



EMPLOYMENT TRIBUNALS

Claimant: Mr O Ogedegbe
Respondent: DM Courier & Transport Ltd
Heard at: Newcastle Employment Tribunal
Sitting at: North Shields, County Court **On:** 20 and 21 October 2025

Before: Employment Judge Martin

Representation

Claimant: In person
Respondent: Mr M Ramsbottom (litigation consultant)

RESERVED JUDGMENT

1. The correct name of the respondent is DM Courier and Transport Ltd.
2. The claimant's complaints of age discrimination and race discrimination are not well founded and are hereby dismissed.

REASONS

Introduction

1. The claimant gave evidence on his own behalf. Mr David Mitchell the owner and managing director of the respondent company gave evidence on behalf of the respondent. The Tribunal was provided with a bundle of documents marked Appendix 1.

The Law

2. The Tribunal considered the following legislation and caselaw:-

Section 4 of the Equality Act 2010 sets out the protected characteristics which include age and race.

Section 5 provides that age is a reference to a person who has a particular protected characteristic by reference to a person of a particular age group.

Section 9 states that race includes colour, nationality, ethnic or national origins.

Section 13 Equality Act 2010 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.”

Section 39 Equality Act 2010 provides that:

An employer (A) must not discriminate against a person (B) —

(c) by not offering B employment.

Section 83(2) Equality Act 2010 provides that:

“Employment” means —

(a) employment under a contract of employment, a contract of apprenticeship or a contract personally to do work;

Section 136 Equality Act 2010 deals with the burden of proof. It states:

(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.

3. The Tribunal also considered the case of ***Madarassy v Nomura International Plc [2007] ICR 867*** where the Court of Appeal reinforced the position in the case of ***Igen v Wong*** regarding the burden of proof. In that case it was held that the claimant must show that there was more than a mere possibility of discrimination before the burden of proof shifts to the respondent. It went on to hold that the primary facts must be such that a tribunal having heard all the evidence could properly conclude that the respondent had committed an unlawful act of discrimination.
4. The Tribunal also considered and was referred to the case of ***Burrett v West Birmingham Health Authority [1994] IRLR***. The EAT held that where the claimant honestly believes that they have been treated less favourably is not sufficient to establish less favourable treatment. It held that it is for the Tribunal to determine whether the claimant has a *prima facie* case on the facts presented and then consider whether the respondent can prove a non-discriminatory reason for any proven treatment.

The Issues

5. The issues in this case are set out in the Order dated 3 July 2025 and in summary are as follows:-
 - Was the claimant an applicant for employment? At the commencement of the hearing today the respondent's representative conceded that the claimant was an applicant for employment as defined under section 83 of the Equality Act 2010.
 - Did the respondent treat the claimant less favourably than it treated a white person in very similar circumstances by not offering the claimant employment?
 - If so, who is the appropriate comparator? The claimant relies on an actual comparator – Mr Phil Moore and/or a hypothetical comparator.
 - If so, was the treatment on the grounds of the claimant's race (colour)
 - What is the respondent's explanation for any proven treatment?

- Did the respondent treat the claimant less favourably than it treated a younger person in similar circumstances by not offering the claimant employment.
- If so, who is the appropriate comparator? The claimant again relies on an actual comparator – Mr Phil Moore and/or a hypothetical comparator.
- If so, was the treatment on the grounds of the claimant's age?
- What is the respondent's explanation for any proven treatment?

Findings of Fact

6. The claimant is 75 years old and is black.
7. The claimant applied for a position with the respondent through an agency called Indeed.
8. The role was for a self-employed owner driver. The respondents accept that the claimant was required to undertake the role personally. The respondents state that the claimant was liable for his own tax and national insurance.
9. The respondent is a very small transport business based in the Northeast of England which was established in 2021. Mr David Mitchell is the owner and managing director of the company which only employs a few employees.
10. At the outset of the hearing today the respondent confirmed that the correct name of the respondent is DM Courier & Transport Ltd. The claimant did not object to the change of name.
11. The respondent provides a range of courier services throughout the country. This includes haulage services. At the time in January 2025 the respondents were also working under a contract for Yodel and delivering parcels for that company under a contract with them.
12. Mr Mitchell said that drivers can only undertake Yodel work after they have met certain conditions namely they have right to work in the UK, a valid UK driving licence and have the appropriate insurance for the vehicle as is noted at pages 75 and 76 which also sets out the form to be completed by the applicant and the insurance details required.
13. On 17 January 2025 the respondent placed an advert with Indeed for an owner driver. The advert is at page 72 of the bundle. The advert indicated that the applicant should have their own vehicle but did not specify which type of vehicle it was other than to indicate it should be a large van. The advert also requested that any applicants had previous experience and requested any applicants to identify the type of van which they owned.
14. The claimant replied to the advert and said that he had three years' recent experience with Amazon and he owned a Mercedes Vito van (page 73 of the bundle).
15. Mr David Mitchell owner and managing director of the respondent company telephoned the claimant to call him for interview. He said in evidence that he was looking to recruit because one of his drivers was off sick. He said he was not sure when he was due to return and he was looking to have a driver to cover that absence.
16. In his evidence to the Tribunal the claimant said that it would have been clear to Mr Mitchell that he was black from his name when he replied to the advertisement.

17. It is common ground that the claimant and Mr Mitchell met on 20 January 2025 at the Yodel depot to discuss the position. It is also common ground that a discussion took place about the fact that the respondent operated three routes:-

- Deliveries for Yodel.
- contract deliveries were not in operation at the time.
- A haulage business that covered the whole country.

18. At the interview the claimant says that he did not want to travel far and in effect was only interested in the Yodel work.

19. Mr Mitchell said in his evidence that he had concerns about the size of the claimant's vehicle. He considered the claimant's van could only do about 35 stops whereas their Yodel contract was for at least 60 stops. He said that this was due to the size of the parcels which they delivered. Mr Mitchell said that he told the claimant that it might be a problem for him to do the Yodel work with his van. Mr Mitchell also said in evidence that he would need to consider how it might work for the claimant with his van if he was just doing the Yodel work. He said that it would not have been a problem if he was prepared to do the haulage work because any size van could be used to do the haulage work.

20. Mr Mitchell said that during the interview he also said to the claimant that he would need to get copies of the insurance certificates for the van and other documents. The claimant said that he had the driving licence and passport with him but he was not asked for them.

21. Mr Mitchell said that he told the claimant the rates of pay which the claimant agreed he was told. Mr Mitchell also said that he offered the claimant an opportunity of a trial/test with one of the other drivers so that he could go and see how the work was done.

22. Mr Mitchell said that in evidence he did not offer the claimant the job during the interview so the claimant could not have accepted any offer of a role. Mr Mitchell said that he only offered the claimant the opportunity to go and do a trial/test with one of the other drivers and see how it went.

23. The claimant in his evidence said that Mr Mitchell told him the rates of pay and then offered him a job which he said he accepted. The claimant said Mr Mitchell said that he could then come in and go out with one of the other drivers who could show him how to do the deliveries.

24. Mr Mitchell in his evidence said that he did not know how old the claimant was. At that stage he had not seen his passport or any driving licence. The Tribunal accept that Mr Mitchell would have known that the claimant was older although he would not have known his exact age.

25. In his evidence Mr Mitchell said that he had previously employed two older drivers. He said that he thought one was 67 or so and another one was about 60.

26. Mr Mitchell also said that he had employed an older black accountant but could not recall employing any black drivers.

27. The claimant agreed to go out with one of the other drivers for a trial/test but it could not be organised for the next day so he went out on the following day 22 January.

28. On 22 January 2025 the claimant came into the depot and said he met the Transport, Traffic and Warehouse co-ordinator and one of the other drivers Mr Phil Moore with whom he went out.
29. Mr Mitchell said that the respondent operated another depot at Hobson. They delivered parcels for Yodel delivery drivers themselves to then do the deliveries.
30. The claimant accompanied Mr Moore on the deliveries that morning. Mr Mitchell said that Mr Moore was an employee/driver who drove the respondent's vans which included several long wheeled based vans and a smaller Berlingo van.
31. Mr Mitchell said that the long wheel-based vans were the ones that were usually used to do the Yodel deliveries. He said they were required because of the larger parcels and the number of stops involved. He said that the smaller van would not be able to do the same number of stops.
32. That morning 22 January 2025 the claimant had 30 parcels to deliver, and Mr Moore used the smaller Berlingo van. He completed the deliveries by about 1.30pm.
33. It was common ground that Mr Moore showed the claimant how to use the App. Mr Mitchell said that the feedback from Mr Moore was that the claimant struggled to use the App and that Phil Moore had to assist him. Mr Mitchell said that Mr Moore also told him that the claimant took a personal call during the deliveries for about 20 minutes and that he did the deliveries during that period.
34. In his evidence, the claimant said that he struggled a bit with the App at the beginning but that he was able to use it after that with no difficulty. In his submissions, as opposed to his evidence, the claimant did say that he took a personal call from his GP for about 10 minutes during the deliveries.
35. The claimant said that he understood that the van that was used for the deliveries was Mr Phil Moore's own van. He said that van was smaller than his van. He contested on cross-examination that it was a company van.
36. When the claimant returned to the depot Mr Mitchell asked him how it went and said he would telephone him later that afternoon.
37. On the afternoon of 22 January 2025 Mr Mitchell called the claimant a couple of times but the claimant did not answer and did not return any missed calls. Mr Mitchell said in evidence that he was looking to see if the claimant was still interested and then would look at a start date and any further details with regard to the documentation around insurance and personal documentation. Mr Mitchell said that when the claimant did not respond he assumed that he was not interested in the role and said that that was not uncommon in their business.
38. At about 6.30am on the following day 23 January the claimant telephoned Mr Mitchell who was still in bed. He then sent a text at 6.33am. The claimant said he had noticed he had missed calls from Mr Mitchell. He texted to say that he would come in that day (page 77 of the bundle). He followed that up with a further text and said that he was coming into the depot (page 77).
39. Mr Mitchell replied to that text at 8.03am to confirm that he had tried to call the claimant and said that, as he had had no contact from the claimant, there was no work which had been sorted for him (page 77 of the bundle).
40. The claimant then sent a further text and said that he had got to the depot and asked if the respondent could schedule work for him tomorrow (page 77).

41. Mr Mitchell said that he did not reply to that text. He said he then received a telephone call later that day from the claimant who was very angry and asked why no work had been arranged for him. Mr Mitchell said that he told the claimant that it was because he had not responded to his calls on 22 January and that no work had been arranged but he would have to sort out any paperwork anyway.
42. In his evidence to the Tribunal, Mr Mitchell said that around this time he was in contact with the sick driver who said that he was anticipating being able to return sooner than expected.
43. The claimant then sent a further text message to Mr Mitchell on Friday 24 January and asked when he would get paid (page 77 and 78d of the bundle).
44. The claimant then sent a further text that evening saying that the respondent did not offer him work because he was too old and black and that they could pay him at least £100 for the work that he had done (page 78d).
45. Mr Mitchell replied to say that he would pay him £50 for the work and asked for the claimant's bank details (page 78d).
46. The claimant then replied to that text to state that he would not accept £50 and asked the respondent why he had refused to give him the job when he had already told him that he would give him the job (page 78d).
47. Mr Mitchell responded to that text (a full copy of that text had not been provided to the Tribunal in the original bundle at the beginning of the hearing by either party but it was subsequently provided by the respondent). In that text Mr Mitchell said that the reason was that a sick driver had returned, he had had feedback from the trainer and that he had tried to call to discuss first the training day and next steps and that the claimant ignored him (page 78d).
48. In his witness statement to the Employment Tribunal rather strangely Mr Mitchell makes no reference to the reason for not offering the claimant employment being because of the return of a sick employee. The claimant suggested during the course of the hearing that the respondent deliberately did not produce a full copy of the text messages referring to the return of the sick employee. The respondent's representative said that the claimant had not produced a full transcript of the text either. The omission of this evidence does not assist the respondent as suggested by the claimant because on the face of it the respondent had a further reason not to offer the claimant employment because in effect there was no job because the sick employee had returned.
49. The claimant responded to Mr Mitchell's text the following morning and indicated that the Employment Tribunal would take a different approach to the respondent's actions. Mr Mitchell responded to that text asking for the claimant's bank details. The respondent replied with a further text indicating that the Employment Tribunal would be in touch. Mr Mitchell then sent a further text asking if the matter could be resolved. The claimant responded by saying that it could be if the respondents paid £50,000 into his bank account which the respondent refused to do (page 78e).
50. On 25 January 2025 the claimant then contacted ACAS to start the Employment Tribunal process namely the day after sending these emails. ACAS conciliation concluded on 13 February 2025.
51. In his evidence to the Tribunal the claimant said he applied to BLG another courier company to undertake Yodel deliveries. He said that he contacted them and was due to be interviewed on 3 February 2025.

52. The claimant said in evidence that Mr Christian Blaga who ran BLG told him that Mr Mitchell had told Mr Blaga not to offer the claimant employment because they found out he was not good in doing the delivery work.
53. Mr Mitchell said that he did not know the claimant had applied for a job with BLG and said in evidence that he had not said anything to Mr Blaga about the claimant and would not have done so.
54. On 3 February 2025 the claimant sent an email to Mr Blaga which is at page 104 of the bundle. In that email he indicates that he was disappointed today ie 3 February when he was told on the telephone by Mr Blaga that he was not giving him any parcels to deliver with his van but that instead he had referred him to Yodel. He asked him to change his mind.
55. In that text at page 104 the claimant also said that Mr Mitchell of the respondent company had told him that one driver was sick and that is why he needed him but that the driver had come back and that was the reason why he did not want him anymore.
56. The claimant went on in that email to indicate that he has seen many drivers using a Mercedes Vito at the depot to load parcels.
57. In the text the claimant also indicated that he had gone to work with the respondents, and his van was okay for the deliveries. He had seen smaller vans doing the deliveries. He referred to Mr Phil Moore also doing the deliveries with the smaller van. He went on to ask for an opportunity to work with BLG.
58. In that text the claimant does not make any reference to what he said in evidence about Mr Mitchell having apparently said to Mr Blaga about not employing the claimant.
59. The claimant also notes in that text a different reason why he says the respondent did not engage or offer him work. He acknowledges it was because of the return of the sick driver but makes no reference to what he is suggesting today in these proceedings which he had commenced prior to that text.
60. In that text the claimant also suggested that Mr Mitchell accepted his van was okay for deliveries, yet Mr Mitchell suggested that he had raised an issue about the claimant's van being a problem at their initial interview.
61. It transpired that BLG did offer the claimant a trial/test of 60 to 70 stops (page 105).
62. The claimant then did that trial with them on 13 February 2025 (page 106).
63. In his evidence to the Tribunal the claimant said that he started working for BLG on the Yodel contract from 17 February 2025. He said that he did 109 stops and delivered 119 parcels using his van for Yodel deliveries. The claimant has produced copies of deliveries that he made on 17 February and subsequently one day in March, April, May, June, July and August which show on those particular days that he did between 50 to 50 stops and delivered 56 to 66 parcels on different respective days. Mr Mitchell said that the respondent's tours were for larger parcels and that they would not be appropriate for smaller van and that is why he required a long wheelbase. The claimant suggested in his evidence that he was delivering larger parcels for BLG as well.
64. In his evidence to the Tribunal the claimant said that the only reason the respondent did not employ him was because he was old and black. He said that Mr Mitchell had a hatred of him because of his colour and age without any explanation.

Submissions

65. The respondent's representative submitted that there were various reasons why the respondent did not offer the claimant work and that the position changed during the recruitment process. He asserted that the claimant's van was a factor in that the respondent said it was too small for the Yodel jobs but would have been fine for the long haulage jobs but the claimant only seemed to want to do the shorter jobs. The respondent also said the trial/test with Mr Moore that it did not go particularly well including the claimant struggling with the App and taking a personal call. Furthermore, the respondent's representative said that but when they contacted the claimant he did not respond, and they assumed that he was not interested. Finally, the respondent's representative also said that the respondent was having to recruit because of a sick driver and that that driver was now looking to return; so the position had changed. The respondent's representative said that the reason why the claimant was not offered work was for those reasons and not because of his age or race. They also said that the comparator whom the claimant relied upon was not a proper comparator for those purposes as the circumstances were materially different. The respondent conceded that the claimant was an applicant for employment.

66. The claimant filed written submissions. He referred to concerns that he had about disclosure of certain documents by the respondent and the evidence given. He submitted that the reason why he had not been employed was because of his age and colour. He relied upon Mr Phil Moore as his comparator whom he said was both white and younger than him.

Conclusions

67. This Tribunal finds that the claimant was an applicant for employment pursuant to section 83(2) of the Equality Act 2010 as conceded by the respondent.

68. This Tribunal does not find that the respondent treated the claimant less favourably on the grounds of either his age or his race (colour) for the following reasons: -

69. The comparator upon whom the claimant principally relies on is Mr Phil Moore whose circumstances are materially different to the claimant's: -

- Firstly, he was not an applicant for employment. He was already working for the respondent at the time.
- Secondly, he was not an owner driver but a driver who drove the company vehicles. In that regard the Tribunal accept the evidence of Mr Mitchell who he is the owner and managing director of the business and likely to be fully aware of what vehicles the company owns.

70. The Tribunal also considered that a hypothetical comparator would not have been treated any differently to the claimant in similar circumstances. The claimant has led no evidence to suggest they would have been differently to him.

71. This Tribunal notes that Mr Mitchell was not provided with any details at any stage about the claimant's age although Mr Mitchell would have been aware from meeting the claimant that he was older but he would not know his exact age. The Tribunal accept Mr Mitchell's evidence that he has employed older drivers in the past; a couple of whom were aged 60 or over.

72. Further the Tribunal note that, after the respondent's managing director met him and he would have realised he was older, he nevertheless invited him to undertake a

test/trial with one of their drivers and then sought to contact him to follow up following that test drive to look at whether he could find a way of engaging the claimant. That is evidence which supports the fact that the respondent was not influenced by the claimant's age.

73. The same applies in relation to the claimant's colour. The claimant himself suggested in evidence that the respondent would have been aware at the outset from his name that he was black. Nevertheless, the respondent proceeded to invite him for interview and after seeing the claimant offered him the opportunity to do a test/trial with another driver and sought to contact him following that test/trial.
74. That evidence is sufficient to show that the reason why the claimant was not employed was not because of his age or race.
75. The Tribunal reminded itself that the burden of proof rests on the claimant to prove the discrimination. The Tribunal is mindful that inferences may be drawn. However, in this case, the Tribunal did not consider that there were any inferences which could be drawn.
76. Here the Tribunal did not consider that the claimant could establish sufficient facts to establish a *prima facie* case of discrimination in the first instance, but it looked at the respondent's explanation, who can show various other reasons why the claimant was not offered employment.
77. Firstly, the Tribunal accepts the respondent's evidence that the claimant was required to provide certain information and documentation before any employment could be offered in accordance with the documentation required by Yodel. That is supported by the documentary evidence. It is noted that claimant did not, as conceded by him, provide that information, complete the forms or provide the vehicle insurance.
78. Secondly, the Tribunal accept the respondent's evidence that the claimant's van was an issue for them even if it was not an issue for BLG. Mr Mitchell has been managing the business for the last three to four years so would have had substantial knowledge and experience of what van was required for them to be able to service their contract with Yodel. However, the respondent indicated in their evidence that they were giving some thought as to whether or not how the claimant could work with them and undertake the Yodel work even with difficulties with his van.
79. Further the respondent did contact the claimant after the test/trial as they had indicated. The claimant as acknowledged did not respond despite the respondent indicating that they would be contacting him. It was reasonable for the respondent to believe that the claimant was not interested in pursuing the matter as he made no attempt to return the missed calls that day.
80. The Tribunal also accept Mr Mitchell's evidence that the trial did not go as well as the claimant suggested. The claimant himself acknowledged that he had difficulty at the beginning with the App. He also accepted in his written submissions that he had taken a personal call from his doctor during deliveries. The Tribunal accept that Mr Mitchell did have some feedback from Mr Moore from the trial which he would have taken into account which feedback related to both the difficulties the claimant had with the App and the personal call, so is largely consistent with the evidence submitted by the claimant.
81. Finally, it would appear that the role that the respondent was looking to fill was no longer in effect available as the sick employee had returned from leave. That

evidence although it was not referred to in Mr Mitchell's witness statement is supported by two text messages, first his own text to the claimant on 24 January 2025 and the claimant's own explanation given to BLG when he was seeking employment with them on 3 February 2025.

82. Accordingly for those reasons the claimant's complaints of age discrimination and race discrimination are not well founded and are hereby dismissed.

Approved by Employment Judge Martin

Date 10 November 2025

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