

EMPLOYMENT APPEAL TRIBUNAL
FLEETBANK HOUSE, 2-6 SALISBURY SQUARE, LONDON EC4Y 8AE

At the Tribunal
On 15 December 2016

Before

THE HONOURABLE MRS JUSTICE SIMLER DBE (PRESIDENT)

(SITTING ALONE)

MR F GAREDDU

APPELLANT

LONDON UNDERGROUND LIMITED

RESPONDENT

Transcript of Proceedings

JUDGMENT

APPEARANCES

For the Appellant

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SUMMARY

RELIGION OR BELIEF DISCRIMINATION

While it was common ground (and accepted by the Employment Tribunal) that attendance at festivals in Sardinia could be a genuine manifestation of religion or religious belief, there was no error of principle or perversity in the Employment Tribunal's conclusion that the Claimant was not genuine in asserting that he required a five week period over the summer off work, in order to attend religious festivals with his family, as a manifestation of his religion or belief.

A **THE HONOURABLE MRS JUSTICE SIMLER DBE (PRESIDENT)**

B **Introduction**

C 1. The Appellant, whom I shall refer to as the Claimant for ease of reference, is a
D practising Roman Catholic from Sardinia in Italy. He lives in the UK with his wife and family,
E but each August he and his two brothers return to the area of Sardinia where their mother
F continues to live in order to be together and to attend religious festivals. He commenced
G employment with the Respondent on 2 July 1990 and remains employed as a Quality Engineer.
H He is entitled to 38 days' holiday per year (including Bank Holidays) and between 2009 and
2013 the Respondent permitted him to take five consecutive weeks of annual leave in the
summer during which he returned to Sardinia. In March 2013 a new manager, Mr Cross, told
him that for the next year he would not be permitted to take five weeks' continuous leave and
that it was unlikely that he would be granted more than 15 continuous working days of leave
during the summer school holiday period. Although in fact ultimately pre-existing
arrangements he had made for a five-week holiday in 2014 were honoured, his application for
annual leave of five weeks in 2015, from 27 July to 2 September, was refused by the
Respondent.

2. The Claimant's case before the Tribunal was that it is part of his religious belief that in
or around the month of August he attends and participates with his family in ancient religious
festivals held in the region of Sardinia where he was born. He challenged the refusal to permit
him to have more than 15 consecutive days of annual leave in August 2015 and/or to permit
him to work during part of this holiday at home as unlawful indirect religious discrimination
contrary to section 19 of the **Equality Act 2010** ("EqA 2010").

A 3. In a Judgment promulgated on 1 December 2015, following a hearing on 22 and 23
B September 2015 the Employment Tribunal, comprising Employment Judge Charlton with
members Mr Secher and Ms Mitchell, dismissed his claim on the basis that the “asserted
C religious belief requiring attendance at a series of religious festivals during the period 27 July to
2 September” was not made in good faith (paragraph 33). Whilst both the Respondent and the
Tribunal accepted that participation in religious festivals might constitute a manifestation of
religious belief, it was the assertion of a specific five-week period in which to attend a series of
religious festivals that resulted in the Tribunal’s finding.

D 4. The conclusion that the Claimant was not subjected to unlawful indirect discrimination
on the grounds of his religious belief is challenged on four grounds now advanced by Mr
Benjamin Jones of counsel (ground two having been withdrawn). These are as follows:

E (i) The Tribunal failed to apply the proper approach to determining a claim of
indirect discrimination under section 19 **EqA 2010** (read together with Article 9 of
the European Convention on Human Rights and Fundamental Freedoms, “the
Convention”). In particular it failed to make findings as to:

- F** a. the PCP in issue;
- G** b. whether the Respondent applied that PCP to persons with whom
the Claimant did not share the characteristic of being a Sardinian
Catholic;
- H** c. whether participating in numerous religious festivals that occur
during the period around August each year is a typical manifestation of
the religious beliefs of Sardinian Catholics (and therefore whether
Sardinian Catholics would be put at a particular disadvantage as a result
of the PCP);

- A** d. whether the Claimant individually was put at that disadvantage as
a result of the PCP; and
- e. if so, whether such disadvantage was justified as a proportionate
B means of achieving a legitimate aim.
- (ii) It imposed at [33] an unwarranted additional requirement that religion be the
sole or primary motivation for the Claimant’s manifestation in order for it to benefit
from the protection of section 19 **EqA 2010**.
- C** (iii) It considered, at [32] and [33], an irrelevant factor - namely the desire to
worship collectively with his family - in determining whether or not the Claimant
had acted in good faith.
- D** (iv) It adopted, at [18] and further at [32(2)], a perverse construction of the
Claimant’s evidence in chief in finding that he had claimed to attend the same 17
specific events annually, and flowing from this, that he had changed his evidence
E during the course of the hearing.

5. The appeal is resisted by Mr Andrew Allen of counsel who appears on behalf of the
Respondent and submits that the Employment Tribunal was entitled to reach the conclusion it
F did and made no error of law. Neither Mr Jones nor Mr Allen appeared below, but both have
provided me with considerable assistance in resolving the issues on this appeal.

G **The Relevant Law**

6. The **EqA 2010** provides by section 10 that “religion” means any religion and that
“belief” means any religious or philosophical belief. The Strasbourg jurisprudence defining
what is protected by Article 9 of the Convention is relevant by virtue of section 3 of the **Human**
H **Rights Act 1998**, and both the Strasbourg and domestic courts have in a number of cases

A acknowledged the diversity of beliefs held by people both between and within religions, and the
protection afforded to those holding religious or philosophical beliefs is accordingly broad. It is
not necessary for a belief to be shared by others in order for it to be a religious belief, and,
B moreover, beliefs can be individualised and highly subjective but are nevertheless accorded
respect and protection by the law.

7. In **Williamson v Secretary of State for Education & Employment** [2005] UKHL 15
C at paragraph 22, in the context of a consideration of Article 9 of the Convention, the House of
Lords held that in a case where the genuineness of a complainant's professed belief is in issue
in the proceedings it is the function of the court to enquire into and decide this issue as a
D question of fact. Lord Nicholls made clear that this is a limited enquiry, the court being
concerned to ensure that an assertion of religious belief is made in good faith and is "not an
artifice". However, he emphasised that the court does not enquire into the validity of an
E asserted belief or test its validity by reference to objective or other standards.

8. Mr Jones submits that the factual enquiry identified in **Williamson** is limited to the
question of whether or not there is a religious belief. If a belief is established, only then is it
F necessary to determine whether manifestation of that belief is protected, but he submits that the
enquiry in relation to manifestation is a different one and involves consideration of factors such
as consistency with the ideals of a democratic society, compatibility with human dignity,
G seriousness, importance and cogency (frequently described as modest, objective minimum
requirements). Mr Jones may well be right, depending on the facts of a particular case, about
there being an additional stage of enquiry that can be embarked on in relation to manifestation,
H always, of course, bearing in mind the concerns expressed both in **Williamson** and elsewhere
about the appropriateness and the ability of a court to adjudicate on such matters. It seems to

A me, however, that where what is in issue in a particular case is the asserted right to manifest a
particular belief and the genuineness of that assertion is put in issue, a similar factual enquiry
into genuineness can be undertaken. I can see no principled basis for the contrary conclusion.
B In this case, it is common ground that the Tribunal limited its enquiry to the question of
genuineness or good faith and did not embark on an evaluation as to whether the particular
belief or manifestation of it satisfied the modest objective minimum requirements implicit in
Article 9 and identified in the jurisprudence.

C
9. Mr Jones also drew my attention to a passage in Lord Walker’s speech in Williamson at
paragraph 57. In that passage, having quoted from a passage in the judgment of Arden LJ in the
D Court of Appeal in Williamson identifying the modest objective minimum threshold
requirements I have just referred to, Lord Walker continued:

E “... it may be unwise to take a rigidly analytical approach to the application of article 9. But
assuming for the moment that the issue is to be analysed in terms of (i) the existence of a belief,
(ii) its manifestation, (iii) interference with the manifested belief and (iv) justification of the
interference, I doubt whether it is right for the court ... to impose an evaluative filter at the
first stage, especially when religious beliefs are involved. For the court to adjudicate on the
seriousness, cogency and coherence of theological beliefs is ... to take the court beyond its
legitimate role. ...”

F 10. Mr Jones submits that Lord Walker’s reference to doubts about imposing an evaluative
filter at the first stage, supports a conclusion that there is a low threshold or low level of
scrutiny at the factual enquiry stage into the genuineness of the asserted belief. I do not accept
that reading. It seems to me that Lord Walker is not referring to the enquiry identified by Lord
G Nicholls, which is a simple fact finding enquiry to determine genuineness of an asserted
religious belief or asserted manifestation of that belief where that is in issue and involves no
other evaluation. Lord Walker’s reference to doubts about the evaluative filter is a reference to
H an evaluation at the stage of determining whether the genuine belief satisfies the modest
objective minimum requirements of seriousness, cogency and coherence.

A 11. I agree with Mr Jones, however, that the factual enquiry into genuineness or good faith
is necessarily limited, and, given the self evident sensitivities involved in the area of religion
B and belief, I would expect Tribunals to tread warily in embarking on such a fact finding
exercise. However, if genuineness is in issue and if there is evidence to support a finding that a
particular belief or asserted manifestation is not genuine or not made in good faith, then that
fact finding exercise can be undertaken. Simply because a manifestation of belief is asserted
C does not mean that there can be no investigation as to whether that asserted manifestation is true
and genuine.

D 12. Finally, in terms of the Strasbourg jurisprudence, in **Eweida v UK** [2013] IRLR 231 at
paragraph 82 the Strasbourg court dealt with the way in which manifestation is to be tested,
holding that even where the belief in question attains the modest objective minimum
requirements referred to, it cannot be said that every act that is in some way inspired, motivated
E or influenced by it constitutes a manifestation of the belief. Rather, the court held that in order
for it to constitute a manifestation the existence of a:

**“82. ... sufficiently close and direct nexus between the act and the underlying belief must be
determined on the facts of each case. ...”**

F 13. It will be apparent from those references that there is no requirement that a specific
belief or manifestation of the religion be a mandatory requirement of an established religion for
it to qualify as a religious belief; there need only be a sufficiently close and direct nexus
G between the act and the underlying belief.

H 14. So far as section 19 is concerned, section 19 defines indirect discrimination in the
following way:

**“(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 relevant protected characteristic of B’s.**

- A** (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 -
- (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,
 - B** (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.”

C 15. To establish indirect discrimination, a claimant must therefore demonstrate that a neutrally applied PCP operates to the particular disadvantage of him or her and those who share the particular religion or belief he or she holds. It is common ground in this case that what must be established is that persons of the same religion or belief as the claimant suffer or would suffer the particular disadvantage distinct from those who do not hold that religion or belief as a consequence of holding or practising that religion or belief. A claimant must share that particular disadvantage because otherwise he or she could not show he or she was a victim and the provision would not adversely affect him or her. It is not necessary to show that compliance with the PCP is impossible, nor is there any minimum level or threshold of disadvantage that must be met. Rather, it is sufficient to show that it is harder for the claimant and those of the particular religious group to comply in practice so that the requirement puts them at a particular disadvantage in comparison with others.

The Employment Tribunal Decision

G 16. The nub of the Employment Tribunal's Decision is at paragraphs 31 to 33. It is convenient to set these out in full as follows:

H “31. We consider first the nature of Mr Gareddu's religious belief and the nature of its manifestation. He is a Roman Catholic following practices common in Sardinia and the Respondent concedes that participation in religious festivals may constitute a manifestation of a religious belief. That must be right. However, the particular manifestation we are dealing with in this case is the attendance at a series of festivals which occur between 27 July and 2 September or thereabouts each year.

A

32. We take into account:

(1) that Mr Gareddu's attendance at any particular festival is entirely dependent on the views of his family and friends. It is not the case that he invariably attends a series of festivals to the same saints although he initially claimed in evidence-in-chief that he attended the same festivals every year. During the last year he was fit to attend, namely 2013 he attended only nine of the 17 festivals he listed as invariably attended but said that he attended other festivals in addition to those nine. With the possible exception of the Candelieri festival, it is not the case that the same festivals are attended each year during five weeks around August.

B

(2) We take into account also the way the list of festivals crystallised. Mr Gareddu's clear evidence before the Tribunal was that 17 festivals were attended each year. When asked to provide details by his employer initially he did not do so but simply provided a link to an internet site which provided a list of religious and non religious festivals in Sardinia. When pressed he produced a list of 38 festivals that he might attend subject to consultation with family and friends and he produced details of three travel websites. Finally he produced a list of 17 festivals he wished to attend, if, as he initially claimed in evidence, he attended the same festivals every year and these were festivals he had attended since childhood or were in respect of saints to whom he felt an affinity there was no obvious problem in him providing that information straightaway. His initial evidence was to the effect that these 17 festivals were ones he attended every year and that each one was very dear to him and had a deep religious significance. It turned out that this was not correct in that the last year he had been fit enough to attend Mr Gareddu had in fact only attended 9 of the 17 although he said he had attended other festivals instead. This goes to the issue of good faith identified by Mr Watson [for the Claimant below] in his skeleton argument as the issue in domestic law which must be the focus of the Tribunal's enquiry and which was challenged by Ms Sydow [for the Respondent below] in hers.

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(3) That Mr Gareddu regarded family arrangements whereby his extended family gathered in the region of Sardinia where he was born for August as important in his request for a five week period of absence.

E

33. We do not find that an asserted religious belief requiring attendance at a series of religious festivals during the period 27 July to 2 September is made in good faith. We have no doubt that in relation to attendance at particular festivals a claim could be made in good faith but we do not accept that this is the case in relation to a period of five weeks to attend various festivals which clearly vary in number and identity from year to year and which Mr Gareddu initially failed to particularise when given the opportunity to do so by the Respondent. In evidence it became clear that the particulars he eventually provided were not to be taken as indicating that these were religious festivals he attended every year he was fit enough to attend. We appreciate particularising which festivals to be attended was a matter for family consultation. This confirms to us however that Mr Gareddu's motive for wanting that particular lengthy period off work related to the family arrangements rather than his religious beliefs or their manifestation and his claim fails in domestic law."

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17. The Tribunal did not go on to deal with the remaining issues in the case, having found that the claim failed at the first hurdle. That is unfortunate. The case was fully argued, and, as Mr Allen has emphasised, the arguments on justification were particularly strong. It would have been in the parties' interests for the Employment Tribunal to have gone on and dealt with the remaining issues including justification. Be that as it may, the question on this appeal is whether the Tribunal's determination of the issue it did decide was correct and if correct was decisive of the claim.

A 18. Before turning to consider the four individual grounds of appeal advanced by the Claimant, it is important to identify what the Claimant's case was before the Tribunal and, perhaps more importantly, what it was not. In his witness statement at paragraphs 5 and 6 the Claimant said the following:

B **"5. It is part of my religious belief that in or around the month of August I attend and participate with my family in ancient religious festivals held in the region of Sardinia where I was born.**

C **6. On 10 November 2014, I sent an email to my Line Manager, Richard Cross, requesting a period of 27 days [sic] annual leave from 27 July to 02 September 2015 ... This was in order to go to Sardinia ... and attend religious festivals during this time with my family. ..."**

19. Unsurprisingly, in those circumstances, at paragraph 3 the Tribunal identified the Claimant's case as follows:

D **"3. ... Mr Gareddu as [sic] a Roman Catholic and it is his case that his religious belief requires him to return to Sardinia for a period of approximately five weeks around the month of August each year to attend and participate in religious festivals with his family."**

E 20. There is no challenge on this appeal to paragraph 3, which frames the Tribunal's Decision and sets out how the Claimant's case was put, as Mr Jones accepts. That five-week period is an important part of the Claimant's case and was equally, in those circumstances, at the core of the Tribunal's Decision. That is emphasised in the Tribunal's Judgment at paragraphs 7, 9, 10, 15, 18, 23 and 32 to 34. No other period, time of year or other variation was advanced by the Claimant in the alternative as forming any part of his case.

F **G** 21. The case is also not about whether participating in festivals in Sardinia is a typical manifestation of the religious beliefs of Sardinian Catholics. The Tribunal did not find that the asserted belief or manifestation can never be a genuine belief or manifestation. Its finding was simply that in this particular case on the facts found in relation to this Claimant that his **H** assertion that his religious belief required him to return to Sardinia for a period of

A approximately five weeks around the month of August each year to attend and participate in religious festivals with his family was not genuine and not made in good faith.

B **The Appeal**

22. Against that background I turn to consider the grounds. Logically, it seems to me, as Mr Allen submits, the appropriate place to start is with ground four, which is the perversity ground.

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23. Mr Jones submits that the Tribunal's central factual finding that the Claimant's asserted manifestation of belief was not made in good faith and not genuine is perverse. He accepts that there is a high threshold for perversity but submits that threshold is met in this case because the findings made by the Tribunal stemmed from an obviously incorrect or wrong reading of paragraph 20 of the Claimant's witness statement. In his witness statement at paragraph 12 the Claimant explains that following the internal grievance hearing he was asked to provide specific dates and details of the religious festivals he would be attending in the period of five weeks for which he was seeking leave. He duly provided this list. The list of festivals he provided and to which he referred in his witness statement was a list of some 17 or perhaps 18, it matters not, religious festivals that he said he aimed to attend in the period 27 July to 2 September. At the end of the list he made clear that family or other reasons, including health and other factors, might impact on that attendance aim. Mr Jones submits that makes all the difference and should have been borne in mind when construing what the Claimant then said at paragraph 20.

H 24. At paragraph 20 the Claimant referred to that list, saying:

“20. I have provided a list of the series of religious festivals that I attend every year with my family in Sardinia, Italy. Each one of these are [sic] very dear to me and have deep religious significance. ... I attend these festivals due to my religious beliefs. ... I attend because I am

A driven by my religious belief that it is right for me to renew the original vow and take my children there as I desire the vow to perpetuate. Whilst I appreciate that these religious festivals might well not have been known to the Respondent ... the reality is that such festivals have deep religious importance to the faithful, which includes me along with 100,000 others.”

B 25. At paragraph 21 the Claimant said:

“21. The denial of my annual leave request meant that I would not be able to attend the series of religious festivals like I normally would. ...”

C 26. That evidence, given in chief by reference to his signed witness statement, was challenged by the Respondent at the hearing before the Tribunal, and the Claimant was cross-examined on the basis that what he said at paragraph 20 was not true. It is clear that the Employment Tribunal had doubts about the reliability of the Claimant’s evidence, as appears D from paragraph 8. So far as paragraph 20 of his witness statement is concerned, at paragraph 18 the Tribunal made the following findings:

E “18. Mr Gareddu’s response to this was to provide a list of some 17 religious festivals he aimed to attend in the period 27 July to 3 September. In evidence to us he explained that these were festivals he was brought up to attend by his family or they were festivals of saints with whom he had a particular affinity because he felt they had played important roles in his life. In his evidence-in-chief Mr Gareddu said that the list represented religious festivals that he attended every year with his family. In fact when questioned it turned out that the last occasion on which he had attended any festivals was 2013. He had not been able to attend any in 2014 although he was in Sardinia because he had broken his leg and although he was in Sardinia in 2015 he had suffered a second break to his leg and was unable to attend any festivals on that occasion as a result of his doctor indicating it would be unsuitable for him to go out in crowds. The last time he was able to attend festivals therefore was 2013 and on that occasion he told us F that he had attended one day at the festival of St Pantaleo and then the festival St Anthony of Padua on 30 July. He had then attended the festival of Madonna De La Neve on 5 August, the Candeleril festival on 14 August which it was clear had considerable significance for him and his family. He then attended on 15 August the festival of Beata Virgine Assunta. He had also attended the festivals of Santa Barbera, St Sabestiano, St Sabena and St Isidoro which finished on 31 August. This amounts to nine of the 17 festivals identified to his employer and it is clear that he did not attend all these festivals every year although he said in evidence that he would have attended different festivals from those named during 2013. This is very different from the evidence he gave initially to the effect that the list represented the festivals he attended every year and that each one of them was very dear to him and have [sic] a deep G religious significance for him.”

H 27. It is clear to me that the Tribunal read and understood paragraph 20 as the Claimant saying that those festivals listed (17 or 18 in number) were festivals he attends every year with his family in Sardinia; that each one of these is dear to him and has deep religious significance; and that he attends every year for reasons of his religious faith. It seems to me that was a fair

A reading open to the Tribunal in this case. The mere fact that the Claimant made a caveat at the
end of the list in his email to the Respondent as to what might happen in the future does not
alter what he was saying about what had happened in the past. The Tribunal was entitled to
B treat his evidence as an account of what he had done in the past until that date.

C 28. At paragraph 18 it is clear that the Tribunal found that what he said at paragraph 20 was
simply not true. He had not attended any festivals in 2014 and 2015 because although able to
travel to Sardinia his broken leg prevented him from doing so and he acted consistently with
doctor's advice. Moreover, in 2013, when he was fit, he attended only nine of the 17 festivals
identified. The Tribunal accordingly found that the Claimant's evidence in his witness
D statement was not true and not correct. He had not invariably attended a series of festivals to
the same saints each year, nor had he attended the same number of festivals each year, and
indeed in the last year he had been fit to attend he had only attended nine of the 17. Those were
findings that the Tribunal was entitled to make on the evidence it heard. They were a
E permissible option and not arguably perverse in the circumstances. This ground of appeal
accordingly fails.

F 29. I take the next two grounds together because they are interrelated: grounds two and
three. Mr Jones submits that the Tribunal erred by adopting an approach of weighing up the
religious reasons for the Claimant's desire to travel against other, non-religious, reasons for
G doing so, in particular his family reasons. He submits that a mixed motive for religious acts or
manifestations does not detract from their genuineness. The fact that the Claimant wished to
attend certain festivals that would be chosen by his family could not affect the genuineness of
his belief. In the course of argument Mr Jones gave the example of a person who enjoys
H attending church, both because of his religious belief and wish to manifest his belief and

A because he enjoys the choral music when at church and the walk through the countryside to get
there. It could not be said, he submits, that despite those mixed motivations or reasons for
attending church to manifest his religious belief that it would not be a genuine manifestation of
B belief. He submits that by engaging in the level of scrutiny the Tribunal did of the Claimant's
motivation for attending the religious festivals the Tribunal exceeded the limited factual enquiry
permitted of it. The fact that there was a family motivation for attendance at the religious
festivals was simply irrelevant, and it was an error of law to take it into account. Alternatively,
C even if he is wrong about that, he submits that it is obvious that the Tribunal did not just
consider this as a factor in its fact finding exercise but looked for a religious motivation as a
primary motivation in order to determine whether the Claimant was genuine in his assertion.

D

30. I have considered these submissions with care but ultimately do not accept them and can
find nothing in the Decision to suggest that the Tribunal was searching for the Claimant's
primary motivation for attending religious festivals or treated a mixed motivation as a reason
E for finding that the Claimant was not genuine. It seems to me on a fair reading of the
Tribunal's Decision that its enquiry was properly limited to determining whether the particular
manifestation contended for, namely attendance at a series of festivals over a five-week period
F in August, was genuine. Nobody in this case disputed that attendance at festivals in Sardinia
was a manifestation of belief both for this Claimant and for others, and this Tribunal both
accepted that and did not engage in any evaluation of the validity of such a belief or
G manifestation and did not look to family motivations in order to reach an opposite conclusion.
Rather, the Tribunal simply assessed whether or not the asserted requirement to attend the
series of festivals for a five-week period was genuine.

H

A 31. The mere fact that attendance at a single festival is a genuine manifestation of religious
belief does not inevitably mean that attendance for a five-week period to do so is also a genuine
B manifestation. To take the example given by Mr Jones of the person who enjoys church for
mixed reasons and to bring it closer to the facts of this case: if a churchgoing family man asserts
that he requires a whole weekend off work to attend church with his family but in truth only
C attends church on Sunday and goes shopping with his family on Saturday, the fact that his
assertion is partly true (in relation to his Sunday attendance) does not prevent a tribunal from
determining whether his asserted requirement for a whole weekend off work in order to
manifest his religious belief is a genuine one. The question here was whether the assertion that
D the Claimant required a five-week period over August in which to attend a series of festivals
was genuine, and that question was answered in the first sentence of paragraph 33 of the
Tribunal's Decision, where it said:

E **“33. We do not find that an asserted religious belief requiring attendance at a series of
religious festivals during the period 27 July to 2 September is made in good faith. We have no
doubt that in relation to attendance at particular festivals a claim could be made in good faith
but we do not accept that this is the case in relation to a period of five weeks to attend various
festivals ...”**

F 32. In light of the evidence and its findings of fact, the Tribunal found that the true or
genuine reason for wanting a five-week period was not the Claimant's religious beliefs or their
manifestation but was his wish to be with his family. That was not to take into account in
weighing up what his motivations were an irrelevant consideration or to search for a primary
G motivation. That was to make findings of fact based on the evidence as to whether the
Claimant was asserting this specific period as a matter of artifice, or not genuinely or in good
faith; or whether on the other hand, he was doing so genuinely and in good faith. The Tribunal
found against the Claimant on this issue in light of its findings of fact, and it reached a
H conclusion that was permissible in those circumstances.

A 33. Ground three is closely related. It challenges the Tribunal’s Decision on the basis that
the Tribunal improperly relied on the collective, familial aspect of the Claimant’s intended
B participation in religious festivals as a factor militating against his stated planned visits
constituting a manifestation. I entirely accept, as Mr Jones submits, that equality protection for
religious beliefs covers manifestations whether “alone or in community with others” without
C distinction (see Article 9 of the Convention). It would be wrong to draw an adverse inference
from a person’s desire to plan attendance at religious events based around those he could attend
in community with his friends and family. However, I do not consider that a fair reading of this
Judgment indicates that this is what the Tribunal did. There is nothing in the Decision to
D suggest that the Tribunal held against the Claimant, in any sense, his desire to worship
collectively with his family. What the Tribunal did is test the genuineness of his assertion that
he was required to do so over a period of five weeks in August. Whilst, as I have already
indicated, the Tribunal accepted that participation in religious festivals may constitute a
E manifestation and that attendance at particular festivals as a manifestation could be in good
faith, what it did not accept (on the facts of this case) is that this was required to be for a period
of five weeks over August. It was the assertion of the specific five-week period that gave rise
to a question as to the genuineness of the underlying belief or manifestation, and it was this
F aspect that the Tribunal determined was as a result of a desire to be with family and related to
family arrangements and not to any religious beliefs or their manifestation. Grounds two and
three accordingly also fail and are dismissed.

G
H 34. I return then to ground one, which challenges as in error the Tribunal’s failure to apply
the proper approach to determining an indirect discrimination claim by failing to make findings
as to the PCP, particular disadvantage and justification. As I have already intimated, it is
unfortunate that the Tribunal, having made factual findings as it did, did not go on to deal with

A the impact of the PCP, the question of particular disadvantage and, to the extent necessary,
justification. It would have been preferable for it to have done so, particularly as these matters
B were ventilated both in evidence and in argument. Nevertheless, the question on appeal is
whether the failure to do so amounts to an error of law. Mr Jones submits that it does, because
although he accepts that a finding that there was no genuine religious belief could be
determinative of a section 19 **EqA 2010** claim and make it unnecessary to go on to deal with
other elements of such a claim, it is different in a case where a Tribunal finds as a fact that there
C is no genuine manifestation. He submits that here, even if the Tribunal was entitled to make the
findings it did in relation to manifestation, it was nevertheless incumbent on the Tribunal to go
on to determine what he described as the undisputed aspects of the Claimant's belief and the
D extent to which that was impacted on by the PCP found by the Tribunal and, depending upon its
decision on those issues, to deal with justification.

E 35. I cannot see any basis for the distinction Mr Jones seeks to draw between a finding that
there was no genuine religious belief and a finding that there was no genuine manifestation of a
religious belief in the context of this particular case. It was no part of the Claimant's case that
if the Tribunal found against him in relation to the five-week period claim that there were other
F shorter periods for which he contended that had to be addressed. The Claimant's case was clear
as to the length of time he was seeking by way of leave to attend festivals and the period in
which that should occur. In those circumstances, it seems to me that the findings of fact made
G by the Tribunal as to the lack of good faith and genuineness of the asserted manifestation or
belief were decisive of this claim. It was, in those circumstances, not necessary for the Tribunal
to go on and deal with the other aspects under section 19. In any event, even if I am wrong
H about that, and taking the PCP at its highest to be the PCP advanced by the Claimant, I cannot
see that it would have made any difference to the outcome if the Tribunal had gone on to

A address the question of PCP and particular disadvantage. In light of the Tribunal's findings of
fact and conclusion that the reason for the five-week period for attending festivals in Sardinia
was not the Claimant's religious belief or a manifestation of his beliefs, the Claimant could not
B have succeeded in establishing particular disadvantage in circumstances where it is necessary
for the particular disadvantage to flow from holding or practising the religious belief in
question.

C **Conclusion**

36. For all of those reasons, and notwithstanding the clearly argued and forceful
submissions made by Mr Jones on behalf of the Claimant, this appeal fails and is dismissed.

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