

## **Mrs Onuoha v Croydon Health Services NHS Trust**

**Case no. 2300516/2019**

### **SUMMARY OF THE DECISION OF THE EMPLOYMENT TRIBUNAL**

**This summary is provided to assist in understanding the tribunal's decision. It does not form part of the decision. The full judgment of the tribunal is the only authoritative document. Judgments are public documents and are publicly available.**

Decision of the Employment Tribunal sitting in London South

Employment Judge Dyal, Miss Foster-Norman, Ms Forecast

The Claimant was employed as Theatre Practitioner by the Respondent NHS Trust. Theatre Practitioner is a nursing role performed primarily in surgical theatre.

The Claimant is a Catholic who always wore a necklace with a small cross pendant on it ('Cross Necklace'). She wore it both in and out of work as a symbol of her religious devotion.

The Respondent's *Dress Code and Uniform Policy* prohibited the wearing of necklaces in clinical areas. The basis for the prohibition was primarily that a necklace could present a health and safety risk. It could be a source of infection and/or it might be grabbed by an angry or out of control patient.

The Claimant's employment began in 2001. For the first 13 or 14 years she wore a Cross Necklace at work without any problem or challenge. She was first asked to remove it in 2014, however, she refused for religious reasons and there was no real follow up. The issue arose again once in 2015 and once 2016. Each time the Claimant refused to remove the Cross Necklace and there was no follow up.

In 2017 the Respondent was criticised in a CQC inspection for failing to enforce its *Dress Code and Uniform Policy*. Thereafter in the summer of 2018 it made some efforts to enforce the policy. For the most part, those efforts took the form of general briefings to all staff and were ineffective. The wearing of jewellery, including necklaces, remained rife. However, in a few cases, a more determined effort was made. In the Claimant's case she was required to stop wearing the Cross-Necklace or failing that accept some compromise such as wearing it inside her top (making it invisible as a declaration of faith) or wearing stud earrings in the shape of a cross instead. The earrings would have had to have been no bigger than 0.5cm and thus barely visible as symbol of religious devotion save at very close range. The Claimant declined to remove the Cross-Necklace or to compromise in relation to wearing it.

The dispute between the Claimant and the Respondent escalated into both disciplinary and grievance procedures. The Claimant was redeployed to non-clinical duties. She was given a final warning and her grievance was rejected. She continued to refuse to remove her Cross Necklace. She resigned claiming constructive dismissal upon the Respondent indicating that it would commence a second set of disciplinary proceedings.

The Claimant complained that her treatment by the Respondent was in breach of her rights under article 9 of the European Convention on Human Rights. Article 9 confers a qualified right to manifest religious beliefs. She further complained that her treatment was direct religious discrimination, harassment, victimisation and indirect religious discrimination under the Equality Act 2010. Finally, she complained that she had been constructively unfairly dismissed.

The Claimant's claims succeeded in substantial part before the Employment Tribunal. It found that:

- The Claimant's article 9(1) ECHR rights engaged and had been interfered with. The Respondent had failed to justify the interference pursuant to article 9(2). In essence that was because, although there was a small risk to health and safety posed by the Claimant wearing the Cross-Necklace:
  - o Wearing jewellery including necklaces was rife among the Respondent's workforce. Many doctors and nurses continued to do it even during the period in which the Claimant was being disciplined. This was widely tolerated by management;
  - o The Respondent allowed its employees to wear other items of religious apparel (including headscarves, turbans and kalava bracelets) that had broadly comparable risk profiles in terms of health and safety as a Cross-Necklace. There was no proper explanation as to why those items were permitted but a Cross-Necklace was not.
- Although the tribunal has no direct jurisdiction to hear a complaint of breach of article 9 ECHR, it is entitled and obliged to take into account whether conduct breaches article 9 when deciding complaints that are in its jurisdiction. The breach of article 9 was therefore material to the tribunal's analysis of the other claims.
- The tribunal found that in a number of ways related to the requirement to remove the Cross-Necklace the Respondent had directly discriminated against and harassed the Claimant, or in the alternative indirectly discriminated against her. A single complaint of victimisation also succeeded.
- The tribunal found that the Respondent's conduct was sufficiently serious to amount to a repudiatory breach of contract and that the Claimant had been entitled to resign and claim constructive dismissal. The dismissal had been both discriminatory and unfair.
- The majority of the tribunal (Employment Judge Dyal and Ms Forecast) rejected the suggestion that in requiring the Claimant to remove her Cross-Necklace the Respondent was deliberately targeting the Cross as a symbol of the Christian faith and more generally the majority rejected the suggestion that the Respondent had acted out of any kind of prejudice towards the Christian faith.

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