



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4113761/2021

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Held in Glasgow on 12 and 13 May 2022

Employment Judge Frances Eccles
Members Mr I Ashraf and Ms L Hutchison

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Mr Przemyslaw Deren

**Claimant
In Person**

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Professional Beauty Systems Ltd

**Respondent
Represented by:
Ms A Stobart -
Counsel**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal is that the claimant was not indirectly discriminated against by the respondent in relation to his religion.

REASONS

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BACKGROUND

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1. The claim was presented on 20 December 2021. The claimant claimed discrimination on grounds of his religion and unauthorised deduction from wages. The claim was resisted. In their response, submitted on 19 January 2022, the respondent denied that any wages were due to the claimant. They reserved their position in response to any claim of discrimination on the grounds that there were no particulars of claim to which to respond. At a preliminary hearing held on 17 February 2021 the claimant confirmed that he was claiming indirect religious discrimination based on his Slavic religion. The provision, criterion or practice (PCP) applied by the respondent was identified as *“requiring the claimant on occasion during his working day to wear a face*

covering.” The claimant was directed to identify the particular disadvantage to which he was put by the PCP.

2. The claimant provided the respondent with additional information on 17 March 2022 (P39-43) which included information about his religious belief and the
5 *“hurt”* to him of *“worsening depression”* caused by wearing a face covering. The claimant provided the respondent with further additional information about his religious belief on 27 March 2022 (P46-47). The respondent did not accept that the claimant had identified the particular disadvantage to which he was put by the PCP. The Tribunal issued an Order dated 5 April 2022
10 (P48-50) requiring the claimant to provide this information. On 12 April 2022, the claimant provided the respondent with documents upon which he intended to rely (P80-87). On 14 April 2022, the respondent applied for strike out of the claim. It was considered appropriate to continue consideration of the application to the final hearing to allow parties the opportunity to make oral
15 representations. The application for strike out was subsequently withdrawn by the respondent.
3. At the final hearing, the claimant represented himself. He gave evidence. The respondent was represented by Ms A Stobart, Counsel. Ms Elaine Ainsworth, HR Advisor and Mr Paul Lindsay, Site Manager gave evidence for the
20 respondent. The Tribunal was provided with a Joint Bundle to which the claimant added a statement (P138- 140). The respondent had prepared a statement of facts with which, apart from facts 6, 13, 36 and 50 to 54, the claimant agreed.
4. At the start of the final hearing, the claimant confirmed that he was no longer
25 claiming unauthorised deduction from wages. This part of the claim was withdrawn.
5. Ms Stobart made oral submissions for the respondent at the close of evidence. The Tribunal was referred to ***Eweida & others v United Kingdom 2013 IRLR 231, EctHR*** and ***Mba v London Borough of Merton 2014 ICR 357, CA***. The claimant was granted an application to make his submissions
30 in writing.

FINIDINGS IN FACT

6. The Tribunal found the following material facts to be admitted or proved; the claimant is of Polish origin and follows the Slavic religion. The basic principles of the claimant's religious belief are *"living with love and harmony of nature; do not hurt and do not let others and yourself be hurt"* (P40). The claimant believes that he has responsibility for his own health and should avoid situations that are harmful to him. (P138- 140). The claimant has strong views about having to wear face coverings. He is opposed to government interference in his life generally and is sceptical about the efficacy of face coverings in preventing the spread of covid 19. He believes in workplace democracy.
7. The claimant was employed by the respondent from 6 July 2016 to 24 August 2021. The respondent manufactures health and beauty products. The claimant was employed by the respondent as a Water Treatment Operative. He was based in the respondent's treatment plant where he spent the majority (approximately 90%) of his time while at work. The treatment plant is very well ventilated. The claimant worked alone. The respondent's manufacturing process involves the use of chemicals as a result of which employees are required to wear protective eyewear. The respondent provided the claimant with prescription safety glasses.
8. From 29 June 2020 the respondent notified employees (P88) of changes to their Safety Support & Social Distancing Policy ("Policy") (P89 – 114). The changes were in response to Scottish Government guidelines on the covid pandemic. They were introduced by the respondent to protect the health and safety of all employees. Wearing visors became mandatory in all areas of the respondent's workplace apart from the office area. The claimant wore a visor at work in accordance with the respondent's Policy.
9. On 9 October 2020 (P115) the respondent informed employees that in response to Scottish Government guidelines on the covid pandemic, face coverings would be mandatory in communal areas of the workplace with effect from 6pm that day. The claimant was required to wear a mask and visor at

work from 9 October 2020. The claimant found wearing a mask and visor uncomfortable and claustrophobic. The claimant was struggling with his mental health. He consulted a cognitive behavioural therapist (CBT) in October 2020. The claimant's health did not improve. He decided that to protect his health he should seek an exemption from having to wear a face covering at work.

10. On or around 9 April 2021 the claimant spoke to Mr Paul Lindsay, the respondent's Site Manager. He provided Mr Lindsay with a letter from a CBT therapist (P116) dated 10 April 2021 confirming that the claimant had contacted them in October 2020 *"to work on anxiety and depression related issues"*. Mr Lindsay informed the claimant that he would no longer have to wear a visor or mask in the treatment plant. He was satisfied that the claimant should be allowed an exemption from wearing a face covering in the treatment plant on health grounds. A number of other employees had obtained similar exemptions. Mr Lindsay informed the claimant that he was still required to wear a visor in communal areas outside the treatment plant.

11. On 27 April 2021, the claimant attended a talk for employees concerning site hygiene that included information about the requirement for extra hygiene measures due to covid 19. The extra measures included the requirement to wear visors and face masks in work areas and corridors (P117). The claimant reluctantly agreed to the additional measures. His exemption from wearing face coverings in the treatment plant remained in place. On an occasion when he was offered a lift home by a colleague because his bicycle was broken, the claimant wore a face mask. This was in compliance with the respondent's car sharing policy (P129).

12. On 24 August 2021, the claimant was in a communal area. He was not wearing a visor. He was challenged by a Manager about not wearing a visor. Paul Lindsay was in an adjacent office. He heard raised voices. He approached the claimant and reminded him that he should be wearing a visor. The claimant responded that he was a *"free man"* and would not be bound by the rules of the country. The claimant collected his bicycle and left the respondent's premises. He did not return to work. On 8 September 2021 (P66)

the claimant requested his P45 from the respondent. The claimant has not obtained alternative employment since leaving the respondent's employment,

NOTES ON EVIDENCE

13. The claimant could not recall saying that he was a "*free man*" and did not have to comply with the law of the land when leaving the respondent's premises on 24 August 2021. He accepted that it was something that he might say. The remarks were consistent with his opposition to government interference in his life. Mr Lindsay's evidence that he heard the claimant make the above remarks was persuasive, The remarks stood out to him as something that he had not heard before and that he would not easily forget. On balance, the Tribunal was satisfied that the claimant did make them. The claimant questioned the credibility of the respondent's witnesses in relation to their evidence about him wearing a face mask during a lift home from work. The claimant did not deny having accepted a lift on condition that he wore a face mask. He could not recall the occasion. Mr Lindsay's evidence was clear that he gave the claimant's work colleague permission to give the claimant a lift home because his bicycle was broken. He recalled granting permission on the understanding that face masks would be worn during the car journey. His evidence was persuasive and on balance the Tribunal accepted it.

ISSUES

14. The issues to be determined by the Tribunal in relation to liability were identified as follows;
- (i) Did the respondent have a PCP requiring the claimant on occasion during the working day to wear a face covering?
 - (ii) Did the respondent apply the PCP to the claimant?
 - (iii) Did the respondent apply the PCP to everyone?
 - (iv) Did the PCP put persons with whom the claimant shares his religion at a particular disadvantage when compared with persons with whom the claimant does not share his religion?

- (v) Did the PCP put the claimant at that disadvantage? and
- (vi) If so, was the PCP a proportionate means of achieving a legitimate aim?

If appropriate, the issues in relation to remedy were identified as follows;

- 5 (vii) Has the claimant taken reasonable steps to replace lost earnings, for example looking for another job?
- (viii) If not, for what period of loss should the claimant be compensated?
- 10 (ix) What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that? and
- (x) Should interest be awarded? If so, how much?

15 15. It was not in dispute that the respondent had a PCP in terms of which employees including the claimant were required to wear a visor from June 2020 and a visor and a face mask from October 2020. From the evidence before it, the Tribunal found that from on or about 10 April 2021 the claimant was exempt from wearing a face mask and that the requirement for him to wear a visor was limited to communal areas.

20 16. It was the claimant's position that as face coverings adversely affected his mental health and therefore caused him harm, it was contrary to his religious belief to continue wearing them. The claimant submitted that having to wear a face covering was *"a form of enslaving the individual and subordinating him to the imposed law"*.

25 17. The respondent did not accept that the PCP caused either group disadvantage or the claimant disadvantage as a follower of Slavic religion. If they were wrong about this, it was the respondent's position that requiring the claimant to wear face coverings was a proportionate means of achieving the legitimate aim of complying with government guidelines to protect employees against the spread of covid 19.

DISCUSSION & DELIBERATIONS

18. Article 9 of the European Convention on Human Rights provides that;

5 1. *Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.*

10 2. *Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.*

15 19. Under the Equality Act 2010 it is unlawful for an employer to discriminate against an employee in relation to their religion or belief. It is the claimant's position that he was indirectly discriminated against by the respondent. Section 19 of the Equality Act 2010 provides that:

20 (1) *A person ((A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a protected characteristic of B's.*

(2) *For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if*

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25 (a) *A applies, or would apply, it to persons with whom B does not share the characteristic;*

(b) *it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,*

(c) *it puts, or would put, B at that disadvantage and*

(d) *A cannot show it to be a proportionate means of achieving a legitimate aim.*

20. In terms of subsection 19(3) of the Equality Act 2010, religion or belief is identified as a relevant protected characteristic.

5 21. Section 136 of the Equality Act 2010 requires the claimant to show 'prima facie evidence' from which the Tribunal could conclude, in the absence of any other explanation, that an employer has committed an act of discrimination. Section 136(2) and (3) provide that;

10 (2) *If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provisions concerned, the court must hold that the contravention occurred.*

(3) *But subsection (2) does not apply if A shows that A did not contravene the provision.*

15 22. In this case, the claimant was unable to persuade the Tribunal that having to wear a face covering at work was discriminatory in relation to his religion. There was no persuasive evidence before the Tribunal that having to wear a face covering at work put people who are followers of Slavic religion at a particular disadvantage when compared with people who are not followers of Slavic religion.

20 23. The claimant felt uncomfortable and claustrophobic wearing a face covering but the Tribunal was not persuaded that there was a sufficient connection between this and his religious belief to establish indirect discrimination. The claimant had strong views about being required to wear a face covering. He was sceptical about their efficacy in preventing the spread of covid 19. He was opposed to government interference in his life. From the evidence before
25 it, the Tribunal was not persuaded that these were beliefs derived from Slavic religion either generally or in terms of the claimant's manifestation of his religion.

30 24. The claimant was not denied the right to take steps to protect his health in relation to wearing a face covering. Along with other employees of the

respondent he obtained an exemption on health grounds from wearing any face covering in all but communal areas.

25. If the Tribunal is wrong and the respondent's PCP did have a disproportionately adverse effect on the claimant relating to his religion, the Tribunal was
5 satisfied that requiring the claimant to wear a visor in communal areas was objectively justified.

26. The respondent required employees to wear face coverings to comply with government guidelines introduced to protect the health and safety of employees in the workplace during the covid pandemic. The Tribunal was
10 satisfied that this was a legitimate aim. The Tribunal was also satisfied that in relation to requiring the claimant to wear face coverings the respondent acted proportionately in seeking to achieve the above aim. When the claimant informed the respondent that he had anxiety and depression in April 2021 they agreed to him only having to wear a visor in communal areas of the
15 workplace. As the claimant spent most of his time working in the treatment plant this required him to wear a visor on limited occasions during the working day. The Tribunal was satisfied that in all the circumstances requiring the claimant to wear a visor in communal areas was appropriate and necessary to comply with government guidelines in relation to the health and safety of
20 employees during covid 19.

Employment Judge: Frances Eccles
Date of Judgment: 13 June 2022
Entered in register: 14 June 2022
25 and copied to parties