Race discrimination may not include mistreatment due to immigration status

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A person’s immigration status may not found a discrimination claim if the reason for their mistreatment is not connected to race.

In *Onu v Akwiwu*, Ms Onu, a Nigerian national, was a domestic worker employed by a Nigerian family. Ms Onu's employers failed to pay her the National Minimum Wage, did not give her suitable accommodation and told her that she would be arrested and sent to prison due to her immigration status if she tried to run away. Ms Onu eventually left the family and brought claims against them, including for race discrimination.

In *Taiwo v Olaigbe*, Ms Taiwo was also Nigerian and a domestic worker; she was employed by a Nigerian man and his Ugandan wife. As with Ms Onu, Ms Taiwo was paid below the National Minimum Wage and her living conditions were substandard. She was also subjected to verbal and physical abuse, made to work long hours and denied rest breaks. Ms Taiwo resigned and brought a race discrimination claim.

The Supreme Court was of the view that both Ms Onu and Ms Taiwo had been treated disgracefully because of their vulnerable immigration status, which made them much more dependent on their employers for the continued right to live and work in the UK. However, that did not mean that they had been discriminated against on grounds of their race. Immigration status is not a characteristic protected by discrimination law in its own right, so in order for a claim to succeed it would have to connect to race or nationality. The Supreme Court held that, in this case, a Nigerian worker with more stable immigration status would not have been mistreated in the same way, so the mistreatment suffered by Ms Onu and Ms Taiwo was not discrimination on grounds of race.

Both Ms Onu and Ms Taiwo did, however, receive sizeable awards for underpayment of the National Minimum Wage and breach of working time legislation. Nonetheless, the Supreme Court suggested that powers under the new Modern Slavery legislation be extended to employment tribunals to allow them to compensate workers for the distress caused by such mistreatment.

Taiwo v Olaigbe; Onu v Akwiwu [2016] UKSC 31

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