

Breakfast Bites

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15 July 2020



Guildhall
CHAMBERS

Agenda

1. 8 Discrimination Cases that have been reported since the start of lockdown.

1. Q&A



The Case List for this morning

1. ***Robinson v DWP*** [2020] EWCA Civ859
2. ***DWP v Boyers*** UKEAT/0282/19/AT
3. ***Ishola v Transport for London*** [2020] IRLR 368
4. ***Hill v Lloyds Bank plc*** UKEAT/0173/19/LA
5. ***Williams v Alderman Davies Church in Wales Primary School*** [2020] IRLR 589
6. ***Rakova v London North West Healthcare NHS Trust*** [2020] IRLR 503
7. ***Morton v Eastleigh CAB*** [2020] EWCA Civ 638
8. ***Gould v St John's Downshire Hill*** UKEAT/0002/20/BA

s.15 - Robinson v DWP – Court of Appeal

- In nearly all cases, s.15 EqA 2010 requires the same analysis of the decision maker's thought processes as s.13 EqA 2010.
- A prima facie case is not established solely by the Claimant showing that she would not be in the situation of being the victim of delay and incompetence if she was not disabled.
- Compliance with RA → justification where subject matter covers the same area.
- Appellate Court does not have to remit if the findings of fact do not cross the threshold of the prima facie case.

s.15 - DWP v Boyers - EAT

- In considering justification, it is not permissible for the ET to focus on the failures in the procedure and decision making that led to the discrimination.
- ET should have analysed the evidence relating to the legitimate aims and balanced the needs of the DWP in the context of the legitimate aims against the seriousness of the impact of the dismissal on Ms B.

s.20(3) EqA – Ishola v TFL – Court of Appeal

- PCP alleged- *‘requiring the CI to return to work without concluding a proper investigation into his...grievances’*
- CA held ‘practice’ should be given its ordinary meaning, connotes some sort of continuum in the sense that it is the way that things generally are or will be done. A practice arises if it carries with it an indication that it will or would be done again in the future in a hypothetical similar case.

Hill v Lloyds Bank plc - EAT

- **Reasonable adjustments**
- C sickness absence, caused by bullying.
- EAT: upheld ET finding that reasonable adjustment: undertaking that C would not have to work with two colleagues / severance package.
- PCP: practice of “not giving undertakings”?
- Recommendation: s.124(2)-(3) EqA 2010.
- ET reconsideration: backtracked
- EAT: no reason why recommendation should not have financial implications
- EAT: is there a problem if recommendations are time limited or can they be indefinite?

Williams v Alderman Davies Primary School - EAT

- School teacher accused of child protection and data breaches.
- Constructive dismissal claim (upheld on appeal)
- Reasonable adjustments claim: not being given the names of child/accuser
- ET: PCP: not a practice – could not say it would be done in all situations
- EAT: ET set the bar too high – a general or habitual approach could suffice

s.20 EqA – Rakova v London North West Healthcare NHS Trust - EAT

- ET assumed that a substantial disadvantage was not established by a desire to be more efficient or that merely being able to show that Ms R could only work in a less efficient way was not sufficient to establish a substantial disadvantage.
- EAT disagreed- assumption not justified and not a substitute for an assessment of whether Ms R's disabilities placed her at a comparative substantial disadvantage *vis a vis* the PCP.

Morton v Eastleigh CAB - CA

- **Disability: refusal to postpone a PH to obtain medical report**
- EJ H (CMC): joint instruction of expert
- EJ R: existing medical evidence only
- REJ: adjournment request refused
- EJ K: adjournment request refused
- EAT: refused appeal
- CA: wrong decision appealed?
- CA: ETs experienced in determining disability

Gould v St John's Downshire Hill - EAT

- **Marriage discrimination**
- Church minister whose marriage had broken down, was later dismissed. Claims of unfair dismissal and marriage discrimination
- ET: reason for dismissal was breakdown in trust and confidence. Marriage breakdown was relevant **context**, but not the reason.
- EAT: distinction between context and material factor in the reason for dismissal
- EAT: cf. if dismissal was “significantly influenced” by moral view of breakdown of marriage



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