



EMPLOYMENT TRIBUNALS ON A PRELIMINARY POINT

Claimant: Dr A Dunn
Respondent: University of Lincoln
Heard at: Lincoln Magistrates Court
On: 19, 21, 22, 26 and 28 November 2018
Before: Employment Judge Blackwell
Members: Mr A Beveridge
Mr W J Dawson

Representation

Claimant: In person
Respondent: Ms R Barratt of Counsel

JUDGMENT having been sent to the parties on 18 December 2018 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

1. These are the reasons pursuant to a Judgment sent to the parties on 18 December 2018 and a request for written reasons from Dr Dunn of 7 January 2019.
2. Dr Dunn represented himself and relied upon his witness statement, a document entitled 'Why I believe that my commitment to Thatcherism entitles me to protection under the 2010 Equality Act' and oral submissions.
3. Ms Barratt represented the Respondent and relied upon oral and written submissions.

REASONS

Introduction

1. Dr Dunn brings a claim of unfair dismissal and direct discrimination in respect of the protected characteristic of religion or belief. Ms Barratt applied on the first morning of the hearing to have the question of whether the belief upon which Dr Dunn relies, namely:

“A belief that challenges the tendency to favour what is palatable in social policy discussion over the truth, in colloquial terms this tendency is known as ‘political correctness’”

Hereinafter called “The belief”.

2. Ms Barratt submitted that the issue is discrete and separable and was not a matter that either required cross-examination or comments by the Respondent’s witnesses. Should it be determined that the above belief is not capable of being a protected belief, that would also have the effect of reducing the length of the main hearing. Dr Dunn did not disagree and we determined therefore to proceed on the basis of Ms Barratt’s application.

The law

3. Section 10 of the Equality Act 2010 reads as follows:

“10 Religion or belief

- (1) *Religion means any religion and a reference to religion includes a reference to a lack of religion.*
- (2) *Belief means any religious or philosophical belief and a reference to belief includes a reference to a lack of belief.*
- (3) *In relation to the protected characteristic of religion or belief—*
 - (a) *a reference to a person who has a particular protected characteristic is a reference to a person of a particular religion or belief;*
 - (b) *a reference to persons who share a protected characteristic is a reference to persons who are of the same religion or belief.”*

4. Ms Barratt also helpfully drew our attention to a number of authorities as follows:-

- a) ***McClintock v Department of Constitutional Affairs [2008] IRLR 29***
- b) ***Grainger plc v Nicholson [2010] IRLR 4***
- c) ***Harron v Chief Constable of Dorset [2016] IRLR 481***
- d) ***Gray v Mulberry Co (Design) Ltd [2018] IRLR 893***

5. The following is an excerpt from the headnote in the case of **Grainger**.

“The case law relating to the European Convention on Human Rights is directly material to determining whether a belief is covered by the Regulations. Accordingly, the following limitations to the term “philosophical belief” apply:

- i) *the belief must be genuinely held;*
- ii) *it must be a belief and not an opinion or viewpoint based on the present state of information available;*

- iii) *it must be a belief as to weighty and substantial aspect of human life and behaviour;*
- iv) *it must attain a certain level of cogency, seriousness, cohesion and importance; and*
- v) *it must be worthy of respect in a democratic society, be not incompatible with human dignity and not conflict with the fundamental rights of others”*

6. The reference to regulations is to the Employment Equality (Religion or Belief) Regulations 2003 but it is common ground that it is equally applicable to section 10.

Dr Dunn’s evidence

7. In paragraph 7 of his statement he says:

“7. My views on ‘political correctness’ and left-wing social science are highly informed and have brought me considerable career success. Only 3 out of 64 students who graduated in Applied Social Studies at the University of Bradford in 1998 received a first-class degree, and mind was on a course that focused on ‘race’, gender and class; ...”

He goes on:

“Since then my critique of left-wing social policy academia has won me a ‘Best article by an early stage career researcher’ award from the peer-reviewed academic journal ‘Social Policy and Administration’ in 2010 ...

He goes on to list other of his achievements and refers to the publication of his first book. In paragraph 8, he accuses UCU (his former trade union) of being politically correct and failing properly to represent him because he was a member of UKIP.

8. At his paragraph 9, he defines what he means as ‘political correctness’ as follows:

*“...
I define ‘political correctness’ as favouring an untruth that is nevertheless palatable from a left-wing or ‘identity politics’ perspective over what is actually true. Those who favour ‘political correctness’ can sometimes brand those who favour uncomfortable truths about the more disadvantaged groups in society, or who express conservative/Thatcherite ideological/moral philosophical positions, as racist, sexist, homophobic, transphobic etc. This, we feel, damages our chances of being able to stage a sensible, intelligent, informed debate about issues such as crime, unemployment and immigration, as people are fearful that if they present evidence that is less than flattering towards relatively disadvantaged social groups it can lead to such damaging allegations against them which might harm their reputation. There is a widely observed ‘double standard’ because it is often considered acceptable to heavily criticise or point out uncomfortable*

truths about powerful groups like white people, men and higher class people.”

9. In his paragraph 10 he asserts:

“My opinions are not the same as Baroness Thatcher’s on other topics, but they are the same as hers on political correctness. Thatcherism and Conservatism are coherent ideologies, and ideology means the same as ‘political philosophy’. Her ideas on ‘political correctness’ remain popular in the Conservative Party, ...

He goes on to say that he agrees with many articles written by columnists in the Daily Telegraph about political correctness and agrees with many articles written by academics in the liberal anti-censorship magazine ‘Spiked Online’.

10. The heading to his paragraph 12 reads:

“Whilst this emphasis on structural forces is justified, so-called ‘political correctness’ comes into play when debate is harmed by the tendency of some left-wing authors to object to ANY criticism of powerless/disadvantaged social groups”

11. The heading to his paragraph 13 reads:

“Comparing ‘politically correct’ Social Policy discussion of migration with discussion of unemployment shows that their siding with the ‘powerless’ group in both cases delivers the opposite finding.”

12. At paragraphs 14 and 15 he cites excerpts from his book and gives examples of the damage that political correctness can do to the debate about US inner-city social problems.

13. Dr Dunn also submitted a further document headed:

“Why I believe that my commitment to Thatcherism entitles me to protection under the 2010 Equality Act”

The document defines Thatcherism and Dr Dunn’s belief in Thatcherism. He also refers us to a number of authorities as follows:

- a) ***Olivier v Department for Work and Pensions [ET/701407/2013]***
- b) ***GMB v Henderson [2015] UKEAT/0073-14-1303***

Those cases determined that both “democratic socialism” and “left-wing democratic socialism” were protected beliefs.

The Respondent’s submissions

14. Ms Barratt submitted that we should adopt the ***Grainger*** approach noting that the five tests have been integrated into the EHRC Statutory Code of Practice at paragraph 2.59.

15. She also drew our attention to a reference from the **McClintock** case in which Elias held:

“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.”

16. She also drew attention to the following excerpt from the **Harron** case in which Langstaff J said:

“Where a belief has too narrow a focus it may, depending on the width of that focus, not meet the standards of the appropriate level identified in summary by Burton J and explored in greater detail in Lord Nicolls speech in Williamson. After all, he was asking that the belief be a belief on a fundamental problem. That might be thought to exclude beliefs that had some narrower focus as to be parochial rather than fundamental.”

17. Turning now to the **Grainger** test, it is common ground that The Belief is genuinely held.

18. As to the second test of whether it is a belief and not an opinion or viewpoint based upon the present state of information available, we note that Dr Dunn sees political orthodoxy in social science as a matter of ‘perceived logic’ and Ms Barratt submits that that amounts to an opinion or viewpoint based upon the information available rather than a principle or belief. We note that most of the material presented by Dr Dunn is his own work and most of it relates to an examination of the real reasons for unemployment as opposed to those advanced by those he describes as ‘left wing social policy commentators’. For example, his book - see pages 117.1 to 117.7 in the agreed bundle. It seems to us that, taking this material as a whole, is based more on an opinion than a belief, ie the opinion that left-wing social policy academics deliberately hide behind what is socially balanced.

19. The third question is whether the belief is a weighty and substantial aspect of human life and behaviour. We accept Ms Barratt’s submission that The Belief is concerned with the academic field of social policy, which is a weighty and substantial and academic discipline but that does not necessarily amount to a weighty and substantial aspect of human life and behaviour.

20. In our view, Dr Dunn’s evidence and submissions do not go beyond that. Further, there is no suggestion that Dr Dunn’s view on political correctness extend to the way in which he leads his life outside of his academic career. As he made clear in his submissions, he earns his living mainly by writing critical reviews of work produced by left-wing social policy academics. We accept of course that that does not mean it cannot be a qualifying belief but it is a factor to be considered.

21. The next matter is the attainment of a certain level of cogency, seriousness, cohesion and importance. It seems to us that Dr Dunn, by introducing the

document on Thatcherism, has injected an element of uncertainty into the definition of The Belief that he asserts is protected. That submission asserts that Thatcherism means opposition to political correctness but of course it also means many other things as Dr Dunn's submission sets out. In our view, there appears to be a lack of cogency and cohesion in Dr Dunn's presentation of his belief. It seems to us that the concept of political correctness can mean different things to different people, depending upon their political beliefs.

22. As to the fifth criterion, it seems to us that The Belief does meet that criterion on the basis of his evidence.

Conclusion

23. This issue is unfamiliar territory to us and we have found it a difficult decision to reach. We have concluded that The Belief is not protected, principally for the following reasons:
- a) It is more of an opinion than a belief and we base that view principally upon Dr Dunn's academic work itself in which he tests that opinion by applying it to the work of other social policy academics and for which he is paid.
 - b) Whilst we accept that The Belief is a weighty and substantial aspect of social policy study, it is not in our view a weighty and substantial aspect of human life and behaviour.
 - c) It lacks cogency and cohesion on the basis of Dr Dunn's own submissions set out above.
24. We therefore conclude that Dr Dunn's belief is not entitled to the protection of the Equality Act 2010.

Employment Judge Blackwell
Date: 21 February 2019

REASONS SENT TO THE PARTIES ON
FOR THE TRIBUNAL OFFICE

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