



EMPLOYMENT TRIBUNALS

Claimant: Dr P Balfour

Respondent: Change Grow Live

Heard at: Midlands East Tribunal via Cloud Video Platform

On: 8 November 2023

Before: Employment Judge Brewer

Representation

Claimant: In person

Respondent: Ms K Anderson, Counsel

JUDGMENT

The Tribunal judgment is as follows:

1. The claimant's claim that he suffered discrimination in relation to his suspension was presented out of time and it is not just and equitable to extend time.
2. The claimant's claim that he held a protected philosophical belief fails.
3. In the circumstances the claimant's claim for discrimination because of Religion or Philosophical Belief under the Equality Act 2010 is dismissed.

REASONS

Introduction

1. This matter was listed for a preliminary hearing by the order of Employment Judge Hutchinson at a private preliminary hearing held on 11th August 2023.
2. The claimant represented himself at that hearing and he confirmed that he held a philosophical belief as follows:

“the equality of all human life and that society should move away from separatist dialogue and focus on making society work as a whole and that all people, irrespective of race, colour or creed, should be treated equally”

3. I understand from some discussion today that at the preliminary hearing the claimant suggested that he was really seeking to claim that he was discriminated against because of his religion but that was not the claim that was pleaded, and I understand that he was advised that should he wish, he could make an application to amend his claim. As at today's date there has been no application to amend the claim.
4. This hearing was listed to consider two matters as follows:
 - a. whether the tribunal has jurisdiction to hear the claims,
 - b. whether the philosophical belief stated is one that is protected under the legislation.
5. A further matter arose yesterday when, rather late in the afternoon, an email was received from the claimant saying that he had sent papers to his solicitor, and he was advised to ask for a postponement. I asked the administration to e-mail the claimant and explain that his application was refused because he gave no reason for his application, but that should he wish, he could raise the matter at the outset of the hearing today. I note that throughout this matter including at today's hearing the claimant has represented himself and although he referred to his solicitor, no-one has come on record as acting for the claimant.
6. At the beginning of the hearing, I asked both parties whether there were any matters they wished to raise beyond the matters for which the hearing was listed and there was no further application from the claimant

for a postponement. I therefore proceeded to deal with the matters before me.

7. I had a bundle of documents running to 177 pages and a witness statement from the respondent's Associate Medical Director. The claimant said that he had been sent the bundle last night, but it transpired that in fact he had been sent the bundle in September but had failed to open it and the link had now expired and therefore he was unable to open the bundle today for the purpose of this hearing. Fortunately, the respondent's solicitor attended the hearing and was able to resend the bundle to the claimant and after a short break he was able to access the relevant documentation.
8. Finally I note that although the orders Employment Judge Hutchinson provided for the exchange of witness evidence should either party wish to rely on it, the claimant provided no witness statement and therefore relied solely upon submissions.

Issues

9. The issues I had to determine were those I have set out above at paragraph 4 above.

Law

10. In relation to the time limit point, in fact the claimant raised discrimination in relation to two matters. The first of those was his suspension or continued suspension based on a decision taken on 20 December 2021. The second decision in issue was taken in December 2022 to give him a final written warning. The respondent accepts the second of those claims was in time.
11. In relation to the decision regarding the suspension, the claimant had three months from the date of that decision to present his claim plus any additional time as a result of early conciliation. In fact no early conciliation was entered into in respect of that matter (see section 123 Equality Act 2010).
12. For reasons which I shall set out below it is only necessary for me to set out the law in brief.
13. In **Robertson v Bexley Community Centre t/a Leisure Link** 2003 IRLR 434, CA, the Court of Appeal stated that when employment tribunals consider exercising the discretion under what is now S.123(1)(b) Equality Act 2010:

'there is no presumption that they should do so unless they can justify failure to exercise the discretion. Quite the reverse. A tribunal cannot hear a claim unless the claimant convinces it that it is just and equitable to extend time. So, the exercise of discretion is the exception rather than the rule.'

14. In relation to the question of a philosophical belief the key case is of course **Grainger plc and ors v Nicholson** 2010 ICR 360, EAT, where the Employment Appeal Tribunal provided important guidance of general application on the ambit of this category of protected belief. It was held that a belief can only qualify for protection if it:
- a. Is genuinely held,
 - b. is not simply an opinion or viewpoint based on the present state of information available,
 - c. concerns a weighty and substantial aspect of human life and behaviour,
 - d. attains a certain level of cogency, seriousness, cohesion, and importance, and
 - e. is worthy of respect in a democratic society, is not incompatible with human dignity, and is not in conflict with the fundamental rights of others.

15. I refer to a number of other cases in the discussion below.

Findings of fact

16. Given that this was a limited preliminary hearing the findings of fact are limited.
17. The claimant is employed by the respondent which is a company limited by guarantee. He is a psychiatrist.
18. The claimant is a member of the British Medical Association (BMA) and has been for his entire 40-year career. He has had advice from the BMA about this claim.
19. The claim arises out of comments he made during a meeting on 9 December 2021 about the movement called Black Lives Matter (BLM).

20. At the time of the meeting the claimant was already suspended from clinical practise and although according to the respondent he was in the process of being returned to work, because his comments about BLM led to a disciplinary investigation, his suspension was continued, and he was advised of that on 20 December 2021.
21. On 12 December 2022 the claimant was given a final written warning in relation to the complaints raised about his comments made on 9 December 2021.
22. The claimant commenced early conciliation on 8 March 2023 (Day A).
23. The claimant received his early conciliation certificate on 19 April 2023 (Day B).
24. The claim form was presented on 19 May 2023.

Discussion and decision

Just and equitable extension

25. Given my decision on the question of the philosophical belief, strictly speaking it was not necessary for me to determine the out of time point, but we dealt with that matter first and therefore I shall set out briefly my reasons.
26. In the absence of any witness evidence from the claimant I invited him to make submissions to me as to why it would be just and equitable to allow claim to proceed notwithstanding that it was presented 17 months out of time.
27. In fact, the claimant said in terms that he could not give me a reason why the claim should be allowed to proceed.
28. I take into account that the claimant it is an educated and intelligent man, he has had access to advice from the BMA and he clearly sought advice in relation to the final written warning. From what he said today, that advice included assisting him to make his tribunal claim. It seems to me that it is reasonable to infer from all of the circumstances that when the claimant 's suspension was continued in December 2021 he did not consider that he had been discriminated against because if he had then he would have done what he did in or around December 2022 which is seek advice and if necessary, present a claim to the employment tribunal.

29. Given that an extension of time is not automatic, and reasons are needed to extend our jurisdiction, and given the absence of any such reasons I decline to extend time in this case.

Philosophical belief

30. The philosophical belief expressed by the claimant consists essentially of four parts. Those parts are:

- a. that all people are equal
- b. that all people should be treated equally,
- c. that society should move away from separatist dialogue,
- d. that society should focus on making society work as a whole.

31. Is the belief genuinely held?

Genuine belief

32. I have no reason to doubt that the claimant genuinely believes what he says about believing that all humans are equal, should be treated equally, that society should move away from separatist dialogue and that society should focus on making society work as a whole.

33. The first part of the **Grainger** test is satisfied.

Not just opinion/viewpoint

34. The second part of the test is more problematic for the claimant.

35. Taking the equality point first, it is in my judgment a broad belief that all human life is equal. As the claimant submitted, he did not consider that this is a universal belief. He stated that not all religious beliefs accept the point. That seems to me to be evidence that the belief that all human life is equal is the claimant's opinion, his viewpoint.

36. The belief in equal treatment is again broad and, if it is based on the presumption that equal treatment leads to equality, somewhat simplistic. This tribunal is well aware that it has long been a defence in discrimination claims that people had been treated in the same way even though the outcomes of that apparently equal treatment was inequality.

37. Apparent equal treatment often leads to treatment which is far from equal which explains why we have laws dealing with discriminatory behaviour and in particular for example in relation to disability, why there are laws in relation to reasonable adjustments requiring employers in some circumstances to provide extra help or different treatment to those for whom apparently equal treatment would lead to a substantial disadvantage.
38. To take a simple example, the equal application of a sickness absence management policy to all sickness absence can lead to disadvantageous treatment of those who are more prone to sickness because of a disability. In such circumstances apparently equal treatment is not really treating people equally. It seems to me that the claimant's belief on this is an opinion *absent* any analysis or further explanation as to why it is more than that.
39. However, having said that, it is the other aspects of the claimant's purported philosophical belief which are slightly more problematic.
40. The argument that society should move away from separatist dialogue appears to be based on a discussion that took place at the meeting on 9 December 2021 about the BLM movement. The claimant expressed the view that this was separatist and that they perhaps would be better to have called themselves 'All Lives Matter'.
41. This is of course a very contentious view and it is no part of my job to make any determination based upon whether the claimant's view is controversial or not. However the claimant's comment is one which others have made and it is based on a view or opinion that the concept of or belief system in respect of the BLM movement is that somehow black lives matter more than other lives. From another viewpoint, a somewhat different opinion is that the 'all lives matter' argument is based on a misunderstanding and that in fact the BLM movement was born out of a view that in certain parts of the world, in particular certain parts of the United States of America, black lives did not matter or mattered less than white lives. The point of this discussion is that the claimant's belief about separatist dialogue is an opinion, it was an expressed point of view, a stance he took and continues to take about what he believes the BLM means, and whether or not that is based upon a correct understanding or a misunderstanding is neither here nor there, it fails the second part of the **Grainger** test for that reason – it is an opinion or viewpoint based upon a current understanding.
42. The other aspect of the belief is even more problematic because the concept that there should be a focus on making society work as a whole is quite literally meaningless without some considerable explanation.

43. I cannot say and the claimant made no attempt to explain what he meant by 'society working as a whole'. As I put to him during the hearing, whilst our society, that is the UK, is arguably far from perfect, in what sense does it not work as a whole? It seems to me perfectly possible that society can work as a whole without treating everybody equally and indeed some may argue that it works perfectly well and that it would be inappropriate for everybody to be treated equally, that there needs to be differences in treatment and although that may not be a view shared by everyone it is certainly a perspective shared by some. The point is that it remains an opinion based on the wholly unexplained belief that society either does not work, or does not focus enough on working, as a whole or the opinion that it should focus on that.

44. For all of those reasons the claimant does not have a protected philosophical belief because the second part of the Grainger test is not met.

Weighty and substantial

45. The third aspect of the test is that the belief should relate to a weighty and substantial aspect of human life.

46. It seems to me certainly true that the concepts of all human life being equal and of treating people equally are weighty and substantial, but the purported philosophical belief looked at as a whole does not in my judgment relate to a weighty and substantial aspect of human life.

47. The reason for that is that the claimant was unable to explain what his belief meant, in particular the two aspects of the belief relating to separatist dialogue and society working as a whole.

48. In **R (Williamson and ors) v Secretary of State for Education and Employment** 2005 2 AC 246 HL, Lord Nicholls held that this aspect of the **Grainger** test means that the belief must 'possess an adequate degree of seriousness and importance' and must be 'a belief on a fundamental problem'.

49. Given the complete lack of explanation from the claimant about what his belief means, and given that aspects of the purported philosophical belief can be interpreted in a number of ways, I cannot say that the belief possesses an adequate degree of seriousness and importance, nor can I say that it is a belief relating to a fundamental problem. That is not to say that unequal treatment is not a problem but that is only one aspect of the belief, and it is not for me to dissect the belief and find that a part of it amounts to a philosophical belief but the part of it does not because that is not how it is presented.

50. For those reasons I consider that the belief also fails this part of the **Grainger** test.

Cogency, seriousness, cohesion and importance

51. According to **Grainger**, a philosophical belief must possess consistent internal logic and structure (i.e. cogency), provide guiding principles for behaviour and concern fundamental (as opposed to parochial) matters.

52. As to coherence, Lord Nicholls in **R (Williamson and ors) v Secretary of State for Education and Employment** (above) stated that this means simply that the belief must be 'intelligible and capable of being understood' and that 'too much should not be demanded in this regard'.

53. In my judgment the belief in this case does not meet the requirements of cogency because there is no necessary congruence between the concept of people being equal, which is one view, treating people equally (which does not in fact require a belief that all human life is actually equal), and being against whatever the claimant means by separatist dialogue which is in and of itself entirely different from and separate from focusing on society working as a whole.

54. The claimant made no submissions about this, and I was not taken to any learning, research, discussion papers or indeed any matter whatsoever touching upon the concepts inherent in the belief I am being asked to consider. There is no definition of separatist dialogue nor why for example that is or may be different from separatist language or separatist behaviour.

55. Although it may seem obvious to the claimant, it was unclear to me what his reference to society was? Does that mean people, structures, business, all of those things? Do all peoples live in 'society' which appears to me to be a somewhat narrow view of how people live. There are clearly some people who live outside of what is called society often through choice. Are they excluded by the claimant?

56. In short, there was no definition or explanation of what the claimant meant which from which I could conclude that he had a cogent and cohesive belief. For those reasons I cannot conclude that the belief is either serious or important and in my view the belief fails the 4th part of the **Grainger** test.

Worthy of respect

57. The EAT conducted a detailed consideration of the scope of the limitation imposed by the fifth **Grainger** criterion in **Forstater v CGD Europe and**

ors 2022 ICR 1, EAT, with much of its analysis resting on case law under Articles 9 and 10 ECHR.

58. In short, the EAT held that the fifth **Grainger** criterion is apt only to exclude the most extreme beliefs akin to Nazism or totalitarianism or which incite hatred or violence.

59. I do not consider the claimant's belief falls into this category and therefore this part of the test is met.

Conclusion

60. For all the reasons set out above, I conclude that the claimant's belief is not a philosophical belief which is protected under the Equality Act 2010.

Employment Judge Brewer

Date: 8 November 2023

JUDGMENT SENT TO THE PARTIES ON

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