



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Lisk

v

Shield Guardian Co Ltd & others

Heard at: Watford

On: 14 September 2011

Before: Employment Judge George

Representation

For the Claimant: Mrs G Smith

For the Respondent: Mr N Jameson, Personnel Manager

PRE-HEARING REVIEW JUDGMENT

The complaints of direct discrimination and harassment on the protected ground of philosophical belief are dismissed. The complaint of victimisation is dismissed insofar as the protected act relied on under s.27 of the Equality Act 2010 is an allegation that a person has contravened the Equality Act 2010 by committing an act of direct discrimination or harassment on grounds of philosophical belief.

REASONS

1. This pre-hearing review has been listed to identify the "poppy incident" claim and to determine whether the tribunal has jurisdiction to hear it. Amongst other claims, Mr Lisk alleges direct discrimination under section 13 of the Equality Act 2010 on the prohibited ground of religion or belief, as defined in section 10(2) of the Equality Act 2010. In that section it is said that

'belief means any religious or philosophical belief and a reference to belief includes a reference to lack of belief'.

In his claim form, Mr Lisk also lists a number of acts which are said to be acts of detriment, harassment and victimisation on the grounds of,

amongst other things, philosophical belief. The factual basis of the allegations has yet to be explored in evidence.

2. Mr Lisk articulates the belief relied upon as being that,

'we should pay our respects to those who have given their lives for us by wearing a poppy from All Souls' Day on 2 November to Remembrance Sunday'

or that it is necessary to show respect to those who gave their lives by wearing a poppy.

3. I have heard from Mr Lisk in evidence where he confirmed the truth of the witness statement that he prepared, which was signed on 20 July. In it he claims that on 2nd November 2010 he was denied his right to wear a poppy at work during remembrance week. I have heard submissions on his behalf from Mr Smith and also from Mr Jameson on behalf of the respondent.

4. Mr Lisk says in his statement, in addition to the explanation of the belief that I have just poppy is outlined, that traditionally the worn from All Souls to Remembrance Sunday but that it can, as a matter of choice, be worn all year. Mr Lisk presents as a serious-minded and sincere individual and I have no reason to doubt that he does believe he is entitled to wear a poppy and takes the wearing of that emblem very seriously. The question, for me, is whether this asserted belief is capable of amounting to a belief within the meaning of the Equality Act 2010, where belief means any religious or philosophical belief.

5. I have been taken to the case of Grainger plc v Nicholson [2010] IRLR 4 (EAT), Mr Justice Burton presiding. That was the case in which Mr Nicholson asserted discrimination on grounds of his belief in man-made climate change. This belief had been recorded by the employment judge, as is set out in paragraph 3 of the judgment of Mr Justice Burton,

'I have a strongly-held philosophical belief about climate change and the environment. I believe we must urgently cut carbon emissions to avoid catastrophic climate change.

It is not merely an opinion but a philosophical belief which affects how I live my life, including my choice of home, how I travel, what I buy, what I eat and drink, what I do with my waste and my hopes and my fears.'

This quotation is taken from Mr Nicholson's witness statement and he goes on in it to give examples of how his belief has affected his day-to-day life.

6. I take particular note of paragraph 24 of the judgment of Mr Justice Burton where he says as follows:

'I do not doubt at all that there must be some limit placed upon the definition of philosophical belief for the purposes of the [then] regulations [...] I shall

endeavour to set out the limitations or criteria which are to be implied or introduced by reference to the jurisprudence set out above:

- (i) the belief must be genuinely held;
- (ii) it must be a belief and not, as in McClintock v Department of Constitutional Affairs [2008] IRLR 29, an opinion or viewpoint based on the present state of information available;
- (iii) it must be a belief as to a weighty and substantial aspect of human life and behaviour;
- (iv) it must attain a certain level of cogency, seriousness, cohesion and importance;
- (v) it must be worthy of respect in the democratic society and be not incompatible with human dignity and not conflict the fundamental rights of others'.

7. The reference there to the case of McClintock v Department of Constitutional Affairs [2008] IRLR 29 is to a case that is dealt with in paragraph 16 (amongst others) of the same judgment. In it a Justice of the Peace member of a family panel declined to officiate in cases where he might have to decide whether same sex partners should adopt children. The conclusions in that case included that, to constitute a belief, there must be a religious or philosophical viewpoint in which one actually believes: it is not enough to have an opinion based on some real or perceived logic or based on information or lack of information available.
8. Whilst I do not draw particularly close analogies from the two factual cases mentioned above, the principles are undoubtedly of application. Mr Lisk's belief is clearly not a religious belief; the question is, whether it is capable of amounting to a philosophical belief. Mrs Smith, in her skeleton argument, argues in respect of those various criteria first, that the wearing of the poppy is nationally recognised and the claimant evidently wore this from All Souls Day. I pause there to say that, from the evidence given to me today by Mr Lisk, there is no obvious reason to doubt the genuine nature of his belief but that would seem to me to be a matter for a final hearing. Mrs Smith goes on to say next that there was no discussion with anyone about the wearing of the poppy prior to wearing it, the claimant did not know what the scale of reaction would be. He had worn the poppy every year, wearing it on days other than during the remembrance period. She goes on to argue, in respect of criteria (iii) (that the belief be a weighty and substantial aspect of human life) that the claimant regarded that time as a period of mourning and remembrance and equates it to the seriousness with which he, as a Christian, observes the season of Lent. Being an ex-serviceman, he considers that he has an obligation to show respect for the sacrifice of others.
9. In respect of limitation (iv), that the belief must attain a certain level of cogency, seriousness, cohesion and importance, Mrs Smith argues that the wearing of the poppy is widespread in this country and abroad. She then, on the question of the belief being worthy of respect in a democratic society and not being incompatible with human dignity, argues that wearing the poppy does not conflict with anybody's rights, certainly not at the claimant's place of work, at the time of the alleged incident.

10. It is not a question of whether Mr Lisk's actions lacked seriousness, but a question of the nature of the belief underpinning his wearing of the poppy. It is not simply a question of whether somebody's choice to wear a poppy is a choice that should be respected but whether, underpinning that choice, there is a belief that is capable of being regarded as a philosophical belief. Comparing Mr Lisk's articulated belief with the belief of Mr Nicholson in the case of Grainger plc v Nicholson, the belief that one should wear a poppy to show respect to servicemen, however admirable, cannot in my view be characterised as a philosophical belief. It seems to me to lack the characteristics of cogency, cohesion and importance that were required in the case of Grainger plc v Nicholson. In my view, it cannot fairly be described as being a belief as to a weighty and substantial aspect of human life and behaviour. I would rather characterise it as a belief that we should express support for the sacrifice of others and not as a belief in itself. That seems to me to be too 'narrow' to be characterised as a philosophical belief.

11. As a consequence of that decision, the complaints of direct discrimination and harassment on the protected ground of philosophical belief are dismissed. The complaint of victimisation is dismissed insofar as the protected act relied on under s.27 of the Equality Act 2010 is an allegation that a person has contravened the Equality Act 2010 by committing an act of direct discrimination or harassment on grounds of philosophical belief.

CASE MANAGEMENT DISCUSSION SUMMARY

1 Particulars of complaint

By 5 October 2011 the claimant has to write to the tribunal and to the respondent in order to:

- 1.1 Particularise his claim of age discrimination, harassment and victimisation, setting out whether he is claiming of direct or indirect age discrimination;
- 1.2 If he alleges direct discrimination, then the claimant is to particularise what incidents are alleged to amount to direct discrimination, identifying the approximate date of any act or omission he complains of, the substance of the allegation and the identifies of any persons involved, identifying any comparators relied on;
- 1.3 If he alleges indirect discrimination, then the claimant is to identify the provision, criterion or practice relied upon and the disadvantage which he claims he suffered.
- 1.4 Particularise the way in which the case is put against the named respondents.
- 1.5 Particularise which incidents are relied upon in support of the complaint of harassment.

- 1.6 Identify the protected act which is relied upon in respect of the claim of victimisation and particularise the incidents which are alleged to have been acts of victimisation.

2. Listing the Hearing

2.1 The judge and the representatives agreed that the hearing of this claim would be completed within 5 days. It has been listed at Watford Employment Tribunal, Radius House, 51 Clarendon Road, Watford, Hertfordshire WD17 1HU to start at 10am or so soon thereafter as possible on **6 August 2012** to finish on **10 August 2012**. The hearing may go shorter, but this estimate is based on the claimant's present uncertainty as to the number of witnesses, other than himself, he intends to call and the respondent's stated intention to call between seven and eight witnesses. The time will be used as follows:-

- (i) Maximum three and a half days for oral and other evidence on liability;
- (ii) A total of half a day (half of that time each) for submissions on liability;
- (iii) Approximately half a day for the tribunal to determine the issues which it has to decide and reach its conclusions;
- (iv) One hour for the tribunal to give judgment, with reasons if possible;
- (v) Two hours for the tribunal determine issues relevant to remedy and to reach its conclusions in respect thereof, if the claimant succeeds in whole or part.

3. The claims

3.1 By a claim form presented on 25 March 2011, the claimant made claims of unfair dismissal, discrimination on the grounds of philosophical belief, age discrimination, breach of contract, unlawful deduction of wages, redundancy payment, wrongful dismissal. Also, in the body of the ET1, it is alleged that there were acts of detriment, harassment and victimisation on the grounds of age, philosophical belief and unfair dismissal. The allegations arise out of an incident that the claimant says took place on 2 November 2010 while he was working for the respondent and exchanges and communications between the claimant and the respondent from that date until his dismissal on 5 January 2011.

3.2 The Respondent defends the claims.

4. The issues

It is now definitively recorded that the issues between the parties which will fall to be determined by the Tribunal, subject to the claimant further particularising his claim as ordered above, are as follows.

- 4.1 What was the reason for the claimant's dismissal? The respondent contends the dismissal was for some other substantial reason within the meaning of section 98(1)(b) of the Employment Rights Act 1996 in that there was a lack of work for the claimant to carry out.
- 4.2 Alternatively, was there a redundancy situation and is the claimant entitled to a redundancy payment?
- 4.3 Was the claimant unfairly dismissed? The claimant argues that the dismissal was an act of discrimination. Alternatively, he argues that there was not, in fact, a lack of work. Further, he says that there was a failure to follow procedure with regards to laying off workers or introducing short-term working which would have avoided his dismissal.
- 4.4 In the further alternative the claimant alleges that the dismissal was not for the reason alleged but was in response to a grievance raised by him.
- 4.5 Whether the respondent is in breach of contract by failing to pay the claimant the notice to which he is entitled.
- 4.6 Whether the claimant was wrongfully dismissed.
- 4.7 Whether there has been an unlawful deduction from the claimant's wages.

5. Remedy

- 5.1 If the claimant succeeds in whole or part, the tribunal will be concerned with issues of remedy. The claimant seeks compensation.

6. Other matters

- 6.1 The judge made the following case management orders.

CASE MANAGEMENT ORDERS

Made pursuant to the Employment Tribunal Rules 2004

1 Disclosure of documents

- 1.1 It is ordered that the parties will give mutual disclosure of documents relevant to the issues identified above by list and copy documents so as to arrive on or before **12 December 2011**. This includes, from the claimant, documents relevant to remedy.

- 1.2 This order is made on the standard civil procedure rules basis which requires the parties to disclose all documents relevant to the issues which are in their possession, custody or control, whether they assist the party who produces them, the other party or appear neutral.

2 Schedule of loss

It is ordered that the claimant provide to the respondent, so as to arrive on or before **14 November 2011**, a properly itemised schedule of loss.

3 Bundle of documents

- 3.1 It is ordered that the respondent, which has most of the originals, has primary responsibility for the creation of the single joint bundle of documents required for the Hearing.

- 3.2 To this end, the claimant is ordered to notify the respondent on or before **9 January 2012** of the documents to be included in the bundle at his request. These must be documents to which he intends to refer, either by evidence in chief or by cross-examining the respondent's witnesses, during the course of the Hearing.

- 3.3 The respondent is ordered to provide to the claimant a full, indexed, paginated bundle on or before **23 January 2011**.

- 3.4 The respondent is ordered to bring sufficient copies (at least five) to the tribunal for use at the Hearing, on the morning of the Hearing.

4 Witness statements

- 4.1 It is ordered that oral evidence in chief will be given by reference to typed witness statements from parties and witnesses. The witness statements must be full, but not repetitive. They must set out all the facts about which a witness intends to tell the tribunal, relevant to the issues identified in these orders. They must not include generalisations, argument, hypothesis or irrelevant material.

- 4.2 The facts must be set out in numbered paragraphs on numbered pages, in chronological order.

- 4.3 If a witness intends to refer to a document, the page number in the bundle must be set out next to the reference to the relevant document.

- 4.4 It is ordered that witness statements are exchanged so as to arrive on or before **27 February 2012**.

5 Other matters

- 5.1 The respondent is ordered to prepare a cast list, for use at the commencement of the hearing. It must list, in alphabetical order of

surname, the full name and job title of all the people from whom or about whom the tribunal is likely to hear.

- 5.2 The claimant is ordered to prepare a short, neutral chronology for use at the hearing.
- 5.3 These documents should be agreed if possible.

CONSEQUENCES OF NON-COMPLIANCE

- 1 Failure to comply with an order for disclosure may result on summary conviction in a fine of up to £1,000 being imposed upon a person in default under section 7(4) of the Employment Tribunals Act 1996.
- 2 The tribunal may also make a further order (an "unless order") providing that unless it is complied with, the claim or, as the case may be, the response shall be struck out on the date of non-compliance without further consideration of the proceedings or the need to give notice under rule 19 or hold a pre-hearing review or a Hearing.
- 3 An order may be varied or revoked upon application by a person affected by the order or by a judge on his/her own initiative.

J. George

Employment Judge George

Sent to the parties on:

..... 27 September 2011

[Signature]

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For the Secretary to the Tribunals