

day before. We felt it was unlikely that Mr Martin had spoken to Mr Cooper in the way alleged by Mr Cooper, given the instruction he sent to the drivers that very day.

4. Mr Cooper attended with the other drivers on the Monday and did some work but it was clear there was not going to be much work going forward and accordingly he and his colleagues were told that he and most of the other drivers were not required to attend work on the Tuesday.
5. Mr Martin sent a message to the coach drivers on the Tuesday essentially inviting them to apply to become furloughed. Mr Cooper replied indicating he would indeed wish to be furloughed.
6. Mr Martin then sent an email to Mr Cooper and to two other drivers on the afternoon of 25 March. The first paragraph of that email raises the possibility of dismissal, on the face of it relating to the commercial situation of the Company itself in the light of the pandemic. The second paragraph informs the recipient that the Company does not have an up to date signed contract of employment for him. Such a document was enclosed and each recipient was invited to sign and return it.
7. Mr Cooper was not happy with the proposed contract and he wrote to Mr Martin to inform him of that and that he wished to negotiate it. Some half an hour after he sent that message to Mr Martin, Mr Martin wrote to him to inform him that he was being given notice of dismissal. There was subsequent correspondence in which Mr Cooper attempted to pursue a grievance but nothing really turned on that for our purposes.
8. Under s13 of the Equality Act 2010 a person (A) discriminates against another (B) if because of a protected characteristic (such as age or disability) A treats B less favourably than A treats or would treat others. Mr Cooper said that he had been treated less favourably by being dismissed and the reason for that less favourable treatment was either his age (ie that he was in his 70s) or the fact that he was diabetic.
9. Under s15 of the 2010 Act a person (A) discriminates against a disabled person (B) if A treats B unfavourably because of something arising in consequence of B's disability and A cannot show that the treatment is a proportionate means of achieving a legitimate aim. In this case Mr Cooper said that his requirement to "shield" because of his disability was something arising from his disability and his dismissal was a consequence of that.
10. Essentially what we were attempting to determine was the rationale of Mr Martin for dismissing Mr Cooper. (There was an issue between the parties as to the state of knowledge of Mr Martin as to Mr Cooper's disability but there was no need for us to address that, given the findings below).
11. The starting point in determining that rationale was the letter that Mr Martin sent Mr Cooper on 25 March. A natural reading of that document would lead one to conclude that Mr Cooper might well be dismissed as a consequence of the financial situation the Company was likely to find itself in as a result of the pandemic. It goes on to refer to his contract but there is nothing to warn Mr Cooper that dismissal was a possible outcome should he refuse to sign it. On the other hand, about half an hour after Mr Martin was told by Mr Cooper that he was not going to sign the contract, he dismissed Mr Cooper.
12. We might have expected Mr Cooper to have asserted in his evidence that the reference to the failure to sign the contract was a sham – that Mr Martin was really motivated by Mr Cooper's age or diabetes. However, he appeared to accept that Mr Martin was telling the truth and that the issue relating to the

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contract was indeed the cause of his dismissal. It was in any case clear to us that Mr Martin's explanation was correct. That was his motivation. Mr Cooper was certainly entitled to say he was treated differently from others. Three employees in respect of whom the Company did not hold signed contracts were written to in the same terms as Mr Cooper but were not dismissed. The reason for that was that they actually signed and returned their contracts.

13. We were obliged to consider the position of a hypothetical person whose circumstances were not materially different from Mr Cooper's, save for his age or disability. Such a person would also have refused to sign the contract, and such a person would also have been dismissed.
14. In short, Mr Cooper was not treated less favourably because of his age or disability and the claims of direct discrimination therefore failed.
15. Similar considerations applied in relation to the claim of discrimination arising from disability. It was clear (and effectively conceded by Mr Cooper) that his requirement to shield was not related in any way to his dismissal. Dismissal was solely a consequence of his refusal to sign his contract. It followed that that claim also failed.
16. To a certain extent Mr Martin made a rod for his own back by failing to spell out in the email of 25 March that if Mr Cooper did not sign and return the document, dismissal was a likely outcome. One suspects if that had been made clear, Mr Cooper would have signed it even if he was not entirely happy with it.
17. Clearly, if Mr Cooper had had two years' service this would have been an unfair dismissal but Mr Martin was aware that he did not and therefore that he did not have to go through the processes that would normally apply.
18. For those reasons our unanimous conclusion was that Mr Cooper was not unlawfully discriminated against either on the ground of age or disability and it followed that his claims failed and were dismissed.

Employment Judge Reed

Date: 30 July 2021

Sent to the Parties: 11 August 2021

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