



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr I Hussain

**Respondent:** Lea Interchange Bus Company Limited T/A Stagecoach London

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

**On:** 15 July 2024

**Before:** Employment Judge Volkmer

**Representation**  
Claimant: did not attend  
Respondent: Mr Riley, solicitor

## JUDGMENT

1. The Respondent's name is amended to Lea Interchange Bus Company Limited T/A Stagecoach London.
2. Claim number 3200490/2024 is dismissed upon withdrawal by the Claimant.
3. Claim number 3200552/2024 is struck out because the Tribunal does not have jurisdiction to consider an unfair dismissal claim in relation to a claimant with less than two years' service. It does not identify any other complaint which the Employment Tribunal has jurisdiction to determine.

## REASONS

1. The Claimant was employed by the Respondent as a Bus Driver from 16 August 2023 until 30 January 2024 when he was dismissed for gross misconduct by the Respondent.
2. ACAS notification was on to February 2024 and the ACAS certificate was issued on 19 February 2024. Two claims were presented: claim number 3200490/2024 was presented on 29 February 2024 and 3200552/2024 was presented on 6 March 2024.

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3. By email to the Tribunal dated 5 June 2024, the Claimant confirmed that claim number 3200490/2024 had been incorrectly submitted. In a letter dated 10 June 2024 the Claimant stated he had requested this claim be cancelled due to the form being incorrect. Therefore this claim is dismissed on withdrawal.
4. The paragraphs below refer to claim number 3200552/2024.
5. In the Claimant's ET1 form at paragraph 8.1 the Claimant did not tick any box relating to discrimination or unfair dismissal. Instead the Claimant ticked the box which stated "*I am making another type of claim which the Employment Tribunal can deal with.*". In the box the Claimant stated "*breach of procedures and breach of contract*".
6. In setting out the background to the claim, the Claimant again referred to breach of contract/breach of procedures. He referred to his disciplinary appeal being ignored, no investigations taking place, a grievance being ignored, a manager being inappropriately involved in an investigation, a predetermined outcome of dismissal and vague and unclear charges being brought forward by the employer. The Claim did not refer to any monetary sum to which the Claimant asserted he had a contractual right to but had not been paid.
7. In referring to the grievance which the Claimant alleges had been ignored, the Claimant stated that the grievance related to "*behaviour mounting [sic] to racial hatred*".
8. The Grounds of Resistance set out that the Respondent asserted that the Claim should be struck out on the basis that the Claimant could not pursue a complaint of unfair dismissal due to having less than two years' service and referred to the fact that the Claimant appeared to be bringing an unfair dismissal claim under the guise of breach of contract. The Respondent stated (in paragraph 38 of the Grounds of Resistance) that it had understood there to be no complaint being made that the Claimant had been discriminated against.
9. The Respondent set out that the Claimant had been dismissed on gross misconduct grounds including driving through a red light, becoming physically aggressive with third party in the Respondent's vehicle, and other customer complaints.
10. The Claimant sent a response to this on 19 May 2024 in which he set out his account of the factual details. In that document he stated "*I am bringing forward a claim of breach of contract. The respondent has breached the mutual trust and confidence which is a fundamental breach and this is a breach of contract.*" Almost all of the narrative referred to procedural concerns regarding the dismissal and grievance process. However there was reference to the Respondent not investigating a grievance allegedly raised by the Claimant in relation to which he stated that the incident was one "*whereby I was inflicted with racial abuse*".

11. By email on 4 June 2024, the Respondent referred to the Claimant's correspondence of 19 May 2024 and stated that the Respondent objected to the Claimant's application to amend his claim. On 5 June 2024, the Claimant responded saying "*breach of contract I believe this does cover everything*", he appeared to dispute that he was seeking to amend the claim. In a letter dated 10 June 2024 the Claimant stated "*the allegations have not changed and my claim has not changed.... I have not asked for anything new or asked for any amendments.... I am putting my case forward to the employment Tribunal to show and clarify the basis of my breach of contract and not unfair dismissal. This also includes breach of trust which is the fundamental part of my breach of contract claim.*".
12. On 20 June 2024 the Respondent sent the Claimant a draft agenda and draft List of Issues which referred to a breach of contract claim only. The Claimant's amendments to the agenda again stated that his claim related to breach of contract and that he did not seek to amend it.
13. The Claimant wrote to the Tribunal on 15 July 2024 stating in the cover email that he would not be attending the Preliminary Hearing due to work commitments. The Claimant stated that he wished the letter to be used as his written submissions. In the letter he stated that "*My claim isn't about unfair dismissal nor it's [sic] about constructive dismissal. This isn't a claim for unpaid wages or seeking rights for sick pay etc. My claim is about breach of contract. A breach of mutual trust and confidence.*". The letter does not refer to bringing a discrimination claim. The Claimant again included a narrative statement relating to the facts, referring to a grievance he raised which he said related to a colleague who became racially abusive.

### **Jurisdiction of the Employment Tribunal**

14. The Employment Tribunal is created by statute and an Employment Tribunal only has jurisdiction to hear those claims for which it has been given jurisdiction by statute.
15. Section 3 of the Employment Tribunals Act 1996 sets out that:

*"(1)The appropriate Minister may by order provide that proceedings in respect of -*

  - (a) any claim to which this section applies, or*
  - (b) any claim to which this section applies and which is of a description specified in the order, may, subject to such exceptions (if any) as may be so specified, be brought before an employment tribunal.*

*(2) Subject to subsection (3), this section applies to—*

  - (a) a claim for damages for breach of a contract of employment or other contract connected with employment,*
  - (b) a claim for a sum due under such a contract, and*
  - (c) a claim for the recovery of a sum in pursuance of any enactment relating to the terms or performance of such a contract,"*

16. By way of section 3 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994, such jurisdiction is extended to the Employment Tribunal where the claim “*arises or is outstanding on the termination of the employee’s employment*” (article 3(c)).
17. Pursuant to section 94 of the Employment Rights Act 1996, an employee can bring a complaint in the Employment Tribunal that they have been unfairly dismissed. However, section 108 of the Employment Rights Act 1996 restricts that right, setting out that “*Section 94 does not apply to the dismissal of an employee unless he has been continuously employed for a period of not less than two years ending with the effective date of termination.*”
18. Discrimination complaints made under the Equality Act 2010 do not require a qualifying period of service.

### **Discussion and conclusions**

19. The Claimant’s claim is framed as a breach of contract claim however the substance and content of it relates to the fairness of the disciplinary procedure leading to his dismissal for gross misconduct. References to breach of the implied duty of trust and confidence would be relevant to a constructive unfair dismissal claim, however the parties agree that the Claimant was expressly dismissed by the Respondent. The Claimant does not have the qualifying period of two years’ service to bring an unfair dismissal claim. In this context there is no freestanding ability to bring claims for breach of the ACAS code and/or disciplinary/grievance procedures.
20. In the Claimant’s own words “*This isn’t a claim for unpaid wages or seeking rights for sick pay etc*” (see paragraph 13 above). Therefore no other type of breach of contract claim is evident from the particulars of claim.
21. Although there is passing reference to an incident alleged to be racial abuse, the focus of the Claimant’s complaint is an alleged breach of procedures by the Respondent, in allegedly not investigating the grievance. The Claimant did not tick discrimination on the ET1 form. The Respondent is clear in its Grounds of Resistance that it understands the Claimant not to be bringing a discrimination claim. The Claimant has not sought to contradict that understanding. The Claimant has repeatedly confirmed that he is bringing a breach of contract claim, and does not seek to amend his original claim. Upon consideration of all the papers, the Tribunal considers that no discrimination claim is brought by the Claimant.

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22. The Tribunal cannot identify any other complaint which it has jurisdiction to hear. As such the claim is struck out for want of jurisdiction.

**Employment Judge Volkmer  
Dated: 15 July 2024**