



A Uniform Approach to Religious Discrimination

Although Northern Ireland has had the benefit of laws preventing religious discrimination for nearly 30 years, the Employment Equality (Religion and Belief) Regulations only came into force in England and Wales in December 2003. The Employment Appeal Tribunal has handed down its first decision on the regulations.

Mr Mohsin Mohmed is a Muslim of Indian Origin. He was employed by West Coast Trains Ltd as a customer services assistant from August 2003. His employment, like all other employees of the company was subject to a six month probationary period.

Mr Mohmed's religious beliefs required that his beard be a minimum of one fist's length – approximately ten centimetres long. West Coast Trains had a uniform policy which stipulated that beards be kept neatly trimmed and smart. When interviewed for the position he was asked if he would trim his beard, however on appointment he had not done so and the "beard issue" continued. At his initial training his team leader asked him to trim his beard and the Regional Manager also noticed his beard and e-mailed his manager asking him to do something about it. Mr Mohmed and his manager had a meeting at which he was asked which he would prefer to keep – his beard or his job. Mr Mohmed stated that his religious beliefs came first nonetheless they reached an agreement that he would keep his beard tidy and at no more than a fist's length.

At Mr Mohmed's three month review in November 2003, he was told that the beard looked tidier but concerns were expressed by his manager about his language and attitude to his work. In February 2004 he was called to a meeting where he was informed that his contract was being terminated because of a lack of enthusiasm. Mr Mohmed questioned the reason for his dismissal and said that he believed that it was because of his beard and appearance. He appealed the decision but the decision to dismiss was upheld.

Mr Mohmed lodged proceedings in the Employment Tribunal alleging religious discrimination. He claimed that the decision to dismiss amounted to racial and religious discrimination and that the rejection of his appeal was an act of direct racial discrimination or religious discrimination and victimisation. He also alleged that his manager had subjected him to racial and religious harassment.

The Tribunal found that West Coast Trains Limited had an ethnically and religiously diverse workforce, including a Sikh employee who did not cut or trim his beard for religious reasons yet was able to keep it tidy in order to comply

with the uniform policy. (for those interested – he tied it up) Mr Mohmed's claim was dismissed. He appealed to the Employment Appeal Tribunal.

The Employment Appeal Tribunal dismissed his claim stating that "on the primary facts found by the Employment Tribunal it was open to them to conclude that no inference of less favourable treatment could be drawn in circumstances where it was agreed that the Claimant could maintain his beard at one fist's length in accordance with his religion, provided it was tidy". "The Tribunal was thus entitled to find that there was no difference in treatment, let alone less favourable treatment, when comparing the Claimant's case with that of a non-Muslim employee".

The Tribunal reinforced the legal position that the burden of proof rests with the employee to prove that a prima facie case of unlawful discrimination had been made out before the employer is required to give an explanation. Employers should always seek professional legal advice before taking any action in respect of their employees to avoid costly and lengthy court proceedings.

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