confirmed that he no longer wished to pursue the breach of contract claim identified in the claim form and subsequent case management orders. The Tribunal therefore dismissed that claim upon withdrawal.

4. The parties confirmed that the complaints before the Tribunal were those identified in the Preliminary Hearing Note dated 15 May 2026 and summarised below (with the exception of the breach of contract claim which was withdrawn).

5. The Tribunal explained to the claimant that it could assist him to a limited extent as an unrepresented party but could not make his case for him. The Tribunal also explained the manner in which the hearing would proceed.

6. The parties were further advised that, if they wished the Tribunal to consider a document, they must refer the Tribunal to the relevant page of the bundle during the hearing.

**Preliminary Issue**

7. Before evidence commenced the respondent raised concerns regarding the claimant's compliance with directions relating to the provision of witness information. The Tribunal considered whether it would be appropriate to prevent the claimant from leading evidence from any proposed witness, as suggested by the respondent. Having regard to all of the circumstances, including the fact that the claimant was unrepresented, the Tribunal concluded that it would not be proportionate to exclude any witness. Issues of relevance and weight would be determined after hearing the evidence.

8. The claimant advised that he had considered calling his wife as a witness. The respondent questioned the relevance of any evidence she might provide. The Tribunal indicated that it was prepared to hear any proposed evidence and thereafter determine its relevance and weight. Ultimately, however, the claimant elected not to call his wife and she did not give evidence.

**Issues**

9. At the outset of the hearing, and with reference to the claims identified in the Preliminary Hearing Note dated 15 May 2026 the parties agreed the issues requiring determination.

10. In relation to automatic unfair dismissal, the Tribunal was required to determine (i) whether the claimant's grievance dated 17 February 2025 amounted to the assertion of a statutory right for the purposes of section 104 of the Employment

Rights Act 1996; and (ii) if so, whether that was the reason, or principal reason, for the claimant's dismissal.

11. In relation to victimisation, the Tribunal was required to determine (i) whether the grievance dated 17 February 2025 amounted to a protected act within section 27 of the Equality Act 2010; (ii) whether the claimant was subjected to the alleged detriments relied upon, namely exclusion from training opportunities and an out-of-hours telephone call; and (iii) if so, whether those matters occurred because of the protected act.

12. In relation to direct race discrimination, the Tribunal was required to determine whether the claimant was denied training opportunities because of his Slovak nationality.

**Evidence**

13. The respondent prepared a joint bundle of documents.

14. The claimant gave evidence on his own behalf. The claimant also called Mr Ronald Kennedy and Mr Alan Docker.

15. The respondent led evidence from Ms Mignonne Khazaka, who took the decision to dismiss the claimant, and Mr David Murchie, the claimant's line manager.

**Findings in Fact**

16. Having considered all of the oral and documentary evidence referred to by the parties, the Tribunal made the following findings in fact material to the issues before it:

*Parties*

17. The claimant is Tomas Kosicky.

18. The respondent is Ben Alder Estate Limited.

19. The respondent operates a Highland estate. During the relevant period it employed maintenance, housekeeping, gamekeeping and office staff and managed a number of residential and holiday properties on the estate.

20. The claimant commenced employment with the respondent on 1 September 2023. He worked within the maintenance team.

21. During the relevant period Mr David Murchie, the respondent’s Operations Manager, acted as his line manager.

*The grievance*

22. On 17 February 2025 the claimant submitted a written grievance.

23. In the grievance, the claimant stated that, prior to accepting employment with the respondent, he had agreed with the previous factor that overtime worked could be taken as time off in lieu. He complained that the respondent had indicated that this arrangement would no longer be honoured and requested that it continue. He described the change as "unfair and contrary to the agreement under which I accepted this position".

24. Ms Khazaka held a grievance meeting with the claimant on 21 February 2025.

25. In the grievance outcome dated 28 February 2025 the respondent upheld the claimant's grievance and informed him that it would continue to honour the arrangement relied upon by him.

26. Following the grievance outcome, the respondent continued to honour the overtime arrangement relied upon by the claimant.

*The training*

27. The claimant had been scheduled to attend a boat training course on 3 and 4 March 2025.

28. He did not attend that course and Mr Murchie attended instead.

29. At the relevant time maintenance work associated with preparations for filming at McCook's Bothy required completion. The claimant was directed to undertake that work rather than attend the boat training course.

30. Other employees, including employees outside the maintenance team, also assisted with the work required at McCook's Bothy.

31. The claimant was informed that he would not undertake the March 2025 training but would be offered a future opportunity to undertake boat training.

32. Later in 2025 the respondent arranged further boat-related training for employees who had already completed the March 2025 training and required additional qualifications to operate boats commercially.

33. The claimant did not attend that later training because he had not attended the March 2025 course.

34. The claimant did not attend a first aid course conducted in July 2025. The respondent understood that the claimant already held a first aid certificate and did not regard him as requiring the training.

35. The claimant also did not attend a four-wheel-drive training course. Attendance on that course was determined by operational requirements and the need to operate off-road vehicles. Operation of such vehicles did not form a standard part of the claimant's role.

36. Employees who attended the four-wheel-drive training principally required that qualification because their duties involved operation of off-road vehicles.

*The out of hours telephone call*

37. During July 2025 Ms Khazaka telephoned the claimant out with normal working hours.

38. Ms Khazaka occasionally telephoned employees outside normal working hours regarding work matters.

39. The claimant was not the only employee who received work-related telephone calls out with normal working hours.

40. The claimant regarded the call as unusual and considered that he was being singled out by Ms Khazaka.

*The Corrievarkie Lodge incident*

41. On 27 June 2025 a fire alarm activated at Corrievarkie Lodge.

42. The claimant became involved in responding to that incident.

43. Mr Murchie advised the claimant to inspect Corrievarkie Lodge. Mr Murchie advised the claimant that Ms Khazaka had said that if he could not inspect Corrievarkie Lodge by boat he would need to drive there.

44. The claimant travelled towards the lodge by boat with Mr Docker. Weather conditions on the loch were poor.

45. The boat was not landed, and the claimant inspected the property from the boat. The claimant did not physically go to the lodge and did not enter the lodge.

46. The claimant believed that he had complied with the instructions given to him.

47. Mr Murchie and Ms Khazaka believed that in order to properly inspect the source of the alarm the claimant needed to physically attend the lodge.

48. Some days later it emerged that an overheated water heater had activated the alarm and caused damage within the property.

49. Mr Murchie and Ms Khazaka concluded that the inspection undertaken by the claimant had been inadequate.

*Other concerns*

50. During the months preceding dismissal management had concerns regarding aspects of the claimant's working practices. Those concerns included the Corrievarkie incident. They also included concerns regarding compliance with management instructions, prioritisation of work and undertaking work away from allocated tasks without first consulting the Estate office.

51. In particular, management (primarily Ms Khazaka but also Mr Murchie) was concerned by occasions on which the claimant assisted colleagues or undertook alternative tasks without first obtaining approval from management.

52. Following changes in management personnel (specifically the arrival of Ms Khazaka as Estate Factor and appointment of Mr Murchie as Operations Manager), management adopted a more structured approach to the allocation and monitoring of work. That approach was applied generally and was not directed solely towards the claimant.

*Claimant's dismissal*

53. The decision to dismiss was taken by Ms Khazaka.

54. The claimant was dismissed on 5 August 2025. The claimant had not been subject to any formal disciplinary sanction before his dismissal.

55. The dismissal letter stated that the claimant was being dismissed because the respondent did not think that the way they needed the claimant to work and the way he wanted to be able to work was ever going to match. Two recent examples were given i.e. the Corrievarkie incident and the claimant undertaking tasks other than those allocated to him without prior approval.

56. Prior to dismissal the claimant was not invited to a disciplinary hearing. He was not provided with a formal opportunity to respond to the allegations relied upon in the dismissal letter before the decision to dismiss was taken.

57. Management nevertheless regarded the matters identified in the dismissal letter as genuine performance and conduct concerns.

58. The claimant appealed against his dismissal.

59. The appeal was heard by Major Dick, a Director of the respondent.

60. The appeal meeting was intended to be recorded but the recording failed. Notes of the appeal meeting were produced. The claimant was dissatisfied that no recording was available.

61. The appeal was unsuccessful.

**Observations on the Evidence**

62. The Tribunal found all witnesses to be doing their best to assist the Tribunal and to give truthful evidence.

63. This was not a case in which the Tribunal considered any witness was deliberately attempting to mislead it. Where differences arose in the evidence, the Tribunal considered those differences were largely attributable to the passage of time, differing recollections of events and, in some instances, differing perceptions of the same events.

64. The claimant gave his evidence in a straightforward manner. The Tribunal accepted that he genuinely believed that his treatment changed after he raised the grievance on 17 February 2025 and that he genuinely considered his dismissal to be unfair.

65. The Tribunal likewise found Ms Khazaka and Mr Murchie to be giving evidence honestly and in accordance with their recollection of events. The Tribunal accepted that they genuinely regarded the matters identified in the dismissal letter as concerns warranting dismissal.

66. The principal disputes in the case therefore did not arise from questions of honesty. Rather, they concerned whether the claimant's interpretation of the events relied upon was correct and whether the grievance or the claimant's nationality formed any part of the reason for the treatment complained of.

67. Although the claimant remained dissatisfied that the appeal recording was unavailable, he was unable to identify any material matter discussed at the appeal hearing which was omitted from the appeal notes. The Tribunal therefore attached little significance to the failure of the recording process.

68. In determining the relevant issues, the Tribunal has placed particular weight upon the contemporaneous documents and the factual findings set out above.

**Relevant Law**

**Automatic unfair dismissal**

69. Section 104 of the Employment Rights Act 1996 provides protection where the reason, or principal reason, for dismissal is the assertion of a statutory right.

70. Section 104(1)(b) of the Employment Rights Act 1996 applies where the reason, or principal reason, for dismissal is that the employee alleged that the employer had infringed a right of his which is a relevant statutory right.

71. In ***Mennell v Newell & Wright (Transport Contractors) Ltd [1997] IRLR 519, [1997] ICR 1039***, the Court of Appeal stated that an employee must make it reasonably clear what right he claims has been infringed. The Court observed that "the important point for present purposes is that the employee must have made an allegation of the kind protected by [section 104]; if he had not, the making of such an allegation could not have been the reason for his dismissal".

**Victimisation**

72. Section 27 of the Equality Act 2010 defines a protected act.

73. Section 27(2)(d) provides that making an allegation, whether express or otherwise, that A or another person has contravened the Equality Act 2010 is a protected act.

74. To establish victimisation, the claimant must show that he carried out a protected act and that he was subjected to a detriment because he had done so.

75. In ***Kokomane v Boots Management Services Ltd [2025] EAT 38***, the Employment Appeal Tribunal held that whether an employee has carried out a protected act is assessed objectively by considering what was said and the context in which it was said. A complaint need not expressly refer to the Equality Act 2010, but it must amount to an allegation of discrimination or harassment related to a protected characteristic.

**Direct discrimination**

76. Section 13 of the Equality Act 2010 provides that a person discriminates against another if, because of a protected characteristic, that person treats the other less favourably than they treat or would treat others.

77. The protected characteristic relied upon by the claimant is race, namely his Slovak nationality.

78. There are two elements to a claim of direct discrimination: first, the less favourable treatment complained of; and secondly, whether that treatment was because of the protected characteristic. The tribunal must determine the reason for the treatment in question**: *Glasgow City Council v Zafar [1998] IRLR 36, [1998] ICR 120.***

79. Section 23 of the Equality Act 2010 provides that on a comparison of cases for the purposes of section 13 there must be no material difference between the circumstances relating to each case. A claimant may rely on an actual comparator or a hypothetical comparator.

**Burden of Proof**

80. In relation to the automatic unfair dismissal complaint, where an employee lacks the qualifying service necessary to pursue an ordinary unfair dismissal claim and relies upon section 104 to establish jurisdiction, the burden rests upon the employee to establish that the reason, or principal reason, for dismissal was the assertion of a statutory right: ***Smith v Hayle Town Council [1978] IRLR 413, [1978] ICR 996*** and ***Maund v Penwith District Council [1984] IRLR 24***.

81. Section 136 of the Equality Act 2010 states that, “if there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred”. This is widely known as the shifting burden of proof and is a two-stage test. The first stage requires the claimant to prove facts from which discrimination could be inferred (often referred to as the need to show a “prima facie case of discrimination”). If so, the burden of proof will “shift” and the respondent will be required to prove that the treatment in question was “in

no sense whatsoever" on the grounds of race (***Igen v Wong 2005 ICR 931; Hewage v Grampian Health Board [2012] UKSC 37*** and ***Efobi v Royal Mail Group Ltd [2021] UKDC 33***).

82. However, a Tribunal will not always require to have resort to the burden of proof provisions. The Supreme Court in ***Hewage v Grampian Health Board*** held that there is no need to consider the burden of proof provisions when the Tribunal can make positive findings on the evidence one way or another.

**Submissions**

83. The claimant was given the opportunity to make oral submissions but declined to do so. The respondent made brief oral submissions. In summary, the respondent contended that the claimant's grievance neither asserted a relevant statutory right nor amounted to a protected act. The respondent further submitted that the claimant was not dismissed, nor treated less favourably, by reason of the grievance. Finally, the respondent submitted that the claimant was not treated less favourably because of his race and that training opportunities were allocated by reference to operational requirements.

**Discussion**

**Automatic unfair dismissal**

84. The claimant relies upon his grievance of 17 February 2025.

85. The Tribunal does not consider that grievance amounted to the assertion of a statutory right for the purposes of section 104 Employment Rights Act 1996.

86. Properly analysed, the grievance concerned what the claimant regarded as a contractual arrangement relating to overtime and time off in lieu.

87. The grievance stated that the overtime arrangement was "unfair and contrary to the agreement under which I accepted this position" and sought continuation of what the claimant considered to be an agreed contractual arrangement.

88. The grievance did not allege an unlawful deduction from wages. It did not assert any statutory entitlement. The Tribunal therefore concludes that it did not amount to the assertion of a relevant statutory right.

89. The complaint of automatic unfair dismissal accordingly fails.

90. Had the Tribunal reached a different conclusion on that issue, it would in any event have concluded that the grievance was not the reason, nor the principal reason, for dismissal.

91. The Tribunal finds that the concerns identified in the dismissal letter relating to the claimant's performance in his role were the concerns which genuinely motivated the dismissal decision.

92. Those concerns included the Corrievarkie incident together with wider concerns regarding the claimant's working practices and compliance with management instructions.

93. The grievance was investigated and upheld. The respondent thereafter continued to honour the arrangement relied upon by the claimant.

94. The Tribunal has found no contemporaneous evidence suggesting hostility towards the grievance or that the grievance formed any part of the decision-making process. The Tribunal therefore concludes that the grievance played no part in the decision to dismiss.

**Victimisation**

95. The claimant relies upon the grievance of 17 February 2025 as the protected act.

96. The grievance complained about overtime and time off in lieu arrangements. It did not allege discrimination. It did not allege any contravention of The Equality Act 2010.

97. The Tribunal therefore concludes that it was not a protected act for the purposes of section 27 of The Equality Act 2010.

98. The claim of victimisation therefore fails.

99. Had we reached a different conclusion on that issue, we would nevertheless have concluded that the alleged detriments did not occur because of the grievance.

100. The Tribunal finds that the claimant did not attend the March 2025 boat training course because maintenance work associated with preparations for filming at McCook's Bothy required completion.

101. The Tribunal finds that decisions regarding attendance at the first aid and four-wheel-drive courses were taken by reference to operational requirements and perceived relevance to role.

102. The Tribunal further finds that the telephone call formed part of ordinary management supervision. The claimant was not the only employee who received work-related calls out with normal working hours.

103. The Tribunal is not satisfied that any of those matters occurred because the claimant raised a grievance.

**Direct race discrimination**

104. The claimant relies upon his Slovak nationality as the protected characteristic.

105. The Tribunal does not require to determine whether the burden of proof shifted. Having heard all of the evidence and made positive findings of fact, the Tribunal is satisfied that the training decisions were taken for operational reasons unrelated to the claimant's nationality.

106. The claimant relied upon a number of comparators occupying different roles within the respondent's business, including maintenance, gamekeeping, housekeeping and office-based roles. The Tribunal is not satisfied that those individuals were in materially similar circumstances to the claimant in relation to the training decisions under consideration.

107. The claimant genuinely believes that his nationality contributed to the treatment which he received. However, the question for the Tribunal is whether nationality was the reason for the treatment complained of.

108. During cross-examination the claimant accepted that he did not contend that his non-attendance at the first aid course occurred because of his nationality.

109. The race discrimination complaint therefore principally concerned the claimant's non-attendance at the March 2025 boat training course and his non-attendance at the four-wheel-drive training course.

110. Having considered all of the evidence, the Tribunal is not satisfied that nationality was the reason for either of those matters.

111. The Tribunal has found that the claimant did not attend the March 2025 boat training course because management required him to undertake maintenance work associated with preparations for filming at McCook's Bothy.

112. The Tribunal has further found that attendance at the four-wheel-drive training course was determined by operational requirements and the need to operate off-road vehicles, and that operation of such vehicles did not form a standard part of the claimant's role.

113. The Tribunal accepts that the claimant regarded these matters as part of a pattern of unfavourable treatment. However, the Tribunal is not satisfied that they occurred because of his nationality.

114. The Tribunal also notes that employees of various nationalities worked on the estate during the relevant period. The Tribunal heard no evidence suggesting hostility towards the claimant because of his Slovak nationality.

115. The Tribunal is accordingly not satisfied that the claimant was treated less favourably because of race.

116. The complaint of direct race discrimination is therefore dismissed.

## Conclusion

117. The claimant plainly considers that he was treated unfairly by the respondent and was distressed by the circumstances of his dismissal.

118. The Tribunal has found that, prior to dismissal, the claimant was not invited to a disciplinary hearing and was not provided with a formal opportunity to respond to the matters later relied upon in the dismissal letter.

119. However, no complaint of ordinary unfair dismissal under section 98 of the Employment Rights Act 1996 is before the Tribunal. The Tribunal's task is confined to determining the claims pursued by the claimant.

120. For the reasons set out above, the complaints of automatic unfair dismissal, victimisation, and direct race discrimination are dismissed. The breach of contract claim was withdrawn and is dismissed upon withdrawal.

**Date sent to parties** **13 October 2026**