

3322830



# EMPLOYMENT TRIBUNALS

**Claimant:**  
**Mr D Kenids**

**Respondent:**

**London**  
**Sovereign Ltd**  
**(trading as Rapt**  
**London**  
**Sovereign)**

**Heard via**                      **CVP**                                      **On: 12<sup>th</sup> August 2022**

**Before:**                      **Employment Judge A Frazer (sitting alone)**

**Representation:**

Claimant:  
In person

Respondent:  
Ms S Smith  
(Solicitor)

## JUDGMENT AND REASONS

### JUDGMENT

The Claimant's claims for unfair dismissal and race discrimination are dismissed under Rule 37 of the Employment Tribunals Rules of Procedure 2013 on the grounds that they have no reasonable prospects of success.

### REASONS

1. This is a claim for unfair dismissal and race discrimination. The EC notification was made on 1<sup>st</sup> October 2021 and the ACAS early conciliation certificate was issued on 2<sup>nd</sup> November 2021. The claim form was presented on 12<sup>th</sup> November 2021. The Claimant was employed as a bus driver from 5<sup>th</sup> September 2017 to 15<sup>th</sup> July 2021. On 20<sup>th</sup> March 2022 EJ Lewis directed that there be a preliminary hearing today to consider whether the Tribunal should strike out the Claimant's claims under Rule 37 if they have 'no reasonable prospects of success' or order a deposit under Rule 39 if they have 'little reasonable prospects of success.' In considering these issues I have taken the claim at its highest.

## The Claim

2. In his claim form the Claimant says *'I was dismissed from work for what they deemed to be gross negligence on 14<sup>th</sup> July 2021. I wasn't given the right to appeal because the company management were delaying the letter which was to be posted within 72 hours.'* The Claimant says that the dismissal process was unfair because he never received the letter confirming his dismissal and the reasons for it, although he did accept today that he was informed of the dismissal at the disciplinary hearing. He said today that the dismissal was brought about because management wanted to get rid of him and that the delay in sending him the letter was a deliberate ploy to keep him from challenging the dismissal.
3. At Box 15 he went on to say *'if you check the dismissal rate a lot of people of colour have been dismissed. It is beginning to look as if something is going on there. It could be racially motivated. Please I want the tribunal to investigate this. I believe we people of colour have been picked on by London Sovereign.'*
4. I had regard to some of the documents included in the bundle particularly the notes of the CCTV evidence and the typed and handwritten disciplinary minutes. The Claimant was observed on CCTV to have done the following while driving a bus on 14<sup>th</sup> July 2021: drinking tea while driving, driving with one hand, leaning forward on the steering wheel to steer with his elbows, stopping the bus to speak to someone and filling out a log card. An accident then took place.
5. The Claimant was on a final written warning from 1<sup>st</sup> February 2021 for failure to carry out a first use check. He says that this was unjustified on the basis that management targeted him for it.
6. The claimant was suspended and invited to a disciplinary hearing for 'unacceptable conduct whilst driving possible gross negligence'. He was warned that he may be dismissed.
7. The hearing took place on 19<sup>th</sup> July 2021. Today the Claimant disputed what was in the contemporaneous document of the disciplinary hearing, particularly that he admitted to the Respondent at the time that the driving was dangerous. It is noted that the Claimant refused to sign the notes at the time.

8. The Claimant says that the Respondent didn't take into account that his stomach was hurting which accounted for why he was drinking tea in the bus. He said that his arms were aching and this was why he lent on steering wheel. He advanced this mitigation at the disciplinary hearing.
9. The handwritten notes record that the Claimant said that he was in a rush, that he was aware of the Respondent's policy not to drink while driving, that he accepted that his elbows being on the steering wheel was bad practice, that he forgot about filling the log card in earlier which was why he was doing it in the bus and that he admitted the driving was dangerous. The Claimant was informed that he was to be dismissed at the disciplinary hearing.
10. The Claimant was advised of the dismissal and reasons in a letter of 20<sup>th</sup> August 2021 which he says that he didn't receive. In that letter he was given the right to appeal within 7 days.
11. The Claimant appealed on 2<sup>nd</sup> September. He stated that at the time he was suffering from a stomach ache. He accepted writing the log card while the vehicle was in slow motion. He accepted he had tea in the cab area. He said that he saw a fellow driver and let him come on board. He accepted his elbow was resting on steering wheel as he had stomach pain. In a further email of 22<sup>nd</sup> September the Claimant went on to say that if it was someone else that the Respondent had liked they would not have been dismissed.
12. The Claimant was informed by Ray Clapson that his appeal was out of time but invited to advance any exceptional circumstances if he wanted to proceed. There is no indication that this was done.
13. The disciplinary officer went off sick with COVID, which the Respondent says accounts for the delay in issuing the letter. The Claimant makes a point that the disciplinary officer put him and his family at risk and that this contributed to the unfairness of the process. I did not consider how this could render a dismissal unfair given the unfolding phenomenon of the COVID infection and the requirement for people to test and then isolate.
14. I understood that the Claimant may have felt some suspicion because the dismissal letter was not posted to him straight away and I considered his case carefully. I considered the points that he made about whether the Respondent could have given him a lesser sanction. I considered that from his perspective his mitigation was not taken into account and that, he says, the decision was not reached from a balanced perspective.
15. However I cannot see how a Tribunal when faced with that set of circumstances could say that the decision to dismiss was outside of the range of reasonable responses. The Claimant accepted the conduct. Indeed there was CCTV evidence of his driving. He was driving a public vehicle with responsibility for passengers and members of the public in such a way that the standard of driving fell below what was reasonably expected of him. There was an accident. In my finding it was well within the band for an employer to dismiss in these circumstances. Even if the Respondent's delay in issuing a

letter or deciding not to hold an appeal out of time rendered the decision procedurally fair - which is unlikely - it would have made absolutely no difference to the outcome. The Claimant still would have been dismissed owing to the serious nature of the conduct in the context of the public-facing role he was employed to do where he had responsibility for the safety of passengers and members of the public.

16. As concerns the discrimination claim I have taken the guidance in **Ezsias v North Glamorgan NHS Trust [2007] EWCA Civ 330** that the power to strike out should only be used in rare circumstances and that cases should not be struck out where the facts are in dispute. However, this is a blatant case where the conduct was on CCTV and was accepted by the Claimant. The Claimant will not be able to establish the necessary comparison because of the serious nature of the conduct and his claim is bound to fail.

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Employment Judge A Frazer

Dated: Friday 12th August 2022

JUDGMENT AND REASONS SENT TO THE PARTIES ON

30/08/2022

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J Moossavi

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FOR THE SECRETARY TO EMPLOYMENT TRIBUNALS