



# EMPLOYMENT TRIBUNALS

**Claimants:** (1) Miss F Anyuru  
(2) Mr E Omosola  
(3) Miss N Fearon  
(4) Mr M Patel  
(5) Mr A Hamdan  
(6) Mr J Henry

**Respondent:** East London Bus & Coach Company Limited

**Heard at:** East London Hearing Centre (by telephone)

**On:** 21 May 2021

**Before:** Employment Judge Gardiner

## Representation

**Claimants:** Miss F Anyuru, Miss N Fearon, Mr J Henry (in person)

**Respondent:** Mr R Bailey, counsel

**No attendance** Mr E Omosola  
Mr M Patel  
Mr A Hamdan

**JUDGMENT was sent to the parties on 24 May 2021. The Respondent's solicitors have requested written reasons in an email dated 24 May 2021.**

# REASONS

1. This is a claim for underpayment of holiday pay in the period up until March 2019. It is brought by six former bus drivers who were employed by the Respondent until 2 March 2019. On that date their employment transferred to Arriva London (North). As a result, the employment to which this claim relates has never ended. It has continued, but from March 2019 they were employed by Arriva London (North) rather than by the Respondent.

2. Early Conciliation started in relation to two of the Claimants on 21 December 2019. I assume that Early Conciliation in relation to the other Claimants started on a similar date. This is over nine months after their employment ended with the Respondent. Normally claims for unpaid holiday pay need to be started through EC within three months of the date on which employment ends. On this basis, these employment tribunal claims would be out of time, unless it was not reasonably practicable to bring these claims at that point. The Claimants do not point to any features during 2019 to explain why this would not be reasonably practicable - apart from the fact of ongoing discussions between their union, Unite, and the Respondent; and the fact that they did not know they had been underpaid.
3. There was a further significant delay in issuing these proceedings. They were not issued until November 2020. For reasons I shall come to, I do not need to decide whether the combined effect of these two periods deprives the Employment Tribunal of jurisdiction to hear the claims.
4. The essential basis on which the Claimants argue that they are entitled to recover extra holiday pay is an agreement about holiday pay reached between Unite and the Respondents during 2019. In a communication sent to certain bus drivers in December 2019, Miss O'Brien said that the agreement was reached in early 2019. Given the terms of the agreement contained in the bundle, I find it is likely that the final agreement was only concluded in October 2019. The agreement recognises that there is a shortfall in the holiday pay that was paid to certain bus drivers, which the Respondent agrees to compensate. This is those weekly paid employees who were in the Respondent's employment at the implementation date of the agreement. This is those employed at 12 October 2019. It also extends to those who had left the Respondent's employment within three months of that date. That is those who were still in the Respondent's employment on or after 12 July 2019.
5. That applied to Mr Ryan Fearon. It did not apply to any of the Claimants who had ceased to be employees of the Respondent in March 2019. As a result, none of the Claimants come within the scope of the agreement.
6. In any event, there is a further problem with the claims that the Claimants are bringing. That is that the Employment Tribunal only has jurisdiction to consider claims for breach of contract in certain circumstances. Those circumstances do not apply here. That is because the Tribunal can only make an award for breach of contract where the breach arises or is outstanding on the termination of the employee's employment. The Claimants' employments continue, albeit with Arriva London (North). For that reason, the employment tribunal does not have jurisdiction to hear the Claimant's claims.
7. There is a final point. That is that the effect of the TUPE transfer is to transfer not just the Claimant's employment to Arriva London (North), but also any liabilities that relate to that employment. This means that the Claimants' claims for underpayment of holiday pay may still exist against Arriva London (North). This would be on the basis of their contractual entitlements under their employment contracts, rather than under the agreement reached with Unite. The Claimants should consider whether the sums potentially due to them are recoverable from Arriva London (North). I express

**Case Numbers: 3213387/2020; 3213388/2020;  
3213389/2020; 3213390/2020;  
3213391/2020; 3219776/2020**

no view on whether those claims against Arriva London (North) have any merit. However, for the reasons already given, the sums claimed are not recoverable from the Respondent.

**Employment Judge Gardiner  
Date: 3 June 2021**