



EMPLOYMENT TRIBUNALS

BETWEEN

CLAIMANT: Mr Fidalgo **v** **RESPONDENT:** London United Busways Ltd

JUDGMENT ON RECONSIDERATION

The judgment dated 20 May 2020 is revoked

JUDICIAL MEDIATION

EXPLANATORY NOTE TO THE PARTIES

1. Alternative Dispute Resolution is a priority for the Government. Judicial mediation is seen as one of the possible ways to achieve this. The Employment Tribunals operate a scheme in all regions in England and Wales.
2. Judicial mediation involves bringing the parties in a case together for a mediation preliminary hearing. The judicial mediation is conducted by a trained Employment Judge, who remains neutral and tries to assist the parties to resolve their dispute. The Employment Judge will help to identify issues in dispute, but will not make a decision about the case, nor give an opinion on the merits of the case. The role of the Employment Judge as mediator is to help the parties find ways to resolve their dispute by mutual agreement. Resolution is not limited to the remedies available at a hearing.
3. Whilst judicial mediation is part of the process of resolving employment disputes, it is an alternative to a tribunal hearing, but not an alternative to

ACAS conciliation. ACAS and the judiciary of the Employment Tribunals work collaboratively in relation to judicial mediation. The statutory duty placed on ACAS is not compromised by the process, and ACAS and the judiciary remain independent of each other at all times.

4. There are no restrictions on the jurisdictions that will be considered for judicial mediation, although it is unlikely that equal pay claims will normally be suitable for this process.
5. An important factor in assessing suitability is whether there is an ongoing employment relationship.
6. Whilst cases suitable for judicial mediation are identified in a number of different ways, identification is usually by an Employment Judge at a preliminary hearing for case management purposes. At that preliminary hearing, suitability for judicial mediation is considered, the parties advised of the possibility of an offer of judicial mediation, their interest (or otherwise) noted, and normal case management orders and directions made.
7. If the parties agree to consider an offer of judicial mediation, the file will be passed to the Regional Employment Judge, who will apply agreed criteria and determine whether the case qualifies for an offer of judicial mediation. An offer of judicial mediation is normally made at a telephone preliminary hearing with the parties when timetables for the mediation will be set, a stay or variation of the existing case management orders made if necessary, and the dates for the judicial mediation agreed. Agreement will also be reached on the issues for the judicial mediation (which may be wider than those determinable by a tribunal at a hearing), who will attend the mediation (which must include people empowered to make decisions), and any requirements of the parties for the conduct of the mediation.
8. It is not possible to offer judicial mediation in all cases because of resource constraints and suitability of the issues to mediation. Parties are notified if an offer cannot be made.
9. Provided that the offer of judicial mediation is accepted by all parties, the matter proceeds to a one or two-day mediation.
10. The judicial mediation will be carried out by an experienced Employment Judge trained in mediation. A facilitative mediation technique is adopted and applied.
11. The judicial mediation is held in private and in circumstances which are entirely confidential with appropriate facilities made available. The contents or the events at a judicial mediation may not be referred to at any

subsequent hearing. The Employment Judge mediating will play no further role in the case should it proceed to a hearing.

12. The judiciary of the Employment Tribunals may, on occasions, and with the prior consent of the parties, contact ACAS to reactivate conciliation, either during, or at the end, of the judicial mediation. This contact is usually by telephone conference call with the parties and an appropriate ACAS officer.
13. If there are any matters of concern or any explanation required, then please write to the Regional Employment Judge for clarification.

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Employment Judge Martin
6 July 2020