



EMPLOYMENT TRIBUNALS

Claimant: Mr A Walayat

Respondent: Uber Britannia Ltd

Heard at: Liverpool
(In Person on day 1 & 2, by video
and in-person hybrid on day 3)

On: 18-20 September 2024

Before: Employment Judge Buzzard
Mrs Eyre
Mr Wells

REPRESENTATION:

Claimant: In Person

Respondent: Ms Kerenza Davis (Counsel)

JUDGMENT having been sent to the parties on **24 September 2024** following the delivery of full oral reasons via video hearing at the express request of the respondent and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013 by the respondent, the reasons below are provided.

REASONS

The Claims

1. The claimant in this claim had made two claims, namely a claim for breach of contract and a claim of direct race discrimination.

2. The claimant's breach of contract claim has been previously struck out. Accordingly, only the claimant's direct race discrimination claim remained for this Employment Tribunal to determine.

The Issues and the Law

3. Part 5 of the Equality Act 2010 applies to employees and workers and prohibits discrimination of workers in their work. In the Equality Act the terms 'employee' and 'employer' are used to refer to both workers and employees.

4. The claimant's claim relates to race discrimination only. The claimant describes his race, for the purposes of this claim, as being 'non-white'.

5. In relation to discrimination s39 states:

"39 Employees and applicants

*(2) An employer (A) must not discriminate against an employee of A's (B)—
.....
(c) by dismissing B;*

6. This prohibits discrimination by dismissal.

7. The right to make a claim in an Employment Tribunal in relation to a breach of this provisions of Part 5 comes from Chapter 3 of Part 8 of the Equality Act 2010. Specifically, s120 states:

*"120(1) An employment tribunal has, subject to section 121, jurisdiction to determine a complaint relating to—
(a) a contravention of Part 5 (work);....."*

Under this a Tribunal has the jurisdiction to determine if prohibited discrimination has occurred at work.

8. The definitions of discrimination come from Part 2 of the Equality Act. This firstly creates the concept of protected characteristics, the relevant one here being the claimant's race. Part 2 Chapter 2 goes on to define what amounts to unlawful discrimination.

9. Direct Discrimination

9.1. There is more than one form of discrimination based on race. The relevant form of discrimination to this claim is Direct Discrimination. This is defined by s13 of the Equality Act as when:

“13(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.”

9.2. This test can be broken down into parts:

9.2.1. The claimant has to identify the treatment that he will say was less favourable. That treatment must be found to have occurred. In this case the treatment relied on is the termination of the claimant’s driver engagement with the respondent. There is no dispute that this occurred. There is no dispute that the termination of the driver engagement is treatment that was unfavourable.

9.2.2. The treatment must, however, be shown to be less favourable than the treatment of a comparator. Direct discrimination therefore requires the claimant to identify a comparator. It is clear from the wording of the section, *‘or would treat others’* that a hypothetical comparator can be used.

9.2.3. In this case the claimant expressly confirmed that he relies on a hypothetical comparator. Accordingly, the claimant contends that a white driver in the position he was in would have been treated more favourably and not had their driver engagement terminated.

9.3. To show this the claimant has to show more than that he was treated unfavourably. For the claim of direct race discrimination to be made out, the conduct complained of must also be *‘because of’* the claimant’s race. In this case, the claimant describes this as being because he is not white.

9.4. The Court of Appeal has stated that the protected characteristic, in this case race, does not have to be the only reason for the less favourable treatment. The question is whether it was an *‘effective cause’* of the treatment. The motive for the treatment is not determinative. It may be because of the claimant’s race even if it was not actually intended to be.

10. **The Burden of Proof**

10.1. Considering the claimant’s claim of direct discrimination the burden of proof is determined by s136 of the Equality Act. The relevant parts of this section state:

“(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

(3) But subsection (2) does not apply if A shows that A did not contravene the provision.”

- 10.2. This in effect reverses the traditional burden of proof so that the claimant does not have to prove discrimination has occurred, which can be very difficult. The Equality Act at s136(1) expressly provides that this reversal of the burden applies to *'any proceedings relating to a contravention of this [Equality] Act'*. Accordingly, it applies to the claimant's direct discrimination claim.
- 10.3. This is commonly referred to as the reversed burden of proof. It has 2 stages.
- 10.3.1. Firstly, has the claimant proved facts from which the Tribunal could conclude, in the absence of an adequate explanation, that the respondent committed an unlawful act of discrimination? This is more than simply showing the respondent could have committed an act of discrimination. The claimant has to show *more than* he was not treated well and that he has a particular characteristic to meet this test. The provisions do not provide those with protected characteristics with additional protections and rights against mistreatment, they only provide protection against mistreatment *'because of'* that protected characteristic.
- 10.3.2. If the claimant passes the first stage, then the respondent has to show that they have not discriminated against the claimant to successfully defend the claim. This is often by establishing both the reason for the conduct alleged to be discriminatory, and that the reason is not connected to the relevant protected characteristic. If the respondent fails to establish this then the Tribunal must find in favour of the claimant. With reference to the respondent's explanation, the Tribunal can consider evidence of an unsatisfactory explanation by the respondent to support the claimant's case. That being noted, regardless of the fairness of the reason, if the reason is in no sense whatsoever connected to race the claim must fail.
- 10.4. It is not necessary for the Tribunal to approach these two elements of the burden of proof as distinct stages. The Court of Appeal have given guidance that, despite the two stages of the test, all evidence can be heard at once, before a two-stage analysis of that evidence is applied.

Evidence

- 10.5. The Employment Tribunal heard evidence from the claimant on his own behalf. The claimant has prepared an amended written statement shortly before the hearing. With the consent of the respondent's representative the claimant was allowed to rely on that statement.
- 10.6. For the respondent evidence was heard from one witness, Ms L Kinane. Ms Kinane had prepared a written statement in advance of the hearing that was disclosed to the claimant in accordance with case management orders.

10.7. In addition to witness evidence, the Employment Tribunal was presented with a substantial bundle of documents. The Employment Tribunal were referred to that bundle by the parties where relevant.

Relevant Facts - The Respondent's Complaints Processes

11. The background facts relevant to this claim are not in fundamental dispute.

12. The claimant was engaged as a driver with the respondent. This engagement was as a worker, not an employee. The claimant's engagement with the respondent was terminated on 16 May 2022.

13. The claimant was reported by passengers (referred to by the respondent as riders) on 4 occasions. The claimant had provided 2008 rides at the time of the fourth rider report. The reports were all complaints.

14. The claimant disputes that these complaints were truthful, or that he was blameworthy for the alleged events. The claimant stated repeatedly that the respondent failed to conduct a proper investigation into the complaints before terminating his driver arrangement. His claim, however, is one of race discrimination not fairness.

15. Ms Kinane described in some detail in her statement the process that the respondent follows when complaints are made about drivers. Whenever a complaint is received it is individually assessed by a team dedicated to that assessment.

15.1. Firstly, the complaints are categorised. The complaints about the claimant were all categorised as safety issues. With the exception of one complaint, that included an allegation of physical contact, the complaints made against the claimant were all classified as non-urgent. The one complaint that included an allegation of physical contact was initially classified as urgent.

15.2. It was described that the respondent does not have the facility to conduct an in-depth investigation of non-urgent complaints. Instead, the respondent looks at:

15.2.1. whether the complainant has a track record of complaining and/or seeking refunds that might call into question the accuracy of the complaint; and

15.2.2. if there is any evidence (for example in-car CCTV) that is provided by the rider or driver, or anyone else, to show what happened in the relevant incident that will be reviewed. It was explained that it is not common for there to be additional evidence.

- 15.3. Where there are two credible but different accounts of the same event, the complaint (or if both sides complained about each other, which is often the case, both complaints) will be identified as 'valid'. That is not intended to suggest that they are found to be accurate. It is confirmation that the complaint has been correctly classified (e.g. as a verbal altercation etc) and has not been discounted as inaccurate.
- 15.4. The respondent has thresholds for the number of permitted 'valid' complaints that if exceeded by a driver or rider will trigger consideration of deactivation. When a driver reaches 75% of the accepted threshold of 'valid' complaints, a team dedicated to that function will contact the driver to alert them to the fact they are at 75% of the permitted complaint threshold.
- 15.5. If a driver goes on to reach the permitted complaint threshold, they are referred to another team referred to as the 'deactivation team'. They assess and check the information held regarding the complaints against the driver to ensure they have all been correctly marked as 'valid', and if they have it will result in the deactivation of the driver arrangement.

Relevant Facts – Complaints about the Claimant

16. Four complaints were made about the claimant. All complaints were in written format. Whether any complaints were in any way related to the claimant's race was in dispute. Accordingly, to ensure clarity about what was stated by each complainant is set out in full in these reasons. This includes the exact content, which at times contained abbreviations, colloquialisms and what appear to be numerous typographical errors.

17. **Complaint 1** – This was made on 30 December 2021.

17.1. The initial complaint is recorded, in its entirety as follows:

"My Driver accused me of putting the wrong address in and charged me triple the price of where he dropped me off"

17.2. This was followed up with more information as follows:

"My driver was very rude calling me and my partner a pair of idiots for booking a taxi to a wrong place and then telling us to get out his car because we asked if we could book another one again if he said it was the wrong address. We tried to explain to him that we didn't book it to the other side of the street and could we still go to where we were meant to. All we got was get out the car, not even a please. Non of the less he charged us £9.69 to get from one side of the street to another. So I am looking forward to getting that money back."

- 17.3. The claimant sought repeatedly to argue at this hearing that the blame for this incident was with the riders, who had made a mistake and booked a ride to start and end in effectively the same place. The claimant's position is that it was the rider who was shouting and swearing.
- 17.4. The claimant accepted in cross examination that if he had acted as the complaint suggested, that would be a breach of the driver standards he was required to abide by.
- 17.5. The respondent witness explained in detail that this was correctly classified as a 'non-urgent safety issue' and the complaint found to be 'valid'. The claimant was issued with the appropriate warning.
18. **Complaint 2** - This was made at 6:10am on 20 March 2022
- 18.1. The complaint stated:

"Me and my cousins were being followed and harassed by London boys to a point where they followed one of my cousins into our uber grabbed her phone and tried to do whatever with it: when we tried to explain this to our driver he was screaming at us rude n disrespectful saying she wanted it to happen and that. He threatened to throw us out because I felt unsafe at the way he was speeding and then he proceeded to kick us out. So I shouldn't even be getting charged for anything. I've never had an issue with uber before ever and this honestly has shocked and traumatised us all."

- 18.2. When contacted the complainant made the following further comments:

"No that's it thank you. I truly appreciate you guys for helping. We're still shaken up about the situation because as 3 black women in Liverpool we're not safe anywhere we go so it was very scary during the time.. Just upset now and hopefully there comes a solution."

And in later messages:

"So sorry, my phone speaker doesn't work after last night best way in contacting me is through here"

"Yeah I'm unable to talk on the phone"

"After we managed to convince him to not cancel our ride (before we entered the car he kept saying he cancelled but we begged him not to) he proceeded to go over the speed limit so I had asked him if he could drive a little slower and he turned around and said 'if you feel unsafe leave my car I don't care' then my cousin said 'it's not about feeling unsafe it's just

that you're really speeding and it's dangerous' then he began to say we should get out of the car and he had already cancelled the rider"

*"I was almost on the verge of crying so I made up a lie and said my mum was tracking us so that was impossible (even though I'm the one that booked it) he said 'So what's my problem?? I don't care get out' so we explained the real situation to him about the boys following us and he told us to our faces that no boy was following or harassing us because my cousin was desperate and thirsty enough to give her number to one of them. We laughed because we couldn't believe what he had just said. 'she was interested!!! she was literally giving her number if you felt unsafe you should've left her!! They followed you because of her!!' So I asked him what he was talking about because at this point I was very confused and he said 'I know wtf I'm talking about it the f***ing truth!'*

"Btw, nobody gave out any of their personal information to any of those boys"

- 18.3. The claimant accepted in cross examination that if he had acted as the complaint suggested, that would be a breach of the driver standards he was required to abide by.
- 18.4. The respondent witness explained in detail that this was correctly classified as a 'non-urgent safety issue' and the complaint found to be 'valid'.
- 18.5. The Employment Tribunal were shown the warning message issued to the claimant about this complaint. The claimant denied that he had been sent this warning. The claimant did not respond to this warning.
19. **Complaint 3** - This was made at 23:44pm on 20 March 2022.
- 19.1. This was on the same day as the second complaint about the claimant.
- 19.2. The complaint stated:

"He was driving very badly and I and my friends that were with me felt all unsafe in the car. He started arguing with another taxi, they were passing each other without respecting the signs and lines. He honked the horn 6 times during the argument and he was swearing to the other driver, all this while he was driving with also other cars around. He nearly crashed with the other taxi, that thankfully stopped right in time."

When asked for more information the rider clarified in later messages as follows:

"Hi,

1. *My driver was distracted by the argument that he was having with the other taxi driver and was not keeping attention to the other cars around us.*
2. *My driver was speeding especially during turns and because of his speed he was not respecting street lines.*
3. *My driver did perform unsafe traffic manoeuvres. He tried 2 times to pass the taxi in front of us which was the one he was having an argument with, even if they was a full line, indicating that passing another car is not permitted because dangerous”*

“How can I ask for a refund of the amount that I payed?”

- 19.3. The claimant accepted in cross examination that if he had acted as the complaint suggested, that would be a breach of the driver standards he was required to abide by.
- 19.4. The respondent witness explained in detail that this was correctly classified as a ‘*non-urgent safety issue*’ and the complaint found to be ‘*valid*’. The claimant was issued with the appropriate warning.
- 19.5. The claimant responded to that warning stating that he had not had any verbal altercations with customers the day before and that he had driven carefully abiding by traffic rules. He thanked the respondent for letting him know and stated he would be more careful in the future. The claimant further responded at a later point that the complaint was a false report and asking the respondent not to flag his account.
20. **Complaint 4** - This was made on 1 May 2022
- 20.1. *This complaint stated:*

“My driver took me to the wrong place and when we told him he continued to drive and kicked us out the car and proceeded to assault me by pushing my bag out of my hand al over the floor, I have contacted the police over this. I do not agree with this and don’t think I should pay for this!!”

In later messages the following additional statements were made:

“Also he has no MOT on his car driving round”

“Hello, so he went the wrong way we asked him not to as we can’t get out that was it’s a dead end he said he’s following the map we said no you can’t do that so he then pulled up at the dead end got out the car an opened all the doors and started to film us on his phone we was stood there asking why he was shouting in our faces, 4 young girls we are and this man carried on screaming and left us in the street, he then was standing in front

of me shouting I told him he doesn't scare me and he pushed my bag out my hand and I fell and all my things fell on the floor he then proceeded to drive away and reverse into my friend if she didn't move he would of ran her over, I paid £17 for a £6 job and it was the worst experience from uber ever, I don't want to use yous anymore as I feel very affected by this"

"How much longer will my account be suspended for and why is it even suspended I haven't done anything wrong?"

I don't understand why my account is on hold?? What are you investigating and why am I being punished for it"

"Why do you keep calling me and then hanging up"

"Escalated what? I need someone to ring me now"

*"Am I getting called or not
This is taking a while when I haven't done nothing wrong"*

"But I told you they tried to call me 3 times yesterday and when I answered then hung up"

"Why am I being ignored"

"When please? This isn't fair I've been waiting nearly a week for a response!"

"I'm not letting this go I want to know why I've been banned for no reason, you're driver is driving with no MOT and he was disgusting towards me and my friends and left him stranded in the dark"

"I appreciate your help, when did you say my account would be available to use again?"

- 20.2. The claimant accepted in cross examination that if he had acted as the complaint suggested, that would be a breach of the driver standards he was required to abide by.
- 20.3. The respondent witness explained in detail that this was initially classified as an '*urgent safety issue*'. This was because of the alleged physical contact, i.e. the alleged pushing of the rider's bag out of her hand. This classification resulted in an immediate temporary suspension of the claimant's driver account.
- 20.4. Because the respondent was not able to determine whose account regarding the physical altercation was accurate, the complaint was reclassified as a '*non-urgent safety issue*'. The temporary suspension was, accordingly, lifted and the

complaint found to be 'valid'. The claimant was issued with the appropriate warning about the verbal altercation part of the incident.

21. At this point the claimant had provided 2008 rides. The claimant had been the subject of four complaints of verbal altercation that had been categorised as 'valid'.

22. The tribunal were directed to a table of the various thresholds for complaint to trigger deactivation. This document is open to more than one interpretation. That being noted, the interpretation that the respondent stated was applied to all drivers was the most credible. The claimant presented no evidence to suggest that a different interpretation has ever actually been applied by the respondent. The interpretation applied by the respondent was that for a driver who had completed under 2500 rides four 'valid' complaints will trigger deactivation.

23. The claimant's driver arrangement was terminated by the respondent. The respondent states that this was because he had exceeded the permitted number of valid complaints for a driver with under 2500 rides completed.

24. The claimant stated in evidence that the respondent had used "racial slurs" and "racial micro-aggressions" in two written communications with him about his driver deactivation. The relevant parts of these communications are set out in full for clarity.

25. Firstly, the claimant referred to the letter confirming his deactivation which stated:

"We refer to your engagement as a worker with Uber.

Following your recent correspondence with Uber Support we are writing to confirm that under clause 14 of the Driver Terms, we have exercised our right to terminate the Driver Terms with effect from 16/5/2022.

This decision was made because of multiple reports from your riders of your failure to act in a professional and efficient manner appropriate for a responsible licensed private hire vehicle or taxi driver when using the Driver App to provide rides, which constitutes a material breach of the Driver Terms.

This means you are no longer able to use the Uber Driver App to provide rides for Uber via the Uber Driver App, with immediate effect.

Unfortunately, this is a final decision.

Uber will pay you any outstanding payments which are due to you in respect of trips undertaken by you on the Uber Driver App up until today."

26. Secondly, the claimant referred to a later letter sent to him which stated, in the paragraphs the claimant identified as relevant, as follows:

“Please be assured that we take the decision to end our engagement with any driver very seriously. We do not do so unless we are satisfied, based on the information available from our investigation, that you breached your obligations and that termination is the appropriate course of action. In this case, and as you have been informed, we have taken the decision to terminate this engagement due to multiple reports from your riders of your failure to act in a professional and efficient manner appropriate for a responsible licensed private hire vehicle or taxi driver when using the Driver App to provide rides, which constitutes a material breach of the Driver Terms. As has been previously explained to you, this decision is final.

Our Review showed a total of four concerning reports from separate riders regarding alleged aggressive behaviour, physical and verbal altercations between December 2021 and May 2022.”

27. There was no formal right of appeal available to the claimant at the time. Regardless, on his own behalf, his trade union and his MP made various representations about his deactivation.

28. The claimant conceded in cross examination that none of these sought to suggest in any way that the claimant’s race was a relevant factor to his deactivation.

29. The respondent’s evidence was that further representations were considered by a separate team, known as the “MP & Union” team. Ms Kinane stated they looked again at the record of complaints before confirming the decision to deactivate the claimant’s driver account.

Conclusions

30. The Employment Tribunal have taken the time to go through every word of the complaints that were made about the claimant. They are set out above in full. Despite the claimant’s assertions that those complaints were in some way tainted by race discrimination, the unanimous finding of the Employment Tribunal is that there is absolutely nothing within any of them that could in any way be inferred to be, in any sense whatsoever, connected with the claimant’s race.

31. The Employment Tribunal have taken the time to carefully consider the two letters that the claimant asserts contain “*racial slurs*” and “*racial micro-aggressions*”. The relevant parts of them are set out above. Having done this the Employment Tribunal are of the unanimous view that there is absolutely nothing within either letter that could in any sense whatsoever be inferred to relate to the claimant’s race. There is no racial slur. There is no racial micro-aggression, or indeed any micro-aggression of any type.

32. Throughout evidence and submissions, the claimant has expressed a clear view that his deactivation by the respondent was an act of direct race discrimination.

The claimant was repeatedly invited to point the Employment Tribunal to the evidence that he says suggests that this is the case. The claimant has completely failed to identify any evidence that, on any reading, could be inferred to be in any sense whatsoever connected to or related to his race.

33. There are no racial slurs in the evidence before the Employment Tribunal. There are no racial micro aggressions. The claimant's perception and belief that these exist, which appears to be genuinely held by him, is not in any way whatsoever supported by any of the evidence that this Employment Tribunal has seen.

34. The Employment Tribunal has been unable to understand why the claimant has this perception and belief. This concern was identified to the claimant at several points in the hearing, hoping the claimant would identify something that could be understood as the basis for his perception or belief that his race was in any way related to his deactivation. The claimant was unable to identify anything that could, even adopting a generous interpretation, in any way explain his perception and belief.

35. It is clear that the claimant is not happy that his driver account was deactivated. The claimant believes that the complaints made about him were untrue and unfair. The Employment Tribunal make no judgment regarding this. What is clear from the evidence presented is that there is nothing within any complaint that in any way suggests, or could lead to any inference, that the claimant's race was relevant in any way to the complaints.

36. The response to the complaints appears to have been entirely consistent with the standard approach taken by the respondent. There is nothing that could cast any reasonable doubt on the respondent's evidence, namely that the claimant would have been deactivated regardless of his race.

37. Whether the claimant's belief that the respondent's processes are unfair and arbitrary is not a matter relevant to the claimant's claim before this Employment Tribunal.

38. Accordingly, this Employment Tribunal find that the claimant has not met the initial burden of proof. He has not presented any evidence, other than his personal perceptions and belief, that his race was in any sense whatsoever related to the decision to deactivate his driver account.

39. The Employment Tribunal has heard the respondent's explanation of the deactivation and find no basis upon which a finding could be reached that this was not the genuine reason for the claimant's deactivation. The explanation is logical, appears to be entirely consistent with the approach the respondent takes and was in no sense whatsoever connected to the claimant's race.

40. Accordingly, even if the burden of proof had been reversed, this Employment Tribunal would have found the reason for the claimant's deactivation to be in no sense

whatsoever connected to or related to his race and the claim of direct race discrimination would have failed.

41. For these reasons the claimant's claim of direct race discrimination is dismissed as not well founded.

**Employment Judge Buzzard
30 September 2024**

Judgment sent to the parties on:

2 October 2024

For the Tribunal:

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