



Newsletter – November 2009

Heat of the globe! Cold of the grave! Two landmark discrimination decisions on green issues and ghosts.

We are devoting more space than usual to a news item. It has very important implications. On that all the disputing parties are agreed.

Previous claims based upon the Employment Equality (Religion or Belief) Regulations 2003 have focused on the theological tenets of faith and associated protocols with a particular religion. New ground is now being broken with two very different but ironically quite similar cases in that they take us in two opposite directions - science and the afterlife. The Regulations define "belief" as "any religious or philosophical belief". Is this belief about something in this life e.g. climate change? Is this belief also about something in the next world e.g. ghosts? The courts have just answered on both. Yes!

Belief based on science can be entitled to legal protection – Grainger plc v Mr Tim Nicholson

A landmark appeal ruling from the Employment Appeal Tribunal now means that a "green campaigner" will be able to pursue his discrimination claim against his former bosses based upon his asserted concern for the environment to which, he says, they had displayed "*contempt*", making him redundant.

Grainger plc had appealed a decision by an employment tribunal that their former employee, a Mr Tim Nicholson, was entitled to pursue a claim in court against them based on his genuine philosophical belief that "mankind is heading towards catastrophic climate change". He asserts he has a "moral duty to lead his life in a manner that mitigated that catastrophic impact for the benefit of future generations." This moral duty included his employment arrangements. Employed as the company's Head of Sustainability, Mr Nicholson was made redundant earlier this year by Grainger's. He says this was because of his genuine beliefs in environmental change. He has produced a file of evidence which a court will now be able to consider. This file includes information such as:-

- That he had tried to set up a carbon management system for Grainger's but was unable to work out its carbon footprint because staff had refused to give him the necessary data;
- The Chief Executive of Grainger's showing "contempt" for Mr Nicholson's concerns. Mr Nicholson will claim in court that the Chief Executive also once flew a member of staff to Ireland to deliver his Blackberry which he had left in London. This is indicative, he says, of the contempt for carbon footprint concerns and other associated concepts around global warming.

In making their decision, the Employment Appeal Tribunal identified three main issues at the centre of what the tabloid press are now calling this "green" claim from the "eco" man.

The three issues were:-



- How far, if at all, does Mr Nicholson’s belief qualify for protection under the equality regulations in the sense of being similar to a religious belief?
- What, if any, limits should be placed upon the words “philosophical belief” which are distinctly used in the equality regulations?
- Is the European Convention of Human Rights of relevance in determining these limitations under the regulations?

The court held that limitations should be placed upon the words “philosophical belief” and in defining these limits turned to judgements from the European Court of Human Rights. Drawing upon these European authorities, the UK court laid down seven limitations about the definition of “philosophical belief”. These were:-

1. The belief had to be genuinely held
2. It must be a belief and not an opinion or viewpoint
3. It must be a belief about a “weighty and substantial” aspect of human life or behaviour
4. It must have “attained a certain level of cogency, seriousness and cohesion”
5. It had to be worthy of respect in a democratic society
6. It must not be a belief that was incompatible with human dignity
7. It must not conflict with the fundamental rights of others

Applying these seven limitations to Mr Nicholson’s case, Mr Justice Burton said there was no reason to disqualify his claim from protection under the regulations and therefore his case could and should be heard. It will now go back to an Employment Tribunal where Mr Nicholson says he will present evidence addressing all of the seven points listed above. The tribunal will have to decide if Mr Nicholson’s treatment by his former employer was based on the grounds of his belief and look at evidence to test the “genuineness” of that belief. This will be a fascinating case to watch and will have massive implications whichever way it is finally decided.

And in one of those ironic twists of fate – or faith – another case which will test the same regulations from another perspective is also about to run.

Psychics who contact people after death can claim this to be part of a religion.

Mr Alan Power v Greater Manchester Police

Scientists and psychics are not often found to be under the same umbrella. But the discrimination case of a sacked 62 year old civilian worker for Greater Manchester Police has some eerie parallels with Mr Nicholson’s claim. Mr Alan Power who trained special constables claims that since childhood he has been able to see “ghosts” and has been a member of a spiritualist church for 30 years. Mr Power will claim in court that his declared views to colleagues not only in Manchester but with others in neighbouring forces were “treated with contempt” and he was sacked. He alleges that his references to his psychic work in crime solving techniques with Manchester and other



constabularies lies at the heart of his dismissal. At another Employment Appeal Tribunal in London, Mr Justice Clark said that the seven limitations also applied in Mr Power's claim. These included the facts that:-

- Mr Power's belief that there is life after death is worthy of respect in a democratic society
- The views of spiritualists have "cogency, seriousness and importance."
- Mr Power genuinely believes in his tenets of faith

This case will now go for decision before a new Employment Tribunal at the end of November. And like Mr Nicholson's claim, will have far reaching implications. Indeed the Greater Manchester Police Barrister alluded to this when he said:-

"This ruling will open the floodgates to similar claims. Mr Power's claim is frivolous and unconvincing"

Volunteers not covered by Disability Discrimination Act (DDA)

An Employment Appeal Tribunal has made an important decision about the application of disability discrimination law to volunteers.

The claimant, an unpaid specialist adviser for welfare rights at the Citizens Advice Bureau (CAB) working under a volunteer agreement, had lodged a claim against the CAB claiming disability discrimination. Her claim was dismissed by the Employment Tribunal and she appealed to the Employment Appeal Tribunal. She argued that, based on the Employment Framework Directive, and its inclusion of 'occupation', the DDA should be interpreted to include her situation on the basis that her volunteering was an 'occupation'. She was an HIV-infected volunteer. She alleges that she was discriminated against, contrary to the DDA, because of her HIV status.

The European legal concept of employment is well established and refers to someone working under a contract – usually an employee or someone who is self-employed. As well as applying to employment, the European Framework Directive and other European anti-discrimination legislation refer to occupation in a number of contexts. However, the scope of the concept of occupation had not previously been tested.

Mr Justice Burton disagreed with her arguments, ruling that the Framework Directive could not be said to require that the DDA protection be afforded to voluntary workers who were not otherwise workers for the purposes of the Act, and that the Government was not in breach of the Framework Directive in this regard. Legal experts have commented on the decision:-

"This ruling provides welcome clarity on the rights of volunteers who would not otherwise be covered by anti-discrimination legislation. It is estimated that 1.17 billion volunteer hours are put in each year by British people, often working for organisations that have little to no financial resources. Had this case succeeded it would have had major implications for voluntary organisations – particularly as the Access to Work scheme, which funds many reasonable adjustments made by employers, does not presently extend to volunteering."



Voluntary workers who have in effect a contract for or of service will remain protected by discrimination legislation. This ruling simply clarifies that volunteers do not otherwise enjoy the enhanced rights of the employed or self-employed. However, Volunteering England, disturbed by this case and others like it, has launched a nationwide wide enquiry into the rights and responsibilities of volunteers. The UK enquiry begins on 18th November and will report early next year.

New Right to Train becomes law

In previous editions and on our training courses we have referred to this new law as it was making its progress through Parliament. It has now become law and lays down very clear rights for any employee to exercise a right to apply for training. As with all applications to employers, e.g. those linked to work-life balance, the employer will now be required to “carefully consider” each and every request. The employer’s response must be objective. If the employer refuses such a request, then he or she must do so on grounds that are “reasonable, practical and proportionate”.

Parliament has laid down some guidance within the new law – the Apprenticeships, Skills, Children and Learning Act – about grounds for an objective refusal. We have produced a free information sheet on this guidance. Send for a copy or details of our training courses covering this and other modern employment rights within the changing world of work; just e-mail info@impact-training-consultancy.co.uk.

Female Beefeater harassed at the Tower

Three Tower of London Beefeaters have been suspended for allegedly harassing the Tower’s first female Beefeater. Two of the employees in question have been suspended. Moira Cameron became the Tower of London’s first female Yeoman Warder, or Beefeater, two years ago. She has cited a number of detriments including having false information about her published online, having her uniform defaced and receiving unpleasant notes.

Yeoman Warders began guarding the Tower in 1485 and today there are 35 Yeomen Warders and one Chief Warder. All warders are retired from the Armed Forces and must be former senior non-commissioned officers with at least 22 years of service. They must also hold the Long Service and Good Conduct medal. Cameron qualified to become a Beefeater in 2007 but said that some people were against her taking up the role. A spokesperson for the charity that runs the Tower, said:

“We take such allegations very seriously and our formal harassment policy makes it clear that this is totally unacceptable. We believe everyone is entitled to work in an environment free from any form of harassment, a principle that we expect all our staff to value and uphold.”