

Part-time status need only be an effective cause of less favourable treatment to give rise to a claim

In *Augustine v Data Cars Ltd* the Supreme Court has made it easier for part-time workers to complain about being treated less favourably than a comparable full-time worker.

What happened in this case?

Part-time workers have a legal right not be treated less favourably than comparable full-time workers as regards their contractual terms or by being subjected to any other detrimental treatment. This protection applies where the less favourable treatment is “on the ground of” the worker’s part-time status and is not justified on objective grounds. Previous case authorities in this area have disagreed about whether “on the ground of” meant the part-time status had to be the *sole* cause of the treatment or merely an *effective* cause.

In this case, Mr Augustine was employed by Data Cars as a part-time taxi driver. All taxi drivers had to pay the same weekly fixed fee of £148 to access the Data Cars booking system. Mr Augustine argued that, in practice, this meant he paid a higher fee per hour to drive than a comparable full-time worker. He said this amounted to less favourable treatment of him as a part-time worker.

What was decided?

The Employment Tribunal rejected the claim. Although it said there was less favourable treatment, it concluded that the fee was not charged on the sole ground of part-time status. Rather, charging of a fixed fee was standard practice within the industry to allow an employer to generate revenue.

Mr Augustine appealed to the Employment Appeal Tribunal (the **EAT**) and then the Court of Appeal. The EAT and Court of Appeal both found that Mr Augustine's part-time status was, at least, one reason for the less favourable treatment. The EAT considered that the correct test was whether the part-time status was an *effective* cause of the treatment, and it did not need to be the sole cause. Yet both the EAT and Court of Appeal considered they were bound by an earlier decision of the Scottish Court of Session (being the highest court in Scotland), which had said that part-time status had to be the *sole* reason for the treatment for a claim to proceed. Accordingly, the appeals failed.

Mr Augustine appealed again to the Supreme Court. The Supreme Court allowed the appeal, overturning the previous case authority. The Court held that a claim is available where the part-time status is an *effective cause* of the treatment, and it does not need to be the sole cause. This aligns the law on part-time worker discrimination with the approach taken in other types of discrimination cases.

What does this mean for employers?

This decision makes it easier for part-time workers to get

claims off the ground. Employers will not be able to avoid claims by pointing to additional explanations for the less favourable treatment in question. If the part-time status is one cause, then a claim is possible. However, it still remains open to employers to objectively justify the treatment, by showing it had a legitimate aim, and the treatment was a proportionate way to achieve that aim. Where there are additional causes for the treatment, they may be relevant to the question of whether the treatment is justifiable.

Employers should pause to assess their exposure to such claims. Although objective justification is available, it is preferable to avoid such claims arising in the first places. Some areas employers may wish to look at immediately include:

- Are pay arrangements fair? A straightforward pro rating of pay and bonuses should avoid the risk of claims but where there is a meaningful difference in pay for full and part-time workers, employers should interrogate the reasons for this.

- Are benefit arrangements fair? It would be sensible to audit staff benefits such as pension entitlements, health insurance and staff discounts to check how part-time workers are treated in comparison to full-timers. Again, the starting point should be to offer the benefit on a pro-rata basis where possible. Where you have a benefit that cannot be pro-rated (e.g. a company car), consider offering it to them in full or offer an alternative (e.g. a pro-rated car allowance).

- Are holiday entitlements fair? Once again, the pro rata principle should apply to calculate holiday entitlements and this is standard practice. However, where you do not provide part-time workers with a pro-rata bank holiday allowance, this could generate complaints of less favourable treatment. The safest course of action is to provide a pro rata entitlement to the eight bank holidays for part-time workers but stipulate that if a bank holiday falls on one of their working days, they must take annual leave on that day.

Employers should also note that there is a risk that the “effective cause” approach may cross over into claims of less favourable treatment brought by fixed term employers.

Protection under the less favourable treatment of fixed-term workers operates in the same way as for part-time workers and so there is a respectable argument that the approach to causation in *Augustine* should be adopted in such claims. Accordingly, when auditing the position for part-time workers, it would be sensible to address how fixed-term workers are treated and consider the reasons justifying any material difference in treatment.

[Augustine v Data Cars Limited](#)

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