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EMPLOYMENT TRIBUNALS

Claimants

Respondents

Ms V McCloud & Others

AND

Ministry of Justice & Another

Heard at: London Central

On: 10 January 2020

Before: Employment Judge S J Williams (Sitting alone)

Representation

For the Claimants represented by Leigh Day:

For the Claimants represented by Bindmans:

Unrepresented Claimants:

Mr A. Short QC

Mr B. Jaffey QC

Mr A. Gordon-Saker

Ms S. Johnston

Ms J. Briggs

Mr G. Branchflower

Mr D. Jones

Mr C Jones

Mr. C Bourne QC

Ms K. Apps

For the Respondents:

JUDGMENT

The judgment of the tribunal is that:

1 The claimants in this litigation be SEPARATED INTO four SCHEDULES: SCHEDULES A, B, C and D, as further particularised in the reasons given below.

2 In relation to those claimants who fall in SCHEDULE A it is declared that pursuant to section 61 of the Equality Act 2010:

a. paragraphs 8(2)(c) and 8(3)(c) of Schedule 2 to the Judicial Pensions Regulations 2015 have been and are of no effect;

and that accordingly

b. such claimants have been entitled to be treated as full protection members for the purposes of the Judicial Pensions Regulations 2015 with effect from 1 April 2015.

3 No later than 28 days from the date of promulgation of this judgment any claimant whose claim is currently covered by the interim declaration of 7 October 2019, and who was neither present nor represented at the hearing on 10 January 2020, and who does not wish his/her claim to be covered by the final declaration set out at paragraph 2 above, must notify the tribunal and the Government Legal Department in writing and set out the reasons for their position.

4 In relation to those claimants who fall in SCHEDULE B it is declared pending the final determination of the issue of remedy that pursuant to section 61 of the Equality Act 2010:

a. paragraphs 9A(b) and (e) of Schedule 2 to the Judicial Pensions Regulations 2015 have been and are of no effect;

and that accordingly

b. such claimants have been entitled to be treated as full protection members for the purposes of the Judicial Pensions Regulations 2015 with effect from 1 April 2015.

5 In relation to those claimants who fall in SCHEDULE C it is declared pending the final determination of the issue of remedy that pursuant to section 61 of the Equality Act 2010:

a. regulation 14(5)(c) and paragraphs 9A(b) and (e) of Schedule 2 to the Judicial Pensions Regulations 2015 have been and are of no effect;

and that accordingly

b. such claimants have been entitled to be treated as full protection members for the purposes of the Judicial Pensions Regulation 2015 with effect from 1 April 2015.

6 In relation to those claimants who fall in SCHEDULE D pending further consideration of the precise circumstances of each such claimant no declaration is made at this stage.

7 Any claimant, whether their case is stayed or not, may apply to be removed from and/or added to any of SCHEDULES A, B, C or D by writing to the Government Legal Department and providing their relevant dates of appointment to fee-paid and/or salaried office and their National Insurance number. The respondent will use its best endeavours to respond within 21 days to such application with a copy to the tribunal, either inviting the tribunal to order that the applicant's name be removed/added as requested (in which case the tribunal will so order by consent) or stating why that should not be done.

8 Judge Branchflower's name (Case Number: 1801063/2017) is removed from SCHEDULE A and added to SCHEDULE C.

9 Judge Briggs's name (Case Number: 2203199/19) is removed from SCHEDULE A and added to SCHEDULE B.

10 Save as set out above or otherwise expressly ordered, the claims of other claimants remain stayed.

11 Save to the extent set out above the determination of issues relating to the remedy to which claimants are entitled is adjourned and will be considered in accordance with the directions set out below.

REASONS

1. The parties who attended or were represented today have consented to this hearing being conducted by an employment judge sitting alone.

2. Following determination of the issue of liability, and case management directions given on 7 October 2019 and 17 December 2019 (by telephone), this hearing was convened in order to consider the remedy to which the claimants in this litigation are entitled, to make such final declarations or further interim declarations as appeared appropriate and to give directions for the determination of issues relating to remedy which remain outstanding.

3. Certain of the claims in this litigation have been dealt with as 'live claims'. Numerous other claims are stayed. Save to the extent that they are covered by this judgment or other orders made today, or otherwise expressly ordered, it is convenient that the stayed claims remain stayed.

4. On 7 October 2019, by consent, the tribunal made an interim declaration in relation to claimants in the 'live claims', listed in Schedule A to the interim declaration.

5. Following the hearing on 7 October five further claimants were added to Schedule A including Judge Branchflower and Judge Briggs (a different claimant from the Judge Briggs who attended today).

6. Having further considered the various categories into which claimants in this litigation fall, the parties are in agreement in submitting, and the tribunal agrees, that claimants WHO HAVE BEEN LESS FAVOURABLY TREATED should be categorised in four SCHEDULES:

6.1. SCHEDULE A, comprising judges who were in salaried office on 31 March 2012 and on 31 March 2015;

6.2. SCHEDULE B, comprising judges who were in fee-paid office on 31 March 2012 and in salaried office on 31 March 2015;

6.3. SCHEDULE C, comprising judges who were in fee-paid office on 31 March 2012 and on 31 March 2015 but have taken salaried office since the latter date;

6.4. SCHEDULE D, comprising judges who were in fee-paid office on 31 March 2012 and on 31 March 2015 and continue in fee-paid office to date.

7. The parties are further in agreement in submitting that there should now be made a final declaration in relation to claimants in SCHEDULE A above. Accordingly, by consent, the tribunal makes a final declaration in the terms set out at the head of this judgment (Judgment, paragraph 2).

8. The parties are further in agreement in submitting that there should now be made interim declarations in relation to the claimants in SCHEDULE B and C above. Accordingly, by consent, the Tribunal makes interim declarations in the terms set out at the head of this judgment (Judgment, paragraphs 4 and 5).

9. The parties wish to consider further the circumstances of any judge in SCHEDULE D before making submissions on what they consider to be the appropriate wording of any declaration which ought to be made.

FURTHER ORDERS

Injury to feelings

10. Numerous claimants claim compensation for injury to feelings and aggravated damages. Whilst it is accepted that some cases may exhibit unique circumstances which require them to be determined separately, it is hoped that the determination of sample cases in the first instance may facilitate the disposal of others also. To that end the parties are in the process of identifying suitable sample cases.

11. The orders below are made by consent and subsume some orders made on 17 December 2019.

10.1 by 17 February 2020 Leigh Day will provide a list of all of their claimants who claim aggravated damages together with particulars of this head of loss;

10.2 by 30 March 2020 the parties are mutually to provide copies of any documents (not already disclosed) to be relied upon by the witnesses at the hearing referred to at paragraph 10.5 below;

10.3 by 4 May 2020 a trial bundle be prepared and agreed;

10.4 by 11 May 2020 witness statements to be exchanged;

10.5 a hearing be listed with an allocation of 5 days commencing 15 June 2010 to determine the claims for injury to feelings and aggravated damages of no more than 10 sample cases to be agreed by the parties;

10.6 the parties will mutually exchange skeleton arguments no later than 10 June 2020.

Personal injury

12. One claimant claims an award for personal injuries. Directions have been given for disclosure of relevant medical records. Further directions will be sought in due course in relation to this case.

Pecuniary losses

13. Some claimants claim compensation for pecuniary losses incurred as a result of the discrimination they suffered. The tribunal was informed that significant issues remain between the parties.

14. The orders below are made by consent and subsume some orders made on 17 December 2019.

13.1 by 30 January 2020 Leigh Day are to provide the information referred to at paragraph 4 of the Directions of 17 December 2019;

13.2 Leigh Day are to

(a) by 17 February 2020 provide the information referred to at paragraphs 5, 6, 7, 9, 10 and 12 of the Directions of 17 December 2019;

(b) by 17 February respond to the respondents' Position Statement dated 3 December 2019;

(c) by 27 March 2020 provide further details of the proposed lead claimants setting out why they are appropriate lead claimants for the issues identified in the Heads of Loss dated 6 November 2019;

13.3 by 27 April 2020 the respondents are to indicate whether any of the proposed lead claimants are not suitable to be lead claimants for the issues identified, explaining their reasoning.

13.4 further directions will be sought (either in writing, by telephone or in person during the hearing of 15-19 June 2020 referred to above).

13.5 a hearing will be listed with an allocation of 5 days commencing on 19 October 2020. The time allocation may be revisited when further directions are sought.

14 Bindmans may apply to add one of their claimants as a sample case if so advised.

General

15 Any party who does not consent to the hearings referred to above being conducted by an employment judge sitting alone must make their objection known no later than 7 February 2020. The absence of objection will be deemed as consent.

Employment Judge S Williams

Dated:15 January 2020.....

Judgment and Reasons sent to the parties on:
.....16 January 2020.....

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For the Tribunal Office