EMPLOYMENT TRIBUNALS

Claimant: **Mr R Joseph**

Respondent: **VP Plc**

Heard at: **East London Hearing Centre**

On: **16-19 September 2025**

Before: **Employment Judge S Iman**

Members: **Miss S Harwood,**
Mrs B Saund

Representation

For the Claimant: In person

For the Respondent: Mr Wood (Counsel)

The Employment Judge gave judgment on behalf of the panel on the 19 September 2025. These written reasons have been requested in accordance with Rule 60(4) of the Employment Tribunal Rules of Procedure 2024.

REASONS

1. The claims of unfair dismissal and race discrimination were not well founded and were dismissed. The claim of unlawful deduction of wages was withdrawn at the commencement of the hearing following a settlement of that aspect of that claim between the parties.

Background

2. The Respondent is a specialist in equipment rental and an expert provider of people, services and support, principally for the infrastructure, construction, housebuilding and energy markets. It employs around 2660 employees in the United Kingdom.

3. The Claimant was employed by the Respondent from 14 July 2000, until 15 August 2024, when he was dismissed on grounds of ill-health capability. Throughout his employment, the Claimant was based at the Brandon Hire Station branch of the Respondent, in Canning Town, London, as a Driver/Branch Assistant.

4. The concerns centred around his ongoing capability to carry out essential duties due to a longstanding back condition.

5. On 20 February 2024, the Claimant was issued with a 'Letter of Concern' for frequent absences, totalling 29 days over 4 occasions in the period between March 2023 and January 2024, three of which were for a back problem and one for cold/flu/tonsilitis.

6. On 26 February 2024, the Claimant raised a grievance concerning complaints around how his return to work from absence on 19 February 2024 had been handled by Sebastian Syce, Canning Town Branch Manager.

7. Specifically, the Claimant said that. Following his return to work at 8am on 19 February 2024, a return-to-work interview had not taken place until 3:25pm that day, at which point Mr Syce completed a return-towork form with the Claimant whilst sat in a parked van, and then was provided with the 'Letter of Concern' mentioned above, to the Claimant; confirming that any further absences would be unpaid.

8. On 19, 20 and 21 February 2024, the Claimant was given tasks to complete which agitated his condition, without assistance.

9. By letter of 7 March 2024, the Claimant was invited to a grievance meeting on 11 March 2024, which was chaired Mr Mates, Business Support Manager). The Claimant confirmed he did not wish to be accompanied at the grievance meeting.

10. Mr Mates found that there was a lack of communication by Mr Syce regarding the suspension of the Claimant's pay going forwards. The issuing of a 'Letter of Concern' was in line with sickness absence procedures; and within the return-to-work form. The Claimant confirmed that he was fit to return to full duties.

11. The Claimant's grievance was partially upheld, concerning the fact that the conversation did not take place in the office but instead was held in the van and miscommunication around suspension of pay. The remainder was not upheld. This was confirmed in an outcome letter of 2 April 2024.

12. The Claimant was reminded of his right of appeal, which he did not exercise.

13. Following the Letter of Concern being issued, the Claimant had three further periods of absence totalling 20 days relating to a back problem, on 19-26 April 2024; July 2024, 15-31 July 2024.

14. By letter of 29 July 2024, the Claimant was invited to attend a welfare meeting on 1 August 2024.

15. On his return to work from the most recent period of absence, the Claimant was given the option of having a colleague work alongside him for 2-3 days per week as a temporary measure, to support him when needed whist awaiting OH input. An ill health and capability meeting was held on the 15 August 2024.

16. The Claimant brought claims of unfair dismissal, direct race discrimination, failure to offer suitable alternative roles and failure to pay redundancy pay.

17. The Respondent maintained that dismissal was for the potentially fair reason of capability and denied discrimination. They maintained that dismissal was reasonable considering the Claimant's description of his symptoms and their effect on his ability to do all aspects of his role. None of their decisions related to race, and any comparator would have been treated in the same way. In respect of the unlawful deduction of wages, this matter was settled between the parties at the start of the hearing and withdrawn by the Claimant.

The Law

18. The Tribunal had several issues to determine as set out in the list of issues including in summary: the principal reason for dismissal; whether dismissal fell within the band of reasonable responses and whether a fair procedure was followed.

19. The key questions were was the employer acting within the band of reasonable responses when determining whether or not dismissal is a fair sanction. The Tribunal was reminded that it is not for the Tribunal to substitute its own view of the appropriate penalty for that of the employer as per the EAT in Trust Houses Forte Leisure Ltd v Aquilar [1976] IRLR 251 at [24]:

> "It has to be recognized that when the management is confronted with a decision to dismiss an employee in particular circumstances there may well be cases where reasonable managements might take either of two decisions: to dismiss or not to dismiss. It does not necessarily mean if they decide to dismiss that they have acted 'unfairly' because there are plenty of situations in which more than one view is possible…".

20. The fact that other employers might reasonably have been more lenient is irrelevant: British Leyland (UK) Ltd v Swift [1981] IRLR 91.

21. The reason for dismissal is a set of facts known to the employer, or it may be of beliefs held by him, which cause him to dismiss the employee (Abernethy v Mott, Hay & Anderson [1974] ICR 323).

22. Whenever a person is dismissed for incapacity or incompetence it is sufficient that the employer honestly believes on reasonable grounds that the person is incapable or incompetent. It is not necessary for the employer to prove that he is in fact incapable or incompetent (Alidair Ltd v Taylor [1978] ICR 445).

23. The Tribunal further reminded itself that before an employee is dismissed on the grounds of ill health it is necessary that they should be consulted and that steps taken by the employer to discover the true medical position. The employee may wish to seek medical advice on his/her own account. There are many possibilities. If the employee is not consulted, and given an opportunity to state his case, an injustice may be done (East Lindsey District Council v Daubney [1977] ICR 566).

24. The tribunal must determine whether in the particular circumstance of each case the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted. If the dismissal falls within the band the dismissal is fair: (Iceland Frozen Foods Ltd v Jones [1983] ICR 17).

Discrimination

25. Section 13(1) Equality Act 2010 provides: *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.*

26. Section 23(1) Equality Act 2010 provides: *On a comparison of cases for the purposes of section 13, 14, or 19 there must be no material difference between the circumstances relating to* each case.

Documents

27. The Tribunal had regard to the following documents:

a) The Claimant's witness statement;

b) Mathew Mate's witness statement;

c) Rachel Tullett's witness statement;

d) Reece Edmonds' witness statement;

e) Bundle of documents running to 290 pages.

Witnesses

28. We heard evidence from the Claimant and from the Respondent's witnesses Mr Mate, Miss Tullett and Mr Edmonds. We found the Respondent's witnesses all to be consistent and reliable and credible. We found that the Claimant was fixated in his evidence and often changeable in his evidence. For example, he would accept that some statements had been made by him in the interviews and then later on in further questioning state that he did not make those statements and they had been completely taken out of context.

Findings of fact

29. The Tribunal considered the documentation which recorded the conversations held with the Claimant during the meetings with the Respondent. Though the Claimant at times seemed to distance himself from the comments recorded and/or state that his words had been taken out of context (such as the collapse at work and the reasons for that) or that in fact certain things were not said, we found that the documents were accurate and reliable record of what had been said at those meetings. We found no evidence of any motivation to embellish, fabricate or misrepresent what the Claimant

had said. We considered that the Respondent's witnesses were genuinely seeking to find a suitable resolution and enter meaningful consultation with the Claimant.

30. We find that there were opportunities offered to the Claimant to explore other roles, but the Claimant decided not to take up these opportunities such as the Respondent introducing the Claimant to Victor Nwokolo who was recruiting for a sales role within the company.

31. We find that at the welfare meeting, the Claimant said that he had been diagnosed with a spinal condition in 2009 that he had episodes of sciatica, including whilst driving and one incident in which he collapsed at work. His condition was worsening over time and being at work was making it worse namely that it was degenerative and that his spine "was crumbling away"

32. We find that the Claimant said that, in February 2024, he experienced Sciatica whilst driving and more recently, in July 2024, he found that he was unable to stand up straight. The Claimant confirmed he used a back brace to assist him in managing his symptoms and continued to take prescribed medication.

33. We find that the Claimant explained that he needed to take time off if is symptoms were exacerbated. He stated that he found lifting and driving could make his symptoms worse.

34. We find it was confirmed that physiotherapy was something which Occupational Health may recommend following their assessment. We find that physiotherapy had not been previously offered to the Claimant by the Respondent given that at this stage the Claimant had not seen Occupational Health and therefore the Respondent would not have been in a position to offer physiotherapy.

35. We also find that prior to the welfare meeting on 1 August 2024, the Claimant was referred to Occupational Health however, after three appointments had not been attended, the referral was cancelled due to the Claimant's failure to engage in the process. The referral was made on the 16 May 2024 and efforts to engage the Claimant continued until 01 July 2024. These efforts included Occupational Health making attempts to contact the Claimant and re-arranging appointments to facilitate the Claimant's attendance.

36. We therefore found that Claimant failed to engage with the Occupational Health review or the deployment process. We found that the respondent took reasonable steps in order to secure an occupational health appointment, but it was the claimant that did not engage. The evidence before is demonstrated clearly the efforts regarding scheduling appointments had been made as had attempts to communicate with the claimant to secure his attendance.

37. We find that at the capability meeting on 15 August 2024 with Reece Edmonds, the Claimant was informed that an outcome could be the termination of his employment. The Claimant discussed the difficulties he had in carrying out tasks such as lifting, pushing, pulling or using vibration tools. The risks whilst driving were also discussed.

38. The Claimant confirmed in his evidence that he did not reply to questions around driving, resulting in serious injury to himself or others.

39. We did not find any evidence of a request for the second meeting being postponed.

40. We accept Mr Mates evidence that during the investigation, the Claimant did not ask for any help on his return to work .We found that at the ill heath capability meeting the Claimant said that he would be putting himself at risk without an assistant and we found that temporary support had been put in place to assist the Claimant whilst the matter was being addressed, namely the assistance of another to assisting with lifting.

41. We find that there were no other vacancies at the Brandon Hire Station branch, and other than a Sales role which the Claimant had not yet applied for. He was informed that interviews were taking place shorty and was encouraged to contact the individual to discuss the role.

42. We accept the Respondent's evidence and find that the Hire Manager role was not held for Mr Lindley which we accept and find as a matter of fact.

Unfair Dismissal

43. It is clear from the evidence before us that the reason for dismissal was the Respondent's belief that there were capability issues in respect of the Claimant and that it was no longer safe for the Claimant to continue in his position. We further concluded that the Respondent's conclusion in the Claimant's incapability was reasonable. The Respondent had conducted an assessment of the Claimant's ability to do the job based on the information available to them at that relevant time. We considered that they were entitled to reach the decision they did.

44. The Claimant also informed the Respondent what the doctors had told him, namely that he had a degenerative spinal condition. It was the Claimant that volunteered this information and said he was getting it worse and that he could not do the manual handling part of the role.

45. The lack of direct medical evidence available to the Respondent was due to the Claimant not engaging with the Respondent's process and being elusive and not showing genuine efforts to attend appointments.

46. As the Claimant did not engage with the process, we accept that after the repeated attempts made, it was not unreasonable for the Respondent to continue in the absence of the direct medical evidence.

47. We consider the process followed was thorough - the Respondent held both a capability and welfare meeting. We accept that Mr Edmonds was faced with a deterioration in the situation in respect of the Claimant's condition and had to seriously give consideration to the ability to carry out the role and the safety of driving.

48. In his evidence he explained even if the Claimant could drive, it was not feasible to employ a second person to do the other parts of the job he was unable to carry out. Mr Edmonds believed that driving was a risk for the Claimant and other road users. He also stated that he could not live with himself if he created further injury to the

Claimant if he ignored what the Claimant had stated about his degenerative condition.

49. We accept that the evidence reasonably indicated a lack of capability in the role. That the driving and manual handling were exacerbating symptoms and could occur with a sudden onset. As mentioned above, we found that the Claimant did not respond in interview when asked "what if something were to happen whilst driving and that he could kill himself or someone else if his back seized or his sciatica kicked in". The claimant did not deny and evidence not replying to this question, and it demonstrated clearly that there was a discussion at this meeting in respect of his symptoms was consistent with what the respondent stated had arisen out of information that had been volunteered by him.

50. We accept that the Respondent could not reasonably rely on the Claimant's statements that he was fit for work. The Claimant's later statements that the condition was "not as bad as was made out", "nothing has changed since he was diagnosed" were not consistent with his earlier comments regarding the difficulties and the degeneration.

51. We consider it was reasonable for the Respondent to proceed in the absence of evidence from a medical practitioner, and it was reasonable for them to assume that the advice was likely not to be obtained.

52. We accept that the Claimant gave his own medical evidence to the Respondent in respect of what he communicated to his own doctors and there was no reason for the Respondent not to rely on this, namely that it was degenerative and it would not improve.

53. The Claimant explained in his evidence that he completed a driving job on the morning of the day of dismissal and this was evidence of his capability. We accepted that this was evidence of a short, slow drive with no manual handling and therefore would not have undermined the Respondent's reason for dismissal as this was not indicative of him being able to carry out the duties of the role.

54. The Claimant made reference in his evidence to the use of Tyler Tadman and that the Respondent could have permitted him to assist the Claimant longer term. Though we accept that Mr Tadman assisted the Claimant at times, we also accepted that he was needed to work alongside other drivers where two-person lifting was required and it would not have been reasonable to require him to assist the Claimant at all times. Furthermore, this did not address the risk in respect of the safety of driving when symptoms were exacerbated or occurred on sudden onset.

55. The Claimant was struggling to carry out manual handling, nor was it safe to permit him to drive. These were key duties for the role he was employed. We considered that the Respondent carried out a fair and reasonable process given both the capability and welfare meeting were held in which the Claimant was invited to comment. In all the circumstance we consider that the decision to dismiss was reasonable.

Race discrimination

56. The Claimant maintained throughout the hearing that he should be paid the same as Tyler Tadman and that he had been differentiated on the basis of his race. The documentation before the Tribunal demonstrated that Mr Tadman was not paid the same as the claimant. In 2021 Mr Tadman commenced employment, he was paid £20,178. At that time, the Claimant's salary was £23,740.

57. The Claimant's position was that if he was not of black race, the Respondent would not have taken his words out of context – they would give him an opportunity to gain a different position within the company.

58. There was no evidence before us from which it could be concluded that race was a factor in the Respondent's conduct.

59. The Claimant also maintained that he had been discriminated against by not being offered the Hire Manager role. We accept that Mr Lindley is not an appropriate comparator. He does not share the Claimant's impairment, and he was already appointed in a hire controller role from March 2022 which involved responsibilities that were distinct from the Claimant. Mr Lindley's situation was also different in that he was not at risk of dismissal.

60. We accept that there would need to be relevant competencies demonstrated as the Manager role would not be similar to the Claimant's driver role. The Tribunal also heard that it was three levels of progression above the driver role.

61. The tribunal heard that there were between 5 and 10 interviews with internal and external candidates. In those circumstances, there was no evidence before us to demonstrate that the Claimant was treated less favourably because of race.

62. We accepted the Respondent's position that the Claimant's comparator was *someone that shares the circumstances of his impairment and is in the same role as him but not sharing his race. In circumstances in which (a) that comparator could not do the role other than driving, and (b) had given cause for concern over the safety of driving.*

63. There was no evidence from which it could be concluded that that person of a different race would have been retained in employment by the Respondent, nor could it be concluded that race was a factor in the decision to dismiss.

64. The Claimant also stated that he should have been paid redundancy and made reference to Mr Fuller as a comparator. He considered that the fact that he was not given redundancy and was dismissed was due to his race. We accepted the Respondents position that Mr Fuller was not an appropriate comparator. Mr Fuller was at risk of redundancy following absorption his branch into another. Mr Fuller requested voluntary redundancy his circumstances were entirely different to the Claimant though it was for health reasons he choose redundancy.

65. The Tribunal therefore applied the hypothetical comparator test but considered that again the test was not met in that the Claimants role was not subject redundancy and therefore he did not have the option of volunteering for redundancy as would apply

to a hypothetical comparator not of the same race. Further, for clarity there was no evidence before us that race was a factor at all in respect of the decision to dismiss as applied to the Claimant. Accordingly, the claims are not well founded and are dismissed.

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Employment Judge S Iman
Dated: 29 April 2026