



# EMPLOYMENT TRIBUNALS

**Claimant:** Howard Ainley

**Respondent:** First West Yorkshire Limited

**Heard at:** Leeds Employment Tribunal (in public; by CVP)

**On:** 20 April 2026

**Before:** Employment Judge Elliott

## Appearances

For the claimant: in person

For the respondent: Victoria Kendrew, solicitor

## JUDGMENT

Adam Taylor is a comparable full-time worker for the purposes of the claimant's complaint, within the meaning of Regulation 2 of the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000.

## REASONS

**JUDGMENT** having been given to the parties orally in the hearing on 20 April 2026 and written reasons having been requested in accordance with Rule 60(4) of the Employment Tribunals Rules of Procedure 2024, the following reasons are provided.

### A. Claims and issues

1. Today's public preliminary hearing was listed by EJ Ayre at a case management preliminary hearing on 24 October 2025. The purpose of today's hearing was for the Tribunal to determine a preliminary issue and make directions to progress the case to final hearing.
2. The preliminary issue was as follows: Are Adam Taylor, Kelly Williams and Theresa Claase comparable full-time workers within the meaning of Regulation 2 of the Part-time Workers (Prevention of Less Favourable Treatment)

Regulations 2000? During the hearing the claimant withdrew Ms Williams as a proposed comparator, acknowledging that she works part-time not full-time.

3. There are essentially four questions for determination set out in Reg 2. Of these, it was agreed that only two were in dispute, as the respondent accepts that Mr Taylor and Ms Claase are engaged by the same employer as the claimant and are based at the same establishment as the claimant. It was therefore for me to decide, based on the evidence before me, whether the claimant and Mr Taylor and/or Ms Claase are
  - 3.1 Employed under the same type of contract; and
  - 3.2 Engaged in the same or broadly similar work having regard, where relevant, to whether they have a similar level of qualification, skills and experience.

## **B. Procedure, documents and evidence heard**

4. The claimant was unrepresented and the respondent was represented by Victoria Kendrew of Weightmans LLP. I was provided with an agreed bundle of 516 pages, although I was taken to relatively few pages of this bundle. I was provided with a witness statement bundle of 20 pages and heard evidence from the claimant, and for the respondent from John Roxburgh and Megan Hope. All witnesses were cross-examined.
5. Two short breaks were taken in the morning and a longer lunchbreak was taken, during which the parties had the opportunity to finalise their submissions. There was then a further break for deliberation, following which oral judgment was given.

## **C. Findings of fact**

6. I make the following findings of fact, based on the limited evidence put before me; recognising that the judge at the full merits hearing will hear all the evidence and is entitled to reach different findings of fact. My intention has been to limit, so far as possible, my findings of fact to matters relevant to the preliminary issue in dispute only.

### *General*

7. The respondent employs bus drivers in two relevant categories, stage carriage drivers (SCDs) and yellow school bus drivers (YSBs).
8. Terms and conditions for SCDs and YSBs are collectively bargained with the relevant trade union in two separate bargaining units. SCD and YSB pay negotiations are treated separately by the union and by the respondent. The union has not put to the respondent that the work of SCDs and YSBs is comparable and should be paid at the same rate.
9. SCD terms and conditions specify that during the first two years of employment an SCD is paid at a "B" rate, the same rate of pay as the claimant; and that thereafter they are paid at an "A" rate, a higher rate of pay than the claimant.

*The individuals*

10. The claimant is, and was at the relevant time, an employee. This is accepted by the parties and specified in his contract at p42 of the bundle. The claimant is engaged on YSB terms and conditions. The claimant undertakes mainly YSB work and some cover for SCD work.
11. Mr Taylor is, and was at the relevant time, an employee. This is accepted by the parties and specified in his contract at p319 of the bundle. Mr Taylor is engaged on SCD terms and conditions.
12. At the time the claimant brought his claim, 2 February 2025, Ms Claase was employed as an apprentice under a government approved apprenticeship – this is accepted by the parties and specified in her contract at p236 of the bundle. Her apprenticeship ended with effect from October or November 2025. Ms Claase is currently an employee engaged on SCD terms and conditions, receiving pay at the same rate as the claimant, at the SCD “B” rate. Ms Claase is currently undertaking YSB work, as part of a bespoke flexible working arrangement in place with her. This does not impact her pay rate or pay progression.
13. Each of the contracts for the three individuals contain different terms and conditions, such as regarding working hours, holiday, pay and sickness absence.

*Similarities and differences between the two groups*

14. Both SCDs and YSBs drive buses. YSBs driving secondary-age children only, drive the same buses as SCDs. YSBs driving primary-age children drive special buses fitted with seatbelts, per local authority requirements.
15. Both SCDs and YSBs drive passengers. The passengers on SCD buses are of any age. The passengers on YSB buses are of school age only. Children on YSB buses are usually unaccompanied; a chaperone is usually present on around 25% of the primary-age children buses. Children on SCD buses may be unaccompanied or may be accompanied. Passengers on SCD buses may include vulnerable adults and/or intoxicated adults. Both passenger groups can present challenges, requiring drivers to resolve conflicts and maintain safety.
16. Both SCDs and YSBs drive to destinations. The destinations for YSBs are school or the depot, with stops along the way. The destinations for SCDs are more varied, with stops along the way.
17. Both SCDs and YSBs drive routes, on roads. Both involve driving with varied urban and rural roads, road hazards, traffic and weather conditions. YSBs tend to drive a familiar route or handful of routes. SCDs tend to drive a much wider range of varied routes, changeable from shift to shift.

18. Both SCDs and YSBs take fares, operate a ticket machine and account to the respondent for money upon return to the depot. SCDs deal with a wider range of fares and a greater amount of money. SCDs are expected to advise passengers on the best ticket to purchase. YSBs have limited involvement in that activity.
19. Both SCDs and YSBs must hold a PCB licence, per DVLA requirements. They must both periodically undertake training to maintain this licence. In addition to either holding a PCB licence, or undertaking around three weeks' training to obtain one, YSBs undertake around a further one week's training. SCDs meanwhile undertake around a further three weeks' training, then operate on a lower "B" pay rate for the first two years of employment while they gain on-the-job experience. SCDs receive more training in customer-facing skills including ticketing and customer service; YSBs receive more training in schools-focused requirements such as safeguarding and interfacing with the local authority.
20. SCDs and YSBs both cover for each others' roles and routes from time to time, where there is a business need.
21. The SCDs and YSBs have significantly different working hours for performing their duties. SCDs generally work on rotating shift patterns covering evenings, nights, weekends and public holidays, working over 363 days of the year, between the hours of 4am and the following 1am. YSBs generally work Monday to Friday term-time only, in blocks of two hours to cover the school run, sometimes with additional work for school activities such as swimming. In line with these working patterns, the holiday provisions for the two groups of drivers are also significantly different.
22. The SCD and YSB revenue streams are both important to the respondent's business. The YSB contracts between the respondent and local authorities provide the respondent with guaranteed income, balancing the commercial risk of operating the SCD routes.

#### **D. Relevant law**

23. The Tribunal briefly explained the relevant law to the parties, summarised below. The parties did not raise any additional or alternative law.
24. The applicable legislation is the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000/1551 (the **Regs**). Reg 2 states as follows:

#### ***2.— Meaning of full-time worker, part-time worker and comparable full-time worker***

*(1) A worker is a full-time worker for the purpose of these Regulations if he is paid wholly or in part by reference to the time he works and, having regard to the custom and practice of the employer in relation to workers employed by the worker's employer under the same type of contract, is identifiable as a full-time worker.*

*(2) A worker is a part-time worker for the purpose of these Regulations if he is paid wholly or in part by reference to the time he works and, having regard to the custom and practice of the employer in relation to workers employed by the worker's employer under the same type of contract, is not identifiable as a full-time worker.*

*(3) For the purposes of paragraphs (1), (2) and (4), the following shall be regarded as being employed under different types of contract—*

- (a) employees employed under a contract that is not a contract of apprenticeship;*
- (b) employees employed under a contract of apprenticeship;*
- (c) workers who are not employees;*
- (d) any other description of worker that it is reasonable for the employer to treat differently from other workers on the ground that workers of that description have a different type of contract.*

*(4) A full-time worker is a comparable full-time worker in relation to a part-time worker if, at the time when the treatment that is alleged to be less favourable to the part-time worker takes place—*

- (a) both workers are—*
  - (i) employed by the same employer under the same type of contract, and*
  - (ii) engaged in the same or broadly similar work having regard, where relevant, to whether they have a similar level of qualification, skills and experience; and*
- (b) the full-time worker works or is based at the same establishment as the part-time worker or, where there is no full-time worker working or based at that establishment who satisfies the requirements of sub-paragraph (a), works or is based at a different establishment and satisfies those requirements.*

25. This means the claimant must identify an actual comparator (not a hypothetical comparator as used in the Equality Act 2010). Per **Advocate General for Scotland v Barton [2016] IRLR 210, CS(IH)**, the comparator must be actually full-time in the context of the relevant respondent's operations – not just be working more hours than the relevant claimant.
26. There are essentially four components to identifying a comparable full-time worker, as follows:
- 26.1 Employed by the same employer. In this claim, the respondent accepts that this element of the test is met.
- 26.2 Employed under the same type of contract.
- 26.2.1 Here, the law treats contracts in broad categories, rather than focusing on the differences between specific terms and conditions.

- 26.2.2 Effectively, the legislation sets out four mutually exclusive categories: employee; worker; apprentice; and other. If a person is found to be an “employee” they cannot also be e.g. an “other”. For example, a fixed-term employee or a zero-hours employee is an “employee” so cannot sit in the fourth category of “other”.
- 26.3 Engaged in the same or broadly similar work having regard, where relevant, to whether they have a similar level of qualification, skills and experience.
- 26.3.1 This limb of the test has been examined in various key cases, including in particular the case of ***Matthews and others v Kent and Medway Towns Fire Authority and others [2006] UKHL 8***. In this case the court made clear that particular weight should be given to the extent to which the work of the two groups is the same and to the importance of that work to the enterprise as a whole. The court considered that differences between the work are “almost inevitable”, such that the focus should not be weighted towards the differences. Where full-timers and part-timers spend much of their time on the core activity of the enterprise, the fact that the full-timers perform additional tasks would not prevent the work of the two groups being regarded as “the same or broadly similar”.
- 26.3.2 This was further considered in the case of ***Moultrie and ors v Ministry of Justice 2015 IRLR 264, EAT***, where the court cautioned that it does not necessarily follow that the work meets the “same or broadly similar” requirement whenever a large component of the work is the same and is important to the enterprise. In such a situation, the crucial question becomes whether the remaining differences are of such importance that they prevent the work being regarded as broadly similar. It is necessary to consider the differences qualitatively, not just quantitatively.
- 26.4 Working or based at the same establishment as the part-time worker (or, where there is no such worker who satisfies the other three requirements, working or based at a different establishment and satisfying those requirements). In this claim, the respondent accepts that this element of the test is met.

## E. Conclusions

27. Applying the law to the facts I have found, and reminding myself that I am dealing with the position as at the point of claim in February 2025, I have reached the following conclusions.
28. The claimant and Mr Taylor are employed under the same type of contract. They are both employees. As already noted, the respondent accepts that he is also employed by the same employer and based at the same establishment.

29. The claimant and Ms Claase are not employed under the same type of contract. Ms Claase was an apprentice at the point of the claimant's claim. She is currently an employee who is receiving same rate of pay as the claimant. Whilst, as the respondent accepts, she meets the condition of being based at the same establishment with the same employer, she is not employed on the same type of contract as the claimant.
30. During the hearing, whilst being mindful of not overstepping from supporting an unrepresented party's access to justice into unduly assisting that party, I gave thought to discussing with this unrepresented claimant whether he is seeking to amend his claim to refer to Ms Claase's current status as an employee, rather than her former status as an apprentice. I noted that, as he remains employed, he could potentially succeed in an amendment application. However, given that Ms Claase is currently receiving the same rate of pay as the claimant, on balance I considered it would not be in the interests of justice to introduce this concept; given that the claimant's substantive claim is based on his comparators receiving a higher rate of pay to his own, including Ms Claase as a comparator would not ultimately assist him. The evidence he has put forward regarding Ms Claase, however, remains relevant to the claimant's argument that the work done by SCDs and YSBs is interchangeable, and I have taken it into account.
31. Taking forward only Mr Taylor, then, to the next stage, I considered whether the claimant and Mr Taylor are engaged in the same or broadly similar work having regard, where relevant, to whether they have a similar level of qualification, skills and experience. I have concluded that they are engaged in broadly similar work. My conclusion depends on an analysis of the similarities, differences and importance of the work of SCDs and YSBs, since Mr Taylor is an SCD and the claimant is a YSB.
32. Turning to that analysis, I note that the same DVLA qualification is required for both roles. The key skills required are the same, in driving, navigation, customer service and operating ticket machines. The experience required is greater for SCDs insofar as more time is needed to become familiar with the wider range of routes, but generally the experience as it relates to the relevant qualifications and skills is substantially similar.
33. Fundamentally, both types of employees drive the same types of buses, for paying passengers, between destinations, on public roads. I agree with the claimant that the operational reality of both types of driver providing cover for the other is an indicator of the similarity between the work done. The respondent made much of the difference in passenger type, but in my view whilst there are of course some practical differences, both passenger groups present challenges such that the work of both SCDs and YSBs requires skills and experience in dealing with customers, such as in conflict resolution and safety.
34. The fact that some SCB buses are fitted with seatbelts does not, in my view, amount to a significant difference. Whilst some of the training provided is different, the number of routes driven by SCDs much broader, the number of

ticket types used by SCDs broader and the customer age much broader, in my view there is not sufficient difference in the skills, qualifications and experience to outweigh the fundamental similarities of the job tasks. Here, I have kept in mind the case law that the fact that the SCDs perform additional tasks does not prevent the work of the two groups being regarded as “the same or broadly similar”; I must consider whether the differences are of such importance that they prevent such a finding.

35. I have taken into account the fact that the union has not put to the respondent that the work of SCDs and YSBs should be paid at the same rate. However, I consider that there may be varied reasons for that being the case, such as union/member politics and the differing working and contractual conditions under which the two groups operate. In my view, it does not follow from the fact the union has not sought pay parity, that YSBs and SCDs do not perform similar work.
36. In my view, the significant differences identified in working patterns and holidays are differences in the contractual terms and conditions applying to the role. I have taken these into account in reaching my decision. These are likely to be highly relevant to the substantive issues to be determined at the next stage of this claim, but I find the differences are not material to the narrow issue before me, that of whether the work itself is the same or broadly similar.
37. In summary, therefore, the claim proceeds to hearing with Mr Taylor as a comparable full-time worker. Per the list of issues prepared with the assistance of EJ Ayre, the Tribunal will still need to determine whether the claimant was treated less favourably, on the ground that he is a part time worker, in circumstances which cannot be objectively justified.

Approved by:

**Employment Judge Elliott**

**22 April 2026**

Judgment sent to the parties on:

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For the Tribunal:

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#### Notes

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