



EMPLOYMENT TRIBUNALS

Claimant: Mrs A Asif
Respondent: Home Office
Heard at: Watford (CVP)
On: 10 and 11 March 2025
Before: Employment Judge Davey
Mrs A Brosnan
Mr A Scott

Representation

Claimant: In person
Respondent: Mr M Green, counsel

JUDGMENT having been sent to the parties on **18 March 2025** and written reasons having been requested in accordance with Rule 60 of the Employment Tribunals Rules of Procedure, the following reasons are provided:

REASONS

Introduction

1. The claimant worked as a border force apprentice assistant officer based at London Luton Airport, main airport terminal from 10 October 2022 until dismissal with effect from 8 June 2023.
2. The claimant presented a claim form on 21 July 2023, following a period of early conciliation between 20 and 22 June 2023, the claimant complained about unfair dismissal, race and disability discrimination. The claimant did not have two years of continuous service to bring a complaint for unfair dismissal so that claim was dismissed.

Preliminary and procedural matters

3. There was a case management preliminary hearing (CMPH) on 07 May 2024 and a preliminary hearing on 19 July 2024. Employment Judge Skehan made two deposit orders for all claims except that detailed in the issues below. This was sent to the parties on 18 September 2024. The claimant did not make payment by 16 October 2024 as required by the order and confirmed she was not pursuing those claims. The reasons for making the deposit orders were provided in those orders so will not be repeated here.
4. By a judgment dated 24 December 2024, the complaints subject to a deposit were struck out.
5. The parties confirmed at the commencement of the hearing there were no preliminary issues and the only claim before this Tribunal is a single complaint for direct race discrimination.

Evidence and witnesses

6. We heard evidence from the following witnesses who also provided witness statements:

For the claimant

- a. Mrs Asima Asif (claimant)

For the respondent

- b. Mr Daniel Rawlinson (the claimant's line manager);
- c. Mr Dara O'Neil (assistant director and port commander).

7. The Tribunal also had an agreed bundle totalling 430 pages.

Issues

8. The issues for the Tribunal to decide were as follows:

8.1 Direct race discrimination (Equality Act 2010 section 13).

- 8.1.1 The claimant describes her race as Pakistani British.

8.2 Did the respondent subject the claimant to the following treatment:

- 8.2.1 In March 2023 Mr Dara O'Neil did not allocate the claimant a parking space in the EasyJet executive car park.

- 8.3 Was that treatment "less favourable treatment", i.e. did the respondent treat the claimant as alleged less favourably than it treated or would have

treated others (“comparators”) in not materially different circumstances?

8.4 The claimant relies on the following comparators:

6.4.1. Mr Harry Powell, who was allocated a car parking space and who is black and/or

6.4.2 A hypothetical comparator.

8.5 If so, was this because of the claimant’s race?

9. Remedy

8.1 If the claimant succeeds the Tribunal will be concerned with issues of remedy and in particular, if the claimant is awarded compensation and/or damages, will decide how much should be awarded.

Findings of fact

10. The relevant facts are set out below. Where the Tribunal has had to resolve any conflict of evidence, we indicate how we have done so at the material point.
11. The claimant commenced employment as a border force apprentice assistant officer at London Luton Airport on 10 October 2022 based at the main airport terminal. The claimant would drive to work and park her car in the space allocated to her in the car park on the outer periphery of the port site.
12. The claimant has fibromyalgia resulting in muscle pain and fatigue. The claimant had difficulty walking from the parking space she was allocated to her place of work, being the main airport terminal. She explained she would usually walk if it was early in the morning as the buses were often full at this time of day.
13. On 30 January 2023, the claimant asked Mr Rawlinson, her line manager, for an occupational health assessment (OHA) because she wanted a parking space closer to her place of work within the port site, which covers a large area. She was referred to occupational health on 2 February 2023 and had an occupational health assessment (OHA) on 28 March 2023. The occupational health professional recommended that the respondent consider providing a parking space closer to the main airport terminal.
14. Following the provision of the OHA, there was a conversation between the claimant and Mr Rawlinson about obtaining a parking space. Mr Rawlinson stated he could not make that decision and that the claimant would have to put the request to Mr Dara O’Neil, the assistant director at London Luton Airport (though employed by the Home Office) which she did, by email, on 30 March 2023, where she stated:

'I was referred to OHS by my line manager, Daniel Rawlinson. One of the recommendations in my report is to park closer to the port. I suffer from fibromyalgia (Chronic Pain) which is covered in equality act. Can I request your assistance and support regarding this matter'.

15. Mr O'Neill responded to Mr Rawlinson as he was the claimant's line manager stating he had in the past secured parking near the terminal, in the EasyJet executive car park, which despite being referred to as such, is a London Luton Airport controlled car park as are all parking spaces on the port site, this parking provision, once allocated to Border Force (part of the respondent), was provided to blue badge holders only, cost £3,000 per year and that London Luton Airport was not willing to extend this provision beyond the three allocated spaces already provided to Border Force (at the time further provision was suspended) and had no obligation to do so.
16. Mr Rawlinson responded to Mr O'Neill stating the situation was frustrating as this was an occupational health recommendation but will explain to the claimant this is a London Luton Airport decision.
17. Mr O'Neill told the Tribunal he did not know or ask if the claimant was a blue badge holder and at the time, this would have made no difference because there were no allocated parking spaces and London Luton Airport had suspended the provision of further spaces.
18. On the 31 March 2023, Mr Rawlinson emailed the claimant to arrange a conversation to discuss her request for a parking space. This conversation took place on 3 April 2023 by phone. Mr Rawlinson told the claimant that Mr O'Neil had told him Border Force does not own or control the car park and presently, there is a waiting list and he did not discuss whether the claimant could join the waiting list. He could not recall if he mentioned that those provided with these spaces had to be blue badge holders.
19. The claimant's position was that Mr Rawlinson did tell her the car park was not owned and controlled by Border Force. However, her consistent evidence to the Tribunal was that she was not told there was a waiting list or that she had to be a blue badge holder.
20. To Tribunal prefer the claimant's evidence because the issue of being a blue badge holder and joining the waiting list were linked and it is unlikely there would have been reference to the waiting list without reference to the requirement to be a blue badge holder to join it. The claimant was not a blue badge holder throughout her employment with the respondent.

21. The claimant placed significant emphasis on the decision not to provide a parking space not being conveyed in writing. Mr Rawlinson explained to the Tribunal that he wanted to have a conversation to avoid the going back and forth between him and the claimant that would have happened with an email exchange.
22. It was common ground that the claimant ended the conversation with Mr Rawlinson by saying, 'don't worry, thanks for trying' and that she did not raise this matter again until, on 1 July 2023, she raised a grievance following her dismissal.
23. Mr O'Neil confirmed to the Tribunal that it was Border Force policy that parking spaces in the EasyJet executive car would only be allocated to blue badge holders because of the scarcity and cost of these parking spaces and this was agreed with the respondent's human resources department. Mr O'Neill also explained that this was not a formalised policy but rather a local agreement and that it would not be a sensible use of resources, given the scarcity of parking spaces, to have this local agreement ratified and drawn up as a formal policy.
24. The Tribunal accepted this was the position and it is common ground that the respondent had no control over the allocation of parking spaces in the EasyJet executive car park and these were owned and controlled by London Luton Airport.
25. Mr O'Neil also told the Tribunal he had also made enquiries with London Luton Airport about the allocation of parking spaces for Border Force staff in the short stay car park and London Luton Airport refused to offer this provision as these parking spaces were required for passengers. We accepted this evidence, not challenged by the claimant.
26. In her oral evidence, the claimant stated she could now see the reason she was not allocated a parking space was because they were allocated to blue badge holders only and there was a waiting list because there were no available spaces. The claimant then expanded on her position stating it was not just the lack of provision of a parking space, it was also that she could have been placed on the waiting list for a parking space, provided with alternative shifts or given a parking space in the short term car park. The claimant complained she had not been told about the requirement for a blue badge or that there was a waiting list and raised further comparators whom she stated did not share her race and were provided with parking, these included Ms Lisa Hutchinson and Ms Karen Downs.

27. Mr O'Neil explained that Ms Downs did not drive because she was epileptic and Ms Hutchinson was parking in the short stay car park without the knowledge or consent of Border Force because she is the wife of a serving police officer and was accessing this car park based on this fact and not on any decision taken by the respondent.
28. The claimant did not challenge this evidence and it appeared to the Tribunal that the claimant was attempting to expand on her case mid-way through evidence. The Tribunal accepted the respondent's evidence and the fact that, with reference to Ms Hutchinson, that the respondent took no part in this decision.
29. It was common ground that Mr Powell worked between the main terminal with the claimant and General Aviation on the other side of the airport and this was at the time of the decision not to allocate a parking space to the claimant. There was some dispute about Mr Powell's access to the EasyJet executive car park. The claimant stated he had given her a lift, dropped her off at the EasyJet executive car park and when she asked about this, he said he had access. It was common ground that like the claimant, Mr Powell had mobility issues.
30. Mr O'Neill told the Tribunal Mr Powell did not have a parking permit for the EasyJet executive car park but because he moved between locations at the port site, being main terminal and General Aviation, was provided with a Border Force car and had access to the EasyJet executive car park whilst using that car. Mr O'Neill stated Mr Powell never had access to the EasyJet executive car park for either personal use or with his personal vehicle.
31. The Tribunal accepted this evidence as it explained why Mr Powell was able to park in the EasyJet executive car park. The claimant's position was that she did not explicitly state that she thought he had a parking permit and rather referred to him having access and parking in the EasyJet executive car park on one occasion. The Tribunal took this to mean that she accepted the respondent's position in this regard.
32. In her oral evidence, the claimant also accepted there were no available parking spaces at the time she made her request or for the rest of her employment at the respondent.
33. Following an incident on 12 May 2023 between three unnamed passengers and the claimant, she was subject to disciplinary proceedings and subsequently dismissed on 8 June 2023. These matters were the subject of some of the earlier claims referenced above, though were not pursued by the claimant following two deposit orders.

Observations on the evidence

34. The Tribunal noted that the claimant regularly referred to not receiving support because of her disability in both her written and oral evidence. The complaint before the Tribunal was not a disability discrimination claim it was a race discrimination claim. The list of issues was confirmed by Employment Judge Alliot during the CMPH on 7 May and again on 19 July when Employment Judge Skehan asked the claimant to confirm the claims she was bringing because there had been earlier reference to failure to make reasonable adjustments and direct and indirect discrimination with reference to the protected characteristic of disability. The claimant confirmed to Employment Judge Skehan that the claims had been discussed at the previous case management hearing and she was only pursuing the claims that were set out in the list of issues agreed with Employment Judge Alliot.

Relevant law

35. The relevant sections of the Equality Act 2010 are set out below.

36. Section 13 Direct Discrimination:

- (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.
- (2) If the protected characteristic is age, A does not discriminate against B if A can show A's treatment of B to be a proportionate means of achieving a legitimate aim. provides that 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.

37. Section 23 Comparison by reference to circumstances

- (1) On a comparison of cases for the purposes of section 13.....there must be no material difference between the circumstances relating to each case.

38. Section 136 Burden of proof:

- (1) This section applies to any proceedings relating to a contravention of this Act.
- (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 provisions.

39. Section 13 of the Equality Act 2010 provides that direct discrimination takes place where a claimant is treated less favourably because of a relevant protected characteristic. In Shamoon v Chief Constable of the Royal Ulster Constabulary 2003 ICR 337, HL Lord Scott stated (at paragraph 110) ‘the comparator required for the purpose of the statutory definition of discrimination must be a comparator in the same position in all material respects as the victim save only that he, or she, is not a member of the protected class’.
- 51 Igen v Wong [2005] ICR 931, CA 9 provided guidelines regarding the burden of proof (at paragraph 76). The Tribunal must follow a two stage process. At stage one the claimant must prove facts from which the Tribunal could conclude, in the absence of an adequate explanation, that the respondent has committed an act of discrimination against the claimant. The outcome of the stage one analysis will usually depend on what inferences, if any, can be drawn from the primary facts. If the claimant gets past stage one, the burden of proof shifts to the respondent who must prove s/he did not discriminate against the claimant. Although there are two stages, Tribunals usually hear the all the evidence in one sitting, including the respondent’s explanation before decided whether the requirements of each stage are satisfied.
- 52 In Qureshi v Victoria University of Manchester and anor [2001] ICR 863, the Employment Appeal Tribunal stated that the function of the Tribunal is to find the primary facts from which they will be asked to draw inferences and then “look at the totality of those facts (including the respondent’s explanations) in order to see whether it is legitimate to infer that the acts or decisions complained of” were discriminatory. Adopting a fragmented approach “would inevitably have the effect of diminishing any eloquence that the cumulative effect of the primary facts might have on the issue” of discriminatory grounds.
- 53 The Supreme Court in Hewage v Grampian Health Board [2012] UKSC has confirmed:
- “The points made by the Court of Appeal about the effect of the statute in these two cases [Igen and Madarassy] could not be more clearly expressed, and I see no need for any further guidance. Furthermore, as Underhill J pointed out in Martin v Devonshires Solicitors [2011] ICR 352, para 39, it is important not to make too much of the role of the burden of proof provisions. They will require careful attention where there is room for doubt as to the facts necessary to establish discrimination. But they have nothing to offer where the tribunal is in a position to make positive findings on the evidence one way or the other.”
- 54 In Laing v Manchester City Council [2006] ICRT 1519, EAT (at paragraph 74) Lord Justice Elias said ‘Another example where it might be sensible for a Tribunal to go straight to the second stage is where the employee is seeking to compare his treatment with a hypothetical employee. In such cases the question whether there is such a comparator - whether there is a prima facie case - is in practice often inextricably linked to the issue of what is the explanation for the treatment.’

55 In Madarrasy v Nomura [2007] ICR 867, CA (at paragraphs 56-57) where the Court of Appeal said there must be something more than simply a difference in protected characteristic and a difference in treatment for the burden of proof to shift to the Respondent:

“The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal “could conclude” that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination”.

56 In Bahl v The Law Society [2004] IRLR 799, the Supreme Court confirmed that unfair treatment will not in and of itself be enough to shift the burden of proof.

57 In Shamoon v Chief Constable of the Royal Ulster Constabulary 2003 ICR 337, HL, Lord Nichols stated (at paragraph 8):

‘No doubt there are cases where it is convenient and helpful to adopt a two step approach to what is essentially a single question: did the claimant, on the proscribed ground, receive less favourable treatment than others? But, especially where the identity of the relevant comparator is a matter of dispute, this sequential analysis may give rise to needless problems. Sometimes the less favourable treatment issue cannot be resolved without, at the same time, deciding the reason why issue. The two are intertwined.’

58 In Stockton on Tees Borough Council v Aylott 2010 ICR 1278, CA, Lord Justice Mummery stated (at paragraph 42): ‘I think that the decision whether the claimant was treated less favourably than a hypothetical employee of the council is intertwined with identifying the ground on which the claimant was dismissed’

Submissions

59 Both parties provided oral submissions. We have not referred to the submissions in any detail unless appropriate to do so but would reassure the parties their respective submissions were considered when reaching our judgment.

Discussion and decisions section

40. Returning to the issues.

Did the respondent subject the claimant to the following treatment: In March 2023 Mr Dara O’Neil did not allocate the claimant a parking space in the EasyJet executive car park.

41. It was common ground that the decision not to provide the claimant with a parking space was taken by Mr O'Neil and not Mr Rawlinson, the claimant's line manager.
42. It is common ground that following a recommendation by occupational health that the respondent consider offering the claimant a parking space closer to the main airport terminal which was where she worked, that she emailed Mr O'Neill on 30 March 2023 and requested a parking space closer to the main terminal and that following an email exchange between Mr O'Neil and Mr Rawlinson, he declined to offer a parking space.
43. Was that treatment "less favourable treatment", i.e. did the respondent treat the claimant as alleged less favourably than it treated or would have treated others ("comparators") in not materially different circumstances?

The claimant relies on Mr Harry Powell, who was allocated a car parking space and who is black and/or hypothetical comparators.

44. In her oral evidence, the claimant also mentioned two further comparators being Ms Hutchinson and Ms Downs. The Tribunal does not accept the claimant's reliance on these additional comparators albeit, we heard that neither had been issued with a parking space in the Easyjet executive car park by the Respondent in any event and given the requirement that a comparator must be "in the same position in all material respects as the claimant save only that he, or she has been treated differently and does not share the claimant's protected characteristic" (Shamoon), these would not be appropriate comparators in any event because neither had a parking space in the EasyJet executive car park.
45. Turning to Mr Powell, the Tribunal do not find Mr Powell to be an appropriate comparator because we heard and accepted that he had never been issued with a parking permit, which would have provided a parking space, in the EasyJet executive car park albeit we accepted he did have access because he drove an official vehicle. However, this did not place him in materially the same position as the claimant save for the protected characteristic and difference in treatment. A comparator must be in materially the same circumstances as the claimant save for the less favourable treatment and the protected characteristic (Shamoon). The claimant was not treated less favourably than Mr Powell because neither had parking permits in the EasyJet executive car park. The claimant accepted Mr Powell did not have a parking permit in the EasyJet executive car park in her oral evidence.
46. In the circumstances, the claimant must rely on a hypothetical comparator, who is in materially the same position, i.e. someone with a mobility issue that requires a parking space closer to the main terminal because of this, is issued with a parking permit in the Easyjet executive car park and does not share the claimant's race – being British Pakistani.

47. Turning back to the less favourable treatment –was this because of the claimant's race?
48. When asked by the Tribunal why the claimant said she had not been provided with a parking space because of her race she said that Mr Powell was black and Ms Hutchinson was white. The claimant also said 'I don't see any other reasons, I wasn't late and there were no performance issues'.
49. The claimant was concerned about the decision not to provide a parking space being communicated by Mr Rawlins on the phone, not being told about waiting lists, the respondent's policy about not allocating parking spaces to blue badge holders only and the fact that policy (referred to by the respondent as a local agreement) was not in writing.
50. As detailed above, the initial burden of proof is on the claimant to prove facts from which the Tribunal may infer, in the absence of an explanation, that the respondent has unlawfully discriminated against the claimant (*Igen v Wong*). The claimant must prove something more than simply a difference with reference to less favourable treatment and the protected characteristic (*Madarrasy*).
51. The Tribunal did consider whether there was any evidence, in the absence of an explanation from the respondent, to shift the burden to the respondent though based on the claimant's evidence, could not see anything else, i.e. 'something more'. The Tribunal considered the three concerns she raised.
- 51.1 The Tribunal's finding with reference to the decision not to provide a parking space being communicated on the phone was done so Mr Rawlinson could answer the claimant's questions and to be supportive. The claimant could have asked for the decision to be communicated to her in writing following the telephone conversation. She did not.
- 51.2 The Tribunal's finding with reference to the lack of written policy regarding the provision of parking spaces to blue badge holders only was because it was a local agreement, that few spaces become available. We accepted Mr O'Neil's evidence that it was not a sensible use of resources to formalise this agreement via a policy in the circumstances.
- 51.3 The Tribunal's finding with reference to the fact the claimant was not told (which we accept) that she had to be a blue badge holder or that there was a waiting list was an oversight and would have made no difference at the time as the provision of parking spaces allocated by London Luton Airport to the respondent, even to blue badge holders, was suspended.

52. The Tribunal can appreciate the frustration the lack of a parking space closer to the main terminal building would have caused the claimant, given her mobility problems and difficulties she experienced accessing the main airport terminal, either by bus or on foot. Unfair treatment is not enough in itself to shift the burden of proof (Bahl). The Tribunal also notes the claimant did not raise this after 3 April 2023 and only complained about this treatment in her grievance following dismissal.
53. As the claimant must to rely on a hypothetical comparator, we concluded it would be appropriate to move to the second stage with reference to the burden of proof provisions to establish the reason for the treatment (Laing). We must look at the totality of the evidence in any event which includes the respondent's explanation to establish if discrimination occurred (Qureshi).
54. It was common ground the allocation of parking spaces across the site which included the EasyJet executive car park was controlled by London Luton Airport and not the respondent. Notwithstanding this, there were no available parking spaces at the time of the claimant's request and the claimant accepted this in oral evidence. There was a waiting list in operation and the respondent's policy was that only blue badge holders could be added to the waiting list. The claimant again asserted she did not know this at the time but accepted this to be the position in oral her evidence.
55. The Tribunal heard and accepted Mr O'Neil's evidence that London Luton Airport would not extend provision, i.e. provide more parking spaces in the Easyjet executive car park beyond the three allocated parking spaces and that further, there were no other closer parking options as London Luton Airport would not allocate the respondent parking spaces in the short stay car park because they wanted them for passengers. The claimant's accepted this in oral evidence.
56. Returning to the hypothetical comparator, the Tribunal finds that a hypothetical comparator, who was an employee of the respondent and based at London Luton Airport, with mobility issues, who did not share the claimant's race, would not have been allocated with a parking space in the EasyJet executive car park (or the short stay car park) for the reasons stated above. The claimant was not treated less favourably because of her race. The provision of parking spaces was limited and when available to the respondent, provided to blue badge holders. Blue badges are provided by local authorities to people with mobility problems. The claimant was not a blue badge holder at the time of her employment with the respondent. The claimant was potentially treated less favourable than a blue badge holder who could (join a waiting list to) obtain a

parking space in the EasyJet executive car park, if one was available. This has nothing to do with race and is instead about mobility.

57. The complaint of direct race discrimination is not well founded and is dismissed.

Approved by:

Employment Judge E Davey

22 April 2025

JUDGMENT SENT TO THE PARTIES ON

28/4/2025.

FOR THE TRIBUNAL OFFICE