



## EMPLOYMENT TRIBUNALS

BETWEEN

**Claimant**

**Respondent**

Mr J Fidalgo

London United Busways Limited

and

**Preliminary Hearing:**

**Held by telephone on 20 September 2021**

**Representation:**

**Claimant:** Mr R Curtin, Legal Consultant  
(retired solicitor)

**Respondent:** Mr P Byrne, Consultant

**Employment Judge Harrington**

### **REASONS FOR JUDGMENT DATED 20 SEPTEMBER 2021**

- 1 This matter comes before me today after two earlier Preliminary Hearings.
- 2 On 27 October 2020 Employment Judge Khalil decided that the Tribunal only had jurisdiction to consider the Claimant's claims of race discrimination. The Claimant's claims of unfair dismissal and of a denial of the right to be accompanied could not proceed. On 14 June 2021, Employment Judge Wright decided that it was appropriate for the Claimant to pay a deposit as a condition of his claim of discrimination proceeding. She also made further, specific case management directions to ensure that the Claimant's case could be sufficiently understood at the final hearing; the final hearing having been listed in October 2021.
- 3 I note the following points from Employment Judge Wright's Order:
  - 3.1 Firstly, at paragraph 9, the Employment Judge states, '*The claimant is to be given one further and final opportunity to particularise his claims.*' This was because earlier orders had been made in October 2020, which had not produced the appropriate particularisation from the Claimant;
  - 3.2 Next, in paragraph 10 of the Order, there is reference to the Claimant providing a document or table setting out the necessary categories of

information including the following, '*Then the claimant must set out what form of unlawful discrimination/prohibited conduct he relies upon...*'. At paragraph 12, the Employment Judge refers to the matters that need to be set out by the Claimant for a claim of direct discrimination. This includes whether an actual or hypothetical comparator is referred to;

3.3 Finally, in Employment Judge Wright's Order it says that unless this information is provided '*within 7 days of the date of this Order*', the claim will stand dismissed without further order.

4 It is clear, and agreed by both representatives today, that the date by which compliance was required was 21 June 2021. Again, it is agreed that there was no compliance by this date.

5 Mr Curtin did not provide further information of the claims until 24 June 2021. This followed Mr Byrne chasing him on 23 June 2021.

6 I note that in his letter dated 5 July 2021, Mr Curtin refers to the further and better information being provided 'a bit late' and he then says by 24 hours, although looking at the relevant dates, it seems that it was more than this. Mr Curtin said in oral submissions today that the Unless Order was unnecessary as the final hearing in the case wasn't imminent at the time it was made. I do not consider that it is for Mr Curtin to say whether the Order was or was not necessary. The Tribunal made the Order, it was a clear and unambiguous order that required strict compliance. The consequences of a failure to comply were made entirely clear and Mr Curtin did not seek to challenge or appeal the Order following the Preliminary Hearing. On the face of it then, the Claimant did not comply with the Unless Order and the consequence of this, again on the face of it, is that the claim stands dismissed without further order.

7 In fully considering this matter however, it is also relevant to take into account what happened shortly after the provision of further information on 24 June 2021. In the event, Mr Curtin provided a further version of the further information on 5 July 2021. He tells me that this should be taken as a wholesale replacement for the document dated 24 June 2021. He identifies that one of the major differences with the new version is that a claim for indirect discrimination is no longer pursued.

8 Having examined the document of 5 July 2021, I conclude that it does not accord with Employment Judge Wright's Order. For example, the second paragraph on the first page refers to the Claimant being a target for direct discrimination. There are examples given of conduct including putting the Claimant on shift work, moving him from his base location and leaving him without a training bus. In respect of these matters, there are no dates identified, the individual or individuals said to be responsible for each of these

acts are not identified, whether there were witnesses to these matters is not clear and no comparators are identified.

- 9 The problems with this document extend further – whilst difficulties with references being provided to witness statements at this stage was identified by Employment Judge Wright, nearly three pages of the further and better information refer to witness statements rather than making appropriate cross references to the grounds of complaint.
- 10 Mr Curtin has described these issues as a pleading point, implying that a party should not be shut out from a full hearing of his complaints by reference to a technical matter of how a case is pleaded. However this is not a case where the Tribunal is presented with a technical pleading point. The Tribunal is trying to understand the Claimant's case – in simple terms, what conduct he complains of, by whom, when, whether it was witnessed by anyone and what legal claim he brings as a result. This last matter requires the component parts of the relevant claim of discrimination being identified. It is only in this way and with the identification of these matters that a final hearing can go ahead because the Tribunal and the Respondent is then able to understand the case being brought; the Respondent can prepare and the Tribunal can turn its mind to the issues that arise.
- 11 The Claimant has not provided this necessary information even at this very late stage – a month before the final hearing. The Claimant has not only failed to comply with the Unless Order by providing information late but, further, the information provided late does not satisfy what was required and ordered by Employment Judge Wright.
- 12 It is for these reasons that I accept that the Claimant's claims are to be dismissed in their entirety because he has failed to comply with the Unless Order. The final hearing dates will be vacated and the deposit of £100 will be paid to the Respondent pursuant to Rule 39(5) of The Employment Tribunals Rules of Procedure, Sch 1 of ETs (Constitution & Rules of Procedure) Regs 2013.

-----  
Employment Judge Harrington  
20 December 2021

**Public access to employment tribunal decisions**

Judgments and reasons for the judgments are published, in full, online at [www.gov.uk/employment-tribunal-decisions](http://www.gov.uk/employment-tribunal-decisions) shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.