



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr MJ Zafar

v

Metroline Travel Ltd

Heard at: Watford

On: 9 and 10 May 2017

Before: Employment Judge Smail

Appearances:

For the Claimant: Mr G Pollit, Counsel

For the Respondent: Ms H Norris, Solicitor

JUDGMENT having been sent to the parties on 17 May 2017 and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013, the following reasons are provided:

REASONS

1. By a claim form presented on 18 August 2016 the Claimant claims unfair and wrongful dismissal. The Claimant was employed as a bus driver between on or about 17 November 2003 and 21 April 2016 when he was summarily dismissed for alleged gross misconduct. Disciplinary proceedings followed a complaint from a passenger dated 16 February 2016.

The issues and the law

2. Unfair dismissal

2.1 The Tribunal has had regard to s.98 of the Employment Rights Act 1996. By s.98(1) it is for the employer to show the reason or if more than one the principal reason for the dismissal. A reason relating to the conduct of an employee is a potentially fair reason. By s.98(4) where the employer has fulfilled the requirements of sub-section (1) the determination of the question whether the dismissal is fair or unfair having regard to the reason shown by the employer:

- 2.1.1 depends on whether in the circumstances including the size and administrative resources of the employer's undertaking, the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee; and

2.1.2 shall be determined in accordance with equity and the substantial merits of the case. This has been interpreted by the seminal case of British Home Stores v Burchall [1978] IRLR 379 EAT as involving the following questions:

- “(a) Was there a genuine belief in misconduct?
- (b) Were there reasonable grounds for that belief?
- (c) Was there a fair investigation and procedure?
- (d) Was dismissal a reasonable sanction open to a reasonable employer?”

2.2 I have reminded myself of the guidance in Sainsburys Supermarkets v Hitt [2003] IRLR 23 Court of Appeal that at all stages of the enquiry the Tribunal is not to substitute its own view for what should have happened but judge the employer as against the standards of a reasonable employer bearing in mind there may be a band of reasonable responses. This develops the guidance given in Iceland Frozen Foods v Jones [1982] IRLR 439 EAT to the effect that the starting point should always be the words of s.98(4) themselves that in applying this section an employment Tribunal must consider the reasonableness of the employer’s conduct not simply whether they the employment Tribunal consider the dismissal to be fair. In judging the reasonableness of the employer’s conduct an employment Tribunal must not substitute its decision as to what was the right course of that of the employer. In many, though not all cases, there is a band of reasonable responses to the employee’s conduct within which one employer might reasonably take one view whilst another quite reasonably take another. The function of the employment Tribunal is to determine whether in the particular circumstances of each case the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted. If the dismissal falls within the band the dismissal is fair, if the dismissal is outside the band it is unfair.

3. Wrongful dismissal

3.1 An employee is entitled to notice of dismissal or compensation in lieu unless as a matter of fact, as determined objectively by the Tribunal on the balance of probability, the employee committed a repudiatory breach of contract entitling the employer to dismiss without notice by way of acceptance of the breach. The burden is on the employer to prove this.

The findings of fact relating to the issues

4. The passenger’s complaint dated 16 February 2016 was as follows: She had telephoned into the TFL complaints’ line. They kept a record of what was said. The caller was on board the no. 7 bus, she pressed the bell to indicate that she wanted to get off at East Acton, the driver opened the doors in the middle of the road before the stop to allow people off, the caller felt it unsafe. She explained that she had a leg injury and would be unable to get off and walk to the stop. The driver closed the doors and kept driving. He did not stop at other bus stops and kept going until he reached Acton

depot. The passenger shouted at the driver to stop the bus and allow her off, the driver ignored her until he got to the depot, he turned off his engine and left his cab. He approached the caller and grabbed her arm. She let out a scream, the driver fell on top of her and landed on her arm. Another person was still on board and shouted at the driver asking what he was doing. The caller was able to get free and pushed the button manually to exit. She was able to get witness details, she had reported the incident to the police, there was a crime reference number, the caller was pretty shaken by what happened and found that driver very aggressive.

5. Metroline was asked to investigate the matter and an investigation was undertaken by the operations manager, Ms Yates. CCTV was available and was downloaded. In her investigation notes Ms Yates has had a go at describing the CCTV and I adopt most of it here as being accurate, having also seen the CCTV. At 18:06:15 the passenger came down the stairs and heads to the back door. This is a bus with two doors, front and back. 18:06:18 driver opens door and passenger goes to cab. Driver then closes door and drives off moving on to what is said to be the wrong side of the road to get into the right hand turn lane. 18:06:36 the passenger tries to open the doors whilst the bus is moving where the driver should have stopped at the bus stop. Passenger starts having a go at driver and takes his duty card. 18:07:08 she is at the back doors wanting to get off. 18:07:25 passenger goes back to the cab clearly angry. She is shouting and takes her phone out to take pictures of the driver. She then physically tries to open the front door by pulling on them. 18:08:01 the bus arrives at the stand which is the end of the line and parks up, the driver opens the cab door, driver approaches the passenger, she turns her back to him in the corner. There is bodily contact. Ms Yates suggests that the driver's stance suggests he is pulling her. There is a scuffle, they lose balance, she falls against cab door and hits her arm on the rail by the entrance door. 18:08:11 the passenger approaches from the back, driver lets go and puts hand up, female passenger moves away from cab. She then continues to shout at the driver through the cab door. She pushes on the door but at no time can she been seen kicking the cab door.
6. The CCTV has been played in the Tribunal. Ms Yates' description is substantially accurate. It is fair to say that at the end there the passenger pushes the cab door into the Claimant on two or possibly three occasions as he is endeavouring to get back into the cab. She then lets herself out by pressing the emergency button at the back doors and exits together with the only other passenger in the bus.
7. The Claimant accepts that he did not stop at the first bus in question which we have called the original bus stop. He tried to stop there some ten yards short in order to let the passenger off. It was convenient for him to do so because there was traffic on the inside lane, he wanting to turn right at the end of the road. It seems clear that the passenger did not want to get off at that point. There may then have been confusion as to whether she wanted to get off at the stop ten yards ahead or the stop following that, but the Claimant agrees that he took her on four stops beyond the original stop at the end of the line. It is apparent from the CCTV and is clear that the Claimant wanted to get off the bus as soon as she realised they were passing the original bus stop. It is common ground, however, that the

Claimant did not stop at bus stop no. 2 or bus stop no. 3. He accepts he went to the stand effectively bus stop no. 4. Ms Yates' descriptions otherwise are accurate.

8. She concluded that there was a case to answer to go to disciplinary at the end of the investigation. She says the following:

“Having listened to the comments and answers to my questions as well as taking all the relevant paperwork and CCTV footage into consideration, I am recommending that this matter is forward to a formal disciplinary enquiry. This is based on the fact that it is clear you wanted the passenger to get off when you opened the doors rather than at the bus stop due to the queue of traffic you would have had to sit in when the right hand lane was clear. This led to the avoidable and terrible incident that occurred. The passenger got annoyed that you failed to let her off at the stop and became abusive towards you so you decided for your safety to continue to the stand and missed a further two stops. The passenger became extremely angry and took your duty card along with pictures of you. She physically tried to open the doors whilst the bus was moving desperately trying to get off. When you reached the stand you still failed to open the doors. You got up to her and grabbed her trying to get your duty card, this causes you both to lose balance. She falls on to the cab door and hits her arm. You say that you just wanted to get off the bus, you got out of the cab having not opened the doors. This whole incident could have been avoided had you served the stop at the top of Du Cane Road correctly. Not only is this way below the standards expected of a Metroline employee but could hold two criminal charges also.”

9. She then brought the charges that went on to the disciplinary hearing. The charges were expressed in these terms:

- “1. Conduct and demeanour alleged assault on a female passenger at 18:08pm on 16 February 2016 on route 7.
2. Conduct and demeanour failing to stop forcibly detaining a female passenger at 18:08pm on 26 February 2016 on route 7.
3. Driving standards driving on the wrong side of the road on 16 February 2016.”

10. The disciplinary hearing was heard by the operations manager at West Perivale Garage. Mr Zunaid Bachoo, having reviewed the evidence including the CCTV, having heard explanation from the Claimant and having heard brief evidence from two witnesses called by the Claimant, one of whom Mrs O'Dowd confirmed that at the stand when the passenger came off the passenger was very upset and was abusive in her language towards the driver and called him a cunt. At the conclusion of all of that, Mr Bachoo dismissed for gross misconduct. His reasoning was as follows:

“It is clear that the driver did in fact fail to stop at the bus stop that the person intended to alight at. He continued to drive on the wrong side of the road. He missed a further three stops on his way to East Acton. What was surprising was the reaction of the passenger who was terrified which could be seen by her extreme methods of trying to open the doors of the bus whilst the bus was moving, clearly trying to get away in a panic.”

11. What shocked Mr Bachoo was that the Claimant failed to recognise or acknowledge the problem. What happened when they got to the East Acton stand at the end of the line was described by Mr Bachoo as not only

grotesque but bewildering and unacceptable. The driver got there and immediately left his cab, went up to the lady in an intimidating and threatening manner, cornered the woman and from her body language and facial expressions as could be seen on CCTV he grabbed the lady and pulled her towards him which in turn caused both of them to fall. He found this completely unacceptable. He agreed that the potential was there for the passenger to have been using foul language and provoke the driver, but the onus was on him as an adult and a professional employee of Metroline to remain calm, patient and professional. He could simply have avoided the whole situation if he (i) had simply served the intended bus stop or (ii) used any one of the further bus stops and (iii) opening the doors at the stand immediately. Instead he allowed the passenger to provoke him to the point where he had effectively assaulted the passenger by grabbing her, manhandling and pulling her into himself and an open cab door. He found that this constituted gross misconduct. Whilst there was some remorse he found he could not take the risk of allowing the Claimant to continue knowing that he possessed the behavioural traits that could be seen. He relied upon grounds of gross misconduct in the disciplinary procedure of assault and threatening behaviour. He dismissed summarily without notice.

12. The Claimant appealed and the appeal was heard by Mr Steve Bennett, a garage manager. The appeal hearing was held on 10 May 2016. By letter dated 11 May 2016 Mr Bennett set out his reasoning. There is no reference in his appeal letter to the third charge, which was driving on the wrong side of the road. Mr Bachoo in evidence said he did not rely on that charge in his findings. As a matter of fact I agree with him on that. Whilst there is some reference to driving apparently on the wrong side of the road, it did not form a part of his reason for dismissal or that of Mr Bennett so I reject the submission made by Mr Pollitt that in fact the third charge was upheld when it was not reasonable to do so. The third charge did not form part of the reason for dismissal. As to not allowing the passenger off the bus, Mr Bennett wrote as follows:

“Having considered your appeal very carefully and taken into account your representations it has been decided to uphold the decision of Mr Bachoo and you will remain dismissed. This decision has been taken because there is no getting away from the fact that you are totally responsible for this incident. When the passenger pressed the bell to get off the bus you had a number of opportunities to stop the bus and allow her to get off. You stated that she asked you to take her to see your manager. I did not understand that having asked you this because she then tried to get off the bus by pulling the doors open whilst the bus was in motion. Again you could have stopped and let her off.”

13. Mr Bennett here was rejecting in effect the Claimant's evidence that it was her request to be driven to the manager at the end of the line. He, with reasonable grounds, rejected that evidence. The passenger, it is clear from the CCTV, was desperately trying to get off the bus.
14. At the beginning of the hearing, continued Mr Bennett, the Claimant stated that he was scared of what was going on with the passenger and the way she was acting but at no time did he call a Code Red. That is a reference to the training and the big red book driving manual which says that in situations of emergencies the bus drivers should stop and press Code Red

which is an intercom service which will go straight to a controller who will decide what needs to be done, for example whether the police need to be called. Mr Bennett continues:

“When you did stop the bus you got out of your cab. Again we find it hard to understand why you should do this if you were scared. One of the very first things you learn in training is never to get out of your cab in an assault situation. There was no reason to get out of the cab especially as you had said you were scared. The CCTV shows that when you did get out of the cab the passenger turned her back on you suggesting that she was the scared person. You then proceeded to touch her and again this in itself could be considered an assault by you. On the day of this incident you acted totally unprofessionally and against all your training. We do not accept your reasons for acting the way that you did.”

15. Then Mr Bennett made reference to something which has figured significantly in our case. At the end of the appeal he said the union representative mentioned two appeals that had been dealt with by two different appeal panels and the outcome of those appeals. Each appeal is dealt with separately and decisions are based on the facts provided at the time of that appeal, he said. As such the outcome of each appeal will be different as no two cases are the same. Mr Bennett has confirmed before me that the representative of the Claimant made reference to two cases and we can see that from the notes of the appeal. He made reference to the case of a Mr Reid at Cricklewood and a Mr Marcus at Brentford.
16. Both cases involved assaults with the result of an appeal being reinstatement. That was alleged. Despite every effort no case concerning a Mr Marcus has been found by the Respondent. There is a case concerning a Mr Reid who was at Cricklewood. When dismissed he on appeal was reinstated and sent to another garage. With reasonable endeavour, had Mr Bennett wanted to find out the facts of Mr Reid's case he could have done so, but Mr Bennett decided not to look into Mr Reid's case as he accepts he said he had seen enough in this case for him to conclude that there had been gross misconduct. Mr Pollitt on behalf of the Claimant says that it is important for companies to behave consistently and so that if on appeal reference is made to a comparable case and that case is not taken into consideration that is a ground for unfair dismissal. As I say, quite some time has been taken up on this case on looking at that argument and I will return to it in a moment.

Conclusions

17. The reason for dismissal was misconduct as set out in the letter of dismissal and the appeal decision letter. The Respondent found that charges 1 and 2 were made out. They did not rely on charge 3. They did not dismiss the Claimant for an ulterior reason, suggested by the Claimant, namely that he was to have a shoulder operation and that by the time of the appeal the it had become clear that his shoulder injury would take longer to heal to the extent that occupational health had suggested in a letter dated 6 April 2016 that it seemed likely that the Claimant, Mr Zafar, would not be ready to drive vocationally for another four to five weeks at least. I reject the suggestion that Mr Bachoo or Mr Bennett were influenced in any way whatsoever by the position of occupational health. Their reasoning for the dismissal related

wholly and solely to the treatment of the passenger on the day in question, 16 February 2016.

18. Were there reasonable grounds for the belief in misconduct? Well, we have all seen the CCTV as did Mr Bachoo and Mr Bennett. It is plain from the CCTV that the passenger wanted to get off the bus. She was not let off the bus until three stops beyond the stop she wanted to get off at. Had she been let off the first stop after the stop she wanted to get off at, there may have been some understanding for the Claimant's actions, but the fact is that the Claimant kept her on the bus in effect falsely imprisoning her. The wording of the charge failing to stop and forcibly detaining a female passenger is a fair enough description of what happened. It also describes arriving at the stand, the last stop, because she was not released immediately then.
19. As to the assault, were there reasonable grounds for concluding that there had been assault? Well certainly the Claimant got out of his cab, he said to get his duty card back, that way well have been his motive. There was no motive on his part to, as it were, punch or fight the female passenger but by his actions he certainly came into physical contact with the passenger. The passenger did look disturbed by this on CCTV. There were reasonable grounds for concluding there had been an assault of a technical nature. So there were reasonable grounds for the findings made.
20. Mr Pollitt on behalf of the Claimant makes three principal charges as to why this was an unfair dismissal. He made four, the fourth relating to the fact that it was his position that the third charge was taken into account. I have already found against that. The first two of the three remaining submissions are related. Mr Pollitt submits that the Respondent failed to take into account adequately or at all the aggression and provocation caused by the passenger, it being common ground that she used foul language certainly when she got off the bus. The Claimant's case that she used it earlier and indeed racist language and indeed we do see the passenger pushing the cab door into the Claimant on two or possibly three occasions when they arrived at the stand and before she was able to free herself by pressing the emergency release button for the back doors. It is a matter of fact, we see from Mr Bachoo's letter and the decision from Mr Bennett and the notes of the appeal before Mr Bennett, that the issue of aggression and provocation was considered. It was just that as Mr Bachoo found expressly, it was not sufficient to justify the Claimant's action as both Mr Bachoo and Mr Bennett said, the operative cause for this problem was not letting the passenger off the bus. It is plain, as I have already found, that as soon as she passed the original stop, as we have called it, she made it very clear that she wanted to get off the bus as soon as possible. She was not let off the bus, she was driven on three further stops. I find that the Respondent's conclusion was reasonable that the aggression and provocative behaviour that can be seen from the passenger was not sufficient to explain why the Claimant did not let her off the bus, why he kept her on the bus, nor does it explain the un-wisdom of getting out of his cab and tackling the passenger. I accept that all the training is to the effect that a driver in these circumstances stays in the cab and presses Code Red. The driver in this case put himself in position for committing what was at least a technical assault by reason of failing to comply with procedures. In short, the Respondent had reasonable

grounds for rejecting the aggression and provocation in this case, but they did absolutely take them into account.

21. Perhaps Mr Pollitt's strongest argument is that on appeal Mr Bennett refused to look at a comparator case. The argument only operates at the appeal level. The existence of potential comparator cases was not raised before Mr Bachoo but it certainly was raised on appeal and Mr Bennett, as he has perfectly freely accepted before me, did not take it into account. Does that mean that the dismissal is unfair? On the facts of this case I conclude that the failure to look at the case does not mean the dismissal is unfair. Not many details were given to Mr Bennett about why this case was said to be comparable. It was just asserted by the rep that there was an assault case leading to a reinstatement and that case needed to be looked at.
22. Let us now look at the alleged comparator case. I might observe that the Claimant was absolutely entitled to disclosure of these matters, the Reid case being a case capable of discovery and it was unfortunate that disclosure should be made on the morning of the hearing which had already been postponed once. Be that as it may, no-one is prejudiced by this matter because we have full details disclosed and we have been able to deal with the matter. We have the details.
23. What happened in this case was described in the disciplinary hearing by Mr Reid himself and was corroborated by a number of witnesses. He said the incident related to the C11 route on 7 November 2015:

"I turned left from Fleet Road and pulled up at the bus in front of the Royal Free Hospital. I have an affection for the Royal Free. I was treated there for a bad hand injury after I was racially attacked. I recognise some of the staff that work there and always have time for them and will wait a little longer at the stop as I know they are hospital workers. I even see the surgeon who did the operation on my hand. On this occasion a lot of women and children got out. This gentleman in the hoodie stood out. Although he started messing about with his pass, I decided to let him on and deal with it whilst I was in motion just to avoid delaying the service. As soon as I pulled away from the bus stop I began to hear this man making noises. He was starting to scream and I could hear swearing. In addition the bell was going all the time. That is when I knew that I shouldn't have let him on. I then saw a woman get up and more or less run off the bus. She looked at me and I could tell she was displeased. The man had stopped shouting by this time. I continued on but by this time it was difficult to concentrate. When I did get to the red lights I could hear him swearing and cursing in the bus. I turned left and as I passed the KFC bus stop I could hear him threatening the woman with the dog. This is when I decided to stop the bus. I kept going to Belsize Park. As I got there he was getting worse and I was feeling more and more guilty for letting him on. I heard him say "what the fuck are you looking at you black bitch?" This was after he had threatened to kick the dog. I was scared that he was going to hit one of these girls and I would have felt responsible. I have grown up around girls and I have always protected them. At this point the black passenger approached me. I told her to sit near the front. I stopped and walked to the rear doors and opened them. I did not want to get out of the cab but I felt it was necessary to protect the girls and the dog. I opened the doors and looked at him and told him he had to leave. He refused and I told him that I wouldn't carry him any further. He said he didn't care so I threatened to call the police. As soon as I said that he got up no problem. He walked straight past me, stepped off the bus, turned around and spat on me. There was booze and spit mixed up in one then you know what happened after that. I stumbled out of the bus or you shouldn't do that and

then I have slapped him. When you learn self-defence you learn to protect yourself. I held him to the floor and he reached for a bottle in his pocket. He tried to hit me with it, I put my knee on his right arm, the one that had the bottle in it and the girls on the bus came and pulled me away. I gave him a couple of slaps to try and distract him. I got back on the bus and couldn't drive away as there was intending passengers. As I went to drive away he took the bottle and threw it at the windscreen."

24. Witnesses corroborated Mr Reid's account. One witness, Maria Gardner, said:

"The bus driver stopped and asked the passenger to leave. As the passenger left he started saying "What are you gonna do about it?" As the driver closed the doors, he was a very brave man, he spat at the driver. Some landed on him, some on the back of his head. The driver was calm and professional. He deserves a medal. He went to the front and tried to contact the police. As he was doing this the passenger threw something that smashed the front window. The driver was very polite and professional. He should receive a medal. All he got was abuse and spat upon."

25. Other witnesses corroborate that, notwithstanding the support of witnesses at the disciplinary hearing the Claimant was dismissed. His appeal however was successful. The appeal was held on 22 December 2015, a final written warning and relocation to West Perivale was decided upon. Yvonne Dawson, the garage manager, wrote:

"This decision has been taken because the appeal panel were convinced that you will never be involved in this type of incident again. Although extremely provoked this type of conduct is unacceptable and unjustified and displays the company image in very poor light. Under normal circumstances it would be unlikely that we would consider reinstatement. However, we were convinced by your remorse and your attitude towards taking responsibility for your actions as well as your previous good record and therefore we decided to offer you a further opportunity."

26. Ms Dawson's reasoning was summarised into twelve points. First, mature driver with over ten years' broad experience in the bus industry; secondly, this we believe is an isolated incident where we feel he has placed his duty of care to his passengers over and above his own personal safety; thirdly, in leaving the cab of the vehicle he left with the clear intention of defusing the situation; fourthly, this narrative is supported by independent witnesses who speak of the aggressive manner of the other passenger concerned; fifthly, Mr Reid has been honest throughout the process and taken responsibility for his actions; sixthly, both at the disciplinary hearing and at appeal he has shown genuine remorse; seventhly, this incident provided extreme provocation and he acted to protect vulnerable passengers mainly elderly females, children and animals; eighthly, previous good record, he had come to the appeal dressed in the manner that shows he is proud to be part of the Metroline family; ninthly, he was insistent in putting his case over and above what his representative was saying; tenthly, he was on his way back to the cab of the vehicle thinking the situation was defused when was spat upon so we find he was not the aggressor; eleventh, has today demonstrated honesty and integrity and is committed to remaining in the company and within policies and procedures; twelfth, we believe that the risk the company repeating this behaviour is minimal.
27. Having now seen the documentation Mr Bennett yesterday stated that the

matter was distinguishable, an essential difference being that the driver was dealing with an aggressive passenger in order to protect other innocent passengers. He saw no real relationship with the Claimant's case.

28. On balance my finding that had Mr Reid's case been seen at the time it would not have eased the Claimant's position. On the contrary Mr Reid's case is distinguishable in the way indicated by Mr Bennett and it is extremely likely that Mr Bennett would not have been persuaded by this Reid case to treat the Claimant differently.
29. Accordingly, if I am wrong in my conclusion that the failure to look at this case by Mr Bennett at the time did not amount to procedurally unfair dismissal, so assuming that was a decision which made the dismissal procedurally unfair, I am satisfied that there was nonetheless a 100% chance that the Claimant would have been dismissed anyway. I do not see any rational basis for finding that the Reid case would have assisted him in any potentially fair manner. I would have considered nonetheless awarding the Claimant a proportion at least of his basic award to reflect the fact that there was a procedurally unfair dismissal had that been my decision but I have not found that the mere failure to look at the issue rendered the dismissal unfair. There has to be more to the argument. The argument has to be there was a failure to look at a genuinely relevant decision.
30. Accordingly, in summary the Claimant's claim of unfair dismissal fails. The reason for dismissal was misconduct. There was a reasonable investigation and procedure. There were reasonable grounds for the belief. Dismissal was within the range of reasonable outcomes. Technically this amounted to an assault. Assault is within the list of gross misconduct reasons but to my mind the real basis for this decision was not letting the passenger off at or near to the stop she wanted to get off at, or at best for the Claimant the stop following the stop when he realised she wanted to get off. It seems to me that there are reasonable grounds for thinking that he effectively falsely imprisoned the passenger by not letting her off the bus.
31. Just as a footnote to the reasonable investigation point: the identity of the passenger was not established. The Respondent did ask TFL for contact details. TFL did not have a record of any contact details. Whilst a witness for the Claimant said that the passenger worked for TFL and was known to be difficult, the identity of the witness was not communicated to Mr Bachoo and indeed the Claimant's witness was not able to name the passenger to the Claimant. What happened in this case can be seen, admittedly not heard, but can be seen from CCTV. Accordingly, I do not find that there was a failure to investigate the matter appropriately by failing to track down the identity of the passenger and seek to interview her. A crime reference was given and no-one had thought of the possibility that the police might be asked to communicate with the passenger to pass on the information that the bus company would like to speak to her directly. No-one thought of that, and it did not happen. Neither the Respondent nor the Claimant thought of that. I do not find that this represented a failure to the extent that there was not a reasonable investigation. It was an idea that no-one thought of. It may or may not have led to anything fruitful.
32. So, in short, the Claimant's claim of unfair dismissal fails and is dismissed.

33. As to wrongful dismissal, I have to find primary facts. It is not a case of looking at the Respondent's reasoning, being careful not to substitute my own views. It is different in the case of a wrongful dismissal claim. I have to find primary facts. I find that the Claimant repudiated his contract in this case by not letting the complainant off the bus for at least three stops beyond where she wanted to get off. That did amount to some sort of false imprisonment. It could not be clearer from the CCTV that she wanted to get off. It is not likely that she said "Drive me to your manager". She wanted to get off as quickly as possible. The Claimant did not allow her off. He then most unwisely put himself in the position whereby he came into bodily contact with the complainant to the extent that the only other passenger had to shout out "Don't touch her". Both those matters amounted to conduct repudiatory to the contract of employment and the Respondent was in the position to accept that conduct as breaches discharging the contract and removing its obligation to give notice.

Employment Judge Smail

Date: 22 August 2017

Judgment sent to the parties on

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For the Tribunal office