



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4105347/2017

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Held in Glasgow on 14 January 2019

Employment Judge: Frances Eccles

10 **Mr C McEleny**

Claimant
Represented by:
Mr M Briggs -
Solicitor

15 **Ministry Of Defence**

Respondent
Represented by:
Dr A Gibson -
Solicitor

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal is, apart from allowing the Judgment dated 25 July 2018 to be varied by substituting “constructive dismissal” where it appears in paragraph 23 of the Judgment with “dismissal in terms of Section 39(2)(c) & (7)(b) of the Equality Act 2010”, to refuse the application for reconsideration.

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REASONS

BACKGROUND

1. By Judgment dated 25 July 2018, the Employment Tribunal found that the claimant’s belief in Scottish independence amounts to a philosophical belief within the meaning of Section 10(2) of the Equality Act 2010 and can be relied upon by the claimant as a protected characteristic for the purposes of claiming direct discrimination under Section 13 of the Equality Act 2010 (“the Judgment”). The respondent made an application under Rule 71 of the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013 (“Rules of Procedure 2013”) for reconsideration of the Judgment. I

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E.T. Z4 (WR)

considered the application in terms of Rule 72 of the Rules of Procedure 2013 and did not refuse it on the grounds that there was no reasonable prospect of the Judgment being varied or revoked. The claim was listed for a hearing to consider the application. The respondent was represented by Dr A Gibson,
5 Solicitor. The claimant was represented by Mr M Briggs, Solicitor.

ISSUE

2. The issues to be considered by the Tribunal are;
 - (i) whether it is necessary in the interests of justice to reconsider the Judgment and if so,
 - 10 (ii) whether the Judgment should be confirmed, varied or revoked.

DISCUSSION & DELIBERATIONS

3. In terms of Rule 70 of the Rules of Procedure 2013, the Tribunal may, on its own initiative (which may reflect a request from the Employment Appeal Tribunal) or on the application of a party, reconsider any judgment where is
15 in the interests of justice to do so. On reconsideration, the original decision (“the original decision”) may be confirmed, varied or revoked. If it is revoked it may be taken again.
4. The respondent seeks reconsideration of the Judgment on the grounds that I
20 failed to correctly identify the claimant’s belief when considering whether it met the tests in **Grainger plc & others v Nicholson 2010 ICR 360** and amounts to a philosophical belief within the meaning of Section 10(2) of the Equality Act 2010. The respondent submits that I failed to consider the claimant’s belief in the social democratic values of the SNP when applying the
25 tests in **Grainger** and wrongly equated a belief in self-determination with a belief in Scottish Independence. I am not persuaded that I misunderstood the claimant’s evidence about his belief or analysed a belief other than the one in relation to which he sought protection. Based on the evidence before me I
30 found that the claimant believes that Scotland should be an independent country. I was satisfied that his belief in Scottish Independence could be “*severed and considered separately*” from his belief in the social democratic

values of the SNP. I was not persuaded that because a political party has a policy that manifests a person's belief and which, for that reason, the person supports, it must follow that their belief cannot be philosophical in nature. From the evidence before me, I found that the claimant supports the SNP because achieving Scottish independence is its principal policy. In the case of **Grainger**, Mr Nicholson's belief in climate change would presumably not cease to be a philosophical belief if he actively supported a political party that included it in their manifesto.

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10 5. I am also not persuaded that I identified the claimant's belief as a belief in self-determination as opposed to Scottish Independence. From the evidence before me I found that the claimant has believed in the right of the Scottish People to self-determination since childhood. I was satisfied that self-determination, as a general principle, is an integral part of the claimant's belief in Scottish Independence being concerned with how people living in Scotland are governed, where sovereignty lies and whether decisions taken regarding the future of Scotland are to be taken in Scotland or elsewhere. In their application for reconsideration the respondent restates their submission that a belief in **Scottish** (my emphasis) independence does not meet the third test in **Grainger** of being a belief as to a weighty and substantial aspect of human life and behaviour. I was persuaded from the evidence before me that the claimant's belief that Scotland, as opposed to any other country, should be independent was of sufficient weight and importance to human life and behaviour to be philosophical in nature. I did not find that the claimant's belief in political independence was unique to Scotland or people living in Scotland. I was persuaded that it is a belief of material relevance and application to human life and behaviour generally.

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6. The respondent also seeks reconsideration of the Judgment on the ground that the claimant's view of Scottish Independence cannot possibly be shared by the 1.5 million of the Scottish electorate who voted in favour of independence. I was asked to consider whether the claimant's belief amounted to a philosophical belief. It was his evidence and the circumstances

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of his case that I considered. The fact that there was a referendum in which 1.5 million of the Scottish electorate voted in favour of independence supported the claimant's position that his belief has a sufficient level of cogency, seriousness, cohesion and importance to satisfy the fourth test in **Grainger**. I am not persuaded that it was necessary for me to find that each of the 1.5 million people who voted in favour of independence would, if asked, have articulated exactly the same belief as the claimant for his belief to be philosophical in nature.

7. Having considered the respondent's submissions, I am not persuaded that it would be in the interests of justice to reconsider my Judgment on the above grounds. I have not been asked to consider new evidence. There is no suggestion of a procedural or administrative error by either the Tribunal or a party. The application for reconsideration of the Judgment on the grounds advanced by the respondent is therefore refused.

8. I am persuaded, there being no objection, that I reconsider the Judgment to provide clarification of the less favourable treatment about which the claimant complains. In paragraph 23 of the Judgment the alleged less favourable treatment is identified as including "constructive dismissal". I agree that for the purposes of clarity, it is appropriate to vary the Judgment by substituting "constructive dismissal" where it appears in paragraph 23 of the Judgment with "dismissal in terms of Section 39(2)(c) & (7)(b) of the Equality Act 2010".

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Employment Judge: Frances Eccles
Date of Judgment: 09 February 2019
Entered in register: 12 February 2019
and copied to parties

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