

Metroline granted postponement in David O'Sullivan unfair dismissal case

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19 November 2021

Watford Employment Tribunal has granted an application by Metroline bus company to postpone next Wednesday's preliminary hearing of David O'Sullivan's unfair dismissal case. O'Sullivan was dismissed from his job as a London bus driver on February 3, after alerting colleagues to the spread of COVID-19 and asserting his legal rights to a safe workplace.

In a letter to O'Sullivan's lawyer on Tuesday, the tribunal advised that Metroline's request for postponement had been referred to Employment Judge [Stephen] Bedeau who had written, "Respondent's application is granted; it was made in good time following the notice of preliminary hearing."

A revised listing date has not yet been set. The parties have been advised to provide any dates when they are unavailable over the next six months. There are huge delays in the courts as a result of the pandemic, a situation that has been widely criticised by lawyers and civil liberties groups.

Metroline's request for postponement was made to the court on August 18 and was supplied to O'Sullivan's solicitor at Leigh Day on October 18. Lawyers for Metroline, Fidelity Law, informed the court they had an incorrect email address for O'Sullivan's solicitor and had been unable to inform Leigh Day of their request to delay proceedings.

Clare Nicolaou, consultant solicitor at Fidelity Law, informed the Employment Tribunal a postponement was being sought because she was appearing in a separate hearing for Metroline at Watford that same day. She said her colleague Ms Norris was also unable to attend because she was representing Metroline at a four-day hearing at London Central Tribunal.

O'Sullivan's solicitors objected to Metroline's application for a postponement, arguing its stated reasons were not credible.

Leigh Day solicitors wrote to Watford Employment

Tribunal on October 19 arguing, "The Claimant [O'Sullivan] fails to see why the Respondent [Metroline], or their representatives are unable to instruct Counsel to deal with the matter on their behalf.

"According to the Respondent's accounts made up to 31 December 2020 [and] filed on 13 September 2021, the Respondent had a turnover of £343 million in 2020 with an operating profit of £4.5 million. The idea that the Respondent does not have the resources to instruct Counsel to deal with the hearing on their behalf is not credible."

Leigh Day further noted, "Considering the ET1 [unfair dismissal claim] in this matter was issued on 09 February 2021, and the Preliminary Hearing was listed some 9 months after issue, a further delay to the matter prior to directions being listed is unacceptable to the Claimant, particularly as the Respondent is unable to give any good reason as to why the matter should be delayed in the first place."

A high-profile case

Metroline's request for a postponement may indicate the company's nervousness over an increasingly high-profile case. In September, O'Sullivan was featured in a BBC Radio 4 episode, "Occupational Hazard: The bus drivers who died from Covid". This Tuesday, *MyLondon* ran a prominent news story about O'Sullivan's legal fight. Published by Reach PLC, *MyLondon* is the most widely read news publication in the capital, receiving 31 million page views in September, according to Ipsos Iris data.

Headlined, "London bus driver sacked after 'exposing cover-up of Covid outbreaks at bus garages'", the article

did not pull any punches, “David O’Sullivan... says that not enough was done by bus operators, authorities and unions to protect bus drivers at the height of the pandemic.”

Transport correspondent Callum Marius explained O’Sullivan’s unfair dismissal claim was widely viewed as a “test case for Covid whistleblowing” and provided critical context to O’Sullivan’s invoking of Section 44 of the Employment Rights Act at his garage.

O’Sullivan told *MyLondon*: “Bus drivers had to take steps to protect themselves: putting cling film over the holes in the guard [driver’s cab], removing the front seats so passengers couldn’t sit next to them, opening the middle and rear doors, and they were disciplined for doing so.

“When drivers died we weren’t informed by TfL [Transport for London] or bus companies, it was all through social media. It was uproar. There was no information being given by Unite [the bus drivers’ union] or the company [Metroline]... I found out there was a cluster of 12 drivers who had Covid at my garage alone.

“It was so unacceptable, I took the decision to inform workers of their rights under Employment Rights Act Section 44. It’s not just about me. This is a test case to stand up for the tragic case of bus workers.”

Metroline and Transport for London come over badly in the article, with their blanket denials and empty claims to have protected drivers during the pandemic. An unnamed Metroline spokesperson said O’Sullivan was sacked for “bringing Metroline’s reputation into disrepute by spreading false and damaging information” and for seeking to stage “a mass walkout”. The company’s claims will be challenged by O’Sullivan at the hearing.

In January, O’Sullivan believed up to 12 staff at his garage had caught COVID-19. A Freedom of Information request later revealed that 46 drivers at Cricklewood caught COVID between October 2020 and January this year.

70 London bus workers have died from COVID-19 since the start of the pandemic.

O’Sullivan told *MyLondon*: “Bus drivers kept working throughout the pandemic. Who keeps London and the country running? It’s the key workers, like bus drivers, like doctors and nurses who get the bus to work in London. Yet bus drivers have got a last minute, minimal response to ensure safety. They’ve put profit over lives.

“My colleagues who died are daughters, sons, mothers and fathers whose deaths were preventable by simple, preventative measures. We need a full track and trace

system at depots, transparent reporting of infection numbers, a reduction of working hours so that drivers can get fair breaks and take time to clean everything properly [...] TfL is not implementing this at all.

“This is why my case is important. Families are asking for inquiries, commissions and we’ve had nothing so on the basis of principle, I hope this acts as a test case to expose the whitewash.”

Tuesday’s article was shared by drivers on Facebook and WhatsApp receiving “likes”, emoticons and messages of support. Many condemned Unite’s complicity in O’Sullivan’s sacking, with messages including, “Where’s the union?” and “it’s all about mileage and profit”.

Drivers also messaged O’Sullivan directly to wish him well, “when Metroline sacked you I was in furlough scheme,” wrote one colleague, “I follow all the information about your case on Reinstatement David WhatsApp. Dear David, I wish you good luck in your fight to get your job back!”

Although the preliminary hearing has been postponed, O’Sullivan must soon complete a £20,000 legal crowdfunding, with £6,723 left to raise. The funds are needed to cover the costs of a solicitor and barrister who will go up against a top QC hired by Metroline.

As O’Sullivan told *MyLondon*, “The response so far has been amazing, I’ve had support from people in France, America, Canada, New Zealand, Germany. I just want to thank everybody who has donated even a minimum amount because it really makes a difference and we need it to do the right thing.”

The WSWS urges our readers to support this test case for the rights of key workers by helping to complete the crowdfunding:

<https://www.crowdjustice.com/case/test-case-for-key-worker-rights-during-pandemic/>



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