Neutral Citation Number: [2025] EAT 106

Case No: EA-2023-001438-RN

EMPLOYMENT APPEAL TRIBUNAL

Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 19 June 2025

Before :

THE HON. LORD FAIRLEY, PRESIDENT

- -

Between :

MS NEELAM LAL

Appellant

- and -

DRIVING & VEHICLE STANDARDS AGENCY

Respondent

- -

- -

MS N MALLICK (**Direct Access**) appeared on behalf of the **Appellant**
MR J ALLSOP (instructed by **Government Legal Department**) appeared on behalf of the **Respondent**

Hearing date: 19 June 2025

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TRANSCRIPT OF ORAL JUDGMENT

SUMMARY:

Direct discrimination; victimisation; unfair dismissal

The appellant brought eleven grounds of appeal against the Employment Tribunal's dismissal of her complaints of direct race / disability discrimination, victimisation and unfair dismissal.

None of the grounds were found to disclose any error of law by the Tribunal. The Tribunal had made findings of fact that were open to it, had correctly applied the law and had expressed its reasons in a **Meek**-compliant way.

The appeal was, therefore, dismissed.

THE HON. LORD FAIRLEY, PRESIDENT:

1. The appellant was employed by the respondent as a driving examiner. She was summarily dismissed on 8 November 2018 following a disciplinary hearing. She thereafter brought a range of complaints to the Employment Tribunal. Following a multi-day hearing before a full panel sitting at Watford in September and October 2023 the Tribunal dismissed all of her complaints in a reserved judgment with reasons dated 9 November 2023.

2. Eleven grounds of appeal have been permitted to proceed to a full hearing by the Employment Appeal Tribunal sift judge (Judge Bowers K.C.). The grounds relate only to the complaints of:

a) direct race or disability discrimination (ground 1);
b) victimisation (grounds 3 and 4); and
c) unfair dismissal (grounds 2, and 5 to 11).

3. Within its reasons, which run to 69 pages, the Tribunal made extensive findings of fact. I will not attempt to rehearse or summarise those, but I will refer to the relevant paragraphs of the findings of fact within the Tribunal's reasoning as I consider each of the grounds of appeal.

4. There is, however, one factual matter about which I need to say something because it featured prominently in the discussion before me today. That relates to the issue of the reason why the appellant was dismissed. The Tribunal's factual finding about that was made by it by quoting at ET § 115 from a dismissal letter prepared by the respondent's Mr Williams. That method of making a finding of fact has led today to some debate about what the quoted passage from the letter meant.

5. I have concluded that it is sufficiently clear that the Tribunal found that the reason for the dismissal of the appellant was a composite one, comprising all of the matters referred to in

the quoted passage. That means that the Tribunal's findings should be read as amounting to a finding that the reason for the dismissal was a belief by Mr Williams: (a) that the appellant had been guilty of a data breach, and (b) that she had been looking for ways to undermine relationships in the office, principally those between herself and her superior, Mrs Vear-Altog.

6. I turn then to look at each of the grounds of appeal in turn.

Ground 1

7. Ground 1 relates to the complaints of direct race and disability discrimination under section 13 of the **Equality Act, 2010**. The appellant submits that the Tribunal made a material error of law in its application of the burden of proof provisions of section 136 by failing to consider relevant evidence before it of how other employees in the same or similar circumstances were treated in comparison to the appellant.

8. For these purposes, the relevant section of the Act is section 13, which states:

> "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."

Ground 1 is, therefore, a submission that the Tribunal failed to consider all relevant comparators.

9. In any complaint of direct discrimination, it is essential that the claimant should identify the relevant comparator(s) relied upon, whether actual or hypothetical. It is important that the claimant does so clearly so that the respondent knows the case it has to meet and also so that the Tribunal clearly knows what evidence is relevant to the case it has to determine.

10. As Langstaff P noted in **Chandhok v Tirkey** [2015] IRLR 195 at paragraph 16, the claim form (ET1) is central to that exercise:

> "The claim, as set out in the ET1, is not something just to set the ball rolling, as an initial document necessary to comply with time limits but which is otherwise free to be augmented by whatever the parties choose to add or subtract merely upon their say so. Instead, it serves not only a useful but a necessary function. It sets out the essential case. It is that to which a Respondent is required to respond. A Respondent is not required to answer a witness statement, nor a document, but the claims made – meaning… the claim as set out in the ET1."

11. He continued at paragraph 18:

> "..a system of justice involves more than allowing parties at any time to raise the case which best seems to suit the moment from their perspective. It requires each party to know in essence what the other is saying, so they can properly meet it… It should provide for focus on the central issues. That is why there is a system of claim and response, and why an Employment Tribunal should take very great care not to be diverted into thinking that the essential case is to be found elsewhere than in the pleadings."

12. The ET1 claim form in this case was adjusted more than once before the full hearing. The appellant only ever identified one comparator. That comparator was Mrs Vear-Altog. She was named as an actual comparator and also, insofar as a hypothetical comparator was required, as the evidential basis for a hypothetical comparator. That same position was also taken in the agreed list of issues that was ultimately submitted for consideration by the Tribunal.

13. This first ground of appeal seeks to suggest that the Tribunal was bound, once all of the evidence had been led, to consider different actual or evidential comparators. That is simply wrong. To have done so would have been manifestly unfair to the respondent which was entitled to know, in advance of evidence being led, what case it had to meet. It is also therefore correct to say, as the respondent does, that this ground represents a material and ultimately impermissible departure from the way in which the case was advanced below.

14. The Tribunal considered the appellant's reliance upon Mrs Vear-Altog as a comparator. It it is clear from the Tribunal's findings of fact that any disciplinary allegations against her were materially different to those against the appellant. The allegations against the appellant are set out within the Tribunal's findings, particularly at ET § 103 to 111. As the respondent rightly notes, therefore, Ms Vear-Altog was not a relevant comparator for the purposes of section 23 of the **Equality Act.** The disciplinary allegation she faced was simply of an accidental data breach and did not include an allegation of seeking to damage the working environment.

15. The Tribunal was also perfectly entitled to consider the issue of the reason why the appellant was dismissed before considering comparators at all. That is implicit in what was said by Lord Nicholls in **Shamoon v. Chief Constable of the Royal Ulster Constabulary** [2003] ICR 337 at paragraphs 8 to 10 and also by Elias J in **The Law Society v Bahl** [2003] IRLR 640 at paragraph 115.

16. In that regard the Tribunal was able to make a clear finding of fact that the reason that the appellant was dismissed rather than merely subjected to some lesser sanction (or, indeed, to no sanction at all) was nothing whatsoever to do with either her race or her disability. It was solely because of her conduct - that being the conduct referred to at ET § 115 and 153. That conduct included the conclusions recorded by Mr Williams in his letter of 8 November 2018 that he had found the appellant to have conducted herself in a way calculated or seriously likely to destroy her working relationship with her manager.

17. For these reasons I see no merit in the first ground of appeal.

Ground 2

18. Ground 2 relates to the Tribunal's conclusion on the unfair dismissal claim. It is based upon a proposition that there was disparity of sanction between the appellant and other employees. Again, however, this submission fails on the facts because there were material differences between the appellant's position and that of the other employees relied upon. The issue of disparity of treatment, as it was described in **Hadjioannou v. Coral Casinos** [1981] IRLR 352 (at paragraph 24), simply did not arise on the facts of this case as found by the Tribunal. The Tribunal correctly directedly itself to all relevant principles of law applicable to unfair dismissal. It did so between ET § 139 and 143 and it reached conclusions at ET § 194 that were open to it as an industrial jury. This ground represents an invitation to this Tribunal to take a different view, but that is not the role of the Employment Appeal Tribunal.

Grounds 3 and 4

19. Turning to Grounds 3 and 4, these relate to the various claims of victimisation made by the appellant under section 27 of the **Equality Act**. The submission within ground 3 is that the Tribunal failed adequately to address the victimisation claims in its findings of fact or adequately to draw a conclusion about them. Ground 4 is a reasons challenge to a particular alleged detriment, 10(m) in the list of issues which related to the appellant's grievance.

20. In relation to Ground 3, the victimisation complaints were all identified by the Tribunal at ET § 6 and 7. Three protected acts were pleaded and 19 alleged detriments of varying degrees of specificity. These were all recorded in paragraphs 9 and 10 of the list of issues. The Tribunal noted (at ET § 166) that it had heard no evidence about the content of an earlier Tribunal complaint in 2010, but correctly it took the view that the bringing of that claim was itself a protected act.

21. At ET § 167, the Tribunal concluded that the second and third allegedly protected acts - those being statements by the appellant respectively to Mr Wildash and Mr Perkins that a notebook containing information about the appellant had been left on a desk - were not protected acts for the purposes of section 27 of the **Equality Act**. It noted that the appellant's sole focus when making those statements had been upon data protection rather than upon the **Equality Act**. Those findings in fact were open to it to make. That left the only protected act as the bringing of the 2010 tribunal proceedings.

22. There was, as the respondent rightly notes, an overlap between the facts relied upon as detriments in the victimisation complaint and those relied on in the direct discrimination claims. The various allegations of alleged detriment were matters about which the Tribunal made full and careful findings in fact. On a fair reading of its reasons, the Tribunal considered each of the allegations of detriment and concluded between ET § 168 and 179 that in some cases the pleaded detriments had simply not happened and, in others, that the matters which had been proved were in no way causally connected to the 2010 tribunal complaint. Where it was able to do so, the Tribunal carefully cross-referenced those conclusions to the paragraphs in its findings of fact using the numbering of the detriments in paragraph 10 of the list of issues.

23. Grounds 3 and 4 also relate to the adequacy of the tribunal's reasoning at ET § 175, 178 and 179. The starting point for examination of ET §175 is that the Tribunal accepted that Mr Perkins was an honest witness. The detriments alleged at 10(i), (j), (l) and (n) of the list of issues, relating to the suspension of the appellant and the instigation of disciplinary proceedings, overlapped with matters relied upon in the direct discrimination complaint. At ET §151 the Tribunal made positive findings that these matters had nothing whatsoever to do with the appellant's race or the fact that she was disabled, and it relied for that conclusion upon the findings of fact made by it between ET § 83 and 93.

24. When turning separately to consider the victimisation complaint, the Tribunal concluded, at ET § 175, that there was no evidence from which any causal connection between anything done by Mr Perkins and the 2010 claim could be inferred. Again, the findings made by it at ET § 83 to 93 were plainly highly material to that conclusion. They were all findings of fact that were open to the Tribunal. Its role, as the primary fact finder, was to make such determinations, and no error of law is apparent in its approach.

25. In relation to ET § 178 the Tribunal took a similar approach to the issue of how Ms Robinson dealt with the appellant's grievance. Based on the findings of fact made by it at ET § 94 to 95, it was able to find that nothing in that scenario was anything to do with a protected act. Rather, as the Tribunal noted, there were obviously other reasons why the grievance was dealt with in the way it was that were nothing to do with the 2010 claim. Again, there is no error of law in its approach.

26. Finally, in relation to ET § 179 and the decision of the disciplinary hearing, the finding made by the Tribunal at ET § 115 was the clear basis for its conclusion that the reason for the decision to dismiss had nothing to do with any prior protected act. The Tribunal's reasons are **Meek** compliant.

27. Grounds 3 and 4 are ultimately statements of disagreement over fact and not law. Each is an invitation to this Tribunal to retry the case without the threshold for perversity being met.

Grounds 5, 6 and 7

28. I will deal with Grounds 5, 6 and 7 together. Each of these is expressed as a perversity ground and each relates to the unfair dismissal complaint. Ground 5 challenges, as perverse, the Tribunal's conclusion that there were reasonable grounds for Mr Williams to infer that the photographs of the notebook were taken in December 2017. The basis for the conclusion was,

however, very clearly set out at ET § 104 in the quoted passage from Mrs Vear-Altog's statement to Mr Day which was also referred to at ET § 194.2, and also, in the supplementary report of Mr Day which featured at page 66 of the appellant's supplementary bundle for this appeal. The perversity threshold is simply not met.

29. Grounds 6 and 7 each challenge the Tribunal's finding as to the reason for the dismissal. Ground 6 quotes selectively, from the dismissal letter referred to by the Tribunal at ET § 115. That letter clearly makes reference to Mr Williams' conclusion that he had found the appellant not only to be guilty of a data breach but also of looking for ways to undermine relationships in the office principally between herself and Mrs Vear-Altog. In that regard the Tribunal noted these matters at ET § 116, 153 and 194.

30. Ground 7 proceeds upon the same selective reading of the dismissal letter. The Tribunal heard evidence from Mr Williams and had the dismissal letter before it. It quoted the material section of that letter at ET § 115. It is clear that it carefully considered the reason for the dismissal and made findings of fact about that that were open to it. Again, therefore, in neither of Grounds 6 or 7 is the perversity threshold met.

Ground 11

31. At this stage it is convenient to take the grounds of appeal slightly out of order and deal with Ground 11, where it is suggested that the Tribunal substituted its view of the reason for the dismissal for that of the respondent. For the reasons I have already given, it did no such thing. Rather, and as I have noted, it made appropriate findings of fact that were open to it based on the evidence as to the reason of Mr Williams for taking the decision to dismiss. Contrary to the submission made to me today by the appellant's counsel, the relevant passage of the Tribunal's reasons was ET § 115. The section of the Tribunal's reasons at ET § 194.3 is entirely consistent with an analysis based upon there being a composite reason for dismissal. I

reject the submission that the Tribunal concluded that any one aspect was more important than the other or that one was the principal reason. Rather, the Tribunal referred to the passage of the letter quoted at ET § 115, which can only be read as a finding that the reason was a composite one.

Grounds 8 and 9

32. Turning to Grounds 8 and 9, each of these relates to allegations of procedural unfairness and an alleged misapplication by the Tribunal of the case of **Strouthos v. London Underground Limited** [2004] IRLR 636. It was open to the Tribunal to conclude that she was aware of the allegations against her, having regard to the terms of the investigation reports sent to the appellant on 16 October 2018, and the incorporation of the terms of those reports into the letter inviting her to attend a disciplinary meeting (referred to by the Tribunal at ET § 112). The allegations were made by various witnesses who had given statements to Mr Day. Those statements were summarised by the Tribunal at ET § 103 to 111, and included evidence from Mrs Vear-Altog at ET § 105, Mr Perkins at ET § 108 and Mr Ausano at ET §109.

33. The Tribunal's reasons for not regarding **Strouthos** as determinative of the issue of fairness were manifestly right. The Tribunal carefully considered the question of fair notice at ET § 194 and reached conclusions at ET § 194.1 to 194.3 that were open to it. The reason that tribunals sit as a panel of three is to bring industrial experience to the very kind of question that was before this Tribunal. It concluded, as it was entitled to do, that the appellant had indeed received fair notice of the allegations in the letter calling her to the disciplinary meeting and in the accompanying documents to that letter, which included both of Mr Day's reports and their relative statements. As in **Strouthos**, the Tribunal's conclusions as an industrial jury are deserving of great respect from this Tribunal and could only be interfered with if they were

manifestly wrong. In my view, that threshold has not been reached having regard to the findings of fact made by the Tribunal between ET § 103 and 111.

Ground 10

34. Finally, Ground 10, which is headed: "Inadequacy of Investigation" seems to amount to a suggestion that the level of enquiry carried out by the respondent was unreasonable. There appears also to be a separate point taken about the issue of compensation. On the former point, the adequacy of the investigation required to be considered under reference to the band of reasonable investigations, per **British Home Stores v Burchell** [1980] ICR 303 and **Sainsbury's Supermarkets Ltd. v Hitt** [2003] ICR 111. The Tribunal clearly did that, as can be seen from its reasons at ET § 142.1 where it correctly directed itself on the law, making reference both to **Burchell** and to **Sainsbury**. It reached conclusions in that regard that were open to it at ET § 194. Again, in my view, this ground represents an invitation to this Tribunal impermissibly to substitute its view of reasonableness for that of the Employment Tribunal sitting as an industrial jury without the threshold for perversity having been met.

35. The appellant's separate point about reduction of compensation is entirely contingent upon a conclusion that the Tribunal erred in its conclusion that the dismissal was fair. As I have already noted, it did not so err.

Conclusion

36. For these reasons, I have come to the view that none of the grounds of appeal has merit and the appeal is therefore refused.