



EMPLOYMENT TRIBUNALS

Claimant: X

Respondent: Y

Heard at: Manchester (by CVP)

On: 26 November 2021
8 December 2021
(in Chambers)

Before: Employment Judge Leach

REPRESENTATION:

Claimant: In person

Respondent: Ms L Quigley, Counsel

JUDGMENT

The claimant's belief in a fear of catching Covid-19 and a need to protect herself and others, does not amount to a philosophical belief for the purposes of section 10(2) Equality Act 2010.

REASONS

Introduction

1. This claim includes a complaint of unlawful discrimination (protected characteristic religion or belief).

2. A preliminary hearing was held in order to determine whether the belief claimed and relied on by the claimant for the purposes of her discrimination complaint, falls within the terms of section 10 of the Equality Act 2010.

3. The hearing was an in-person hearing. The respondent had applied for the hearing to take place by CVP for Covid related reasons. The claimant objected because she was concerned that the CVP video link would not be secure and, in relation to other issues covered in this preliminary hearing, the parties would need to discuss sensitive personal information. The claimant's objections were upheld.

The Law

4. Section 10 EQA states:

“(1) Religion means and religion and a reference to religion includes a reference to a lack of religion.

(2) Belief means any religious or philosophical belief and a reference to belief includes a reference to lack of belief.

(3) In relation to the protected characteristic of religion or belief:-

(a) A reference to a person who has a particular protected characteristic is a reference to a person of a particular religion or belief;

(b) A reference to persons who share a protected characteristic is a reference to persons who are of the same religion or belief.”

5. Both parties referred me to the EAT judgment in **Granger plc v. Nicholson [2010] IRLR 4 (“Nicholson”)** and the limitations or criteria placed on the definition of philosophical belief as set out in that judgment (at paragraph 24).

“(i) The belief must be genuinely held.

(ii) It must be a belief and not, as in McClintock, an opinion or viewpoint based on the present state of information available.

(iii) It must be a belief as to a weighty and substantial aspect of human life and behaviour.

(iv) It must attain a certain level of cogency, seriousness, cohesion and importance.

(v) It must be worthy of respect in a democratic society, be not incompatible with human dignity and not conflict with the fundamental rights of others (paragraph 36 of Campbell and paragraph 23 of Williamson).

I refer to these below as the Nicholson criteria.

6. The reference above to “Campbell” is to the ECHR’s decision in **Campbell and Cosans v. UK [1982] 4 EHRR 293** to which both parties referred to support the requirement for a belief to have “*sufficient cogency, seriousness, cohesion and importance.*”

7. The reference to Williamson is to the judgment of the House of Lords in **Williamson v. Secretary of State for Education and Employment [2005] 2 AC 246** another decision relating to article 9 of the European Convention on Human Rights. The claimant referred me to paragraph 23 of the judgment:

23 Everyone, therefore, is entitled to hold whatever beliefs he wishes. But when questions of "manifestation" arise, as they usually do in this type of case, a belief must satisfy some modest, objective minimum requirements. These threshold requirements are implicit in article 9 of the European Convention and comparable guarantees in other human rights instruments. The belief must be consistent with basic standards of human dignity or integrity. Manifestation of a religious belief, for instance, which involved subjecting others to torture or inhuman punishment would not qualify for protection. The belief must relate to matters more than merely trivial. It must possess an adequate degree of seriousness and importance. As has been said, it must be a belief on a fundamental problem. With religious belief this requisite is readily satisfied. The belief must also be coherent in the sense of being intelligible and capable of being understood. But, again, too much should not be demanded in this regard. Typically, religion involves belief in the supernatural. It is not always susceptible to lucid exposition or, still less, rational justification. The language used is often the language of allegory, symbol and metaphor. Depending on the subject matter, individuals cannot always be expected to express themselves with cogency or precision. Nor are an individual's beliefs fixed and static. The beliefs of every individual are prone to change over his lifetime. Overall, these threshold requirements should not be set at a level which would deprive minority beliefs of the protection they are intended to have under the Convention.

8. The reference to McClintock is to the EAT decision in **McClintock v. Department of Constitutional Affairs [2008] IRLR 29**. We note the following criterion identified at paragraph 45:

“As the Tribunal in our view correctly observed, to constitute a belief there must be a religious or philosophical viewpoint in which one actually believes, it is not enough 'to have an opinion based on some real or perceived logic or based on information or lack of information available.’”

9. The EHRC code of Practice on Employment (2011), at paragraph 2.59. sets out the criteria listed in **Nicholson** (above). Paragraph 2.57 and 2.58 also state as follows:-

“A belief which is not a religious belief may be a philosophical belief. Examples of philosophical beliefs include Humanism and Atheism.

A belief need not include faith or worship of a God or Gods but must affect how a person lives their life or perceives the world.”

The claimant’s belief

10. The claimant provided a statement (page 135). I set out below the body of the statement:-

- “2. *My belief is a philosophical belief and it is genuinely held by myself. I believe it is important and forms a substantial aspect of human life and behaviour. Placing limitations on a person’s right to manifest their religion or belief may amount to unlawful discrimination; this would usually amount to indirect discrimination.*
3. *On 31 July 2020 I took the decision not to return to the workplace on the grounds of health and safety. I had reasonable and justifiable health and safety concerns about the workplace surrounding Covid-19, and I was also very worried about the increasing spread of the virus. I had a genuine fear of getting the virus myself, and a fear of passing it on to my partner (who is at high risk of getting seriously unwell from Covid-19).*
4. *I made a protected disclosure in good faith and asserted my statutory employment rights about a danger to the health and safety of myself and others, which I reasonably believed to be serious and imminent.*
5. *[XX] told me that he would not be paying me, and he said “I do not accept you had a reasonable belief that returning to work would put you or your husband in serious and imminent danger”.*
6. *I then had my wages withheld and I suffered financial detriment.*
7. *I claim this was discrimination on the grounds of this belief in regard to Coronavirus and the danger from it to public health. This was at the time of the start of the second wave of Covid-19 and the huge increase in cases of the virus throughout the country.”*

11. At the hearing, I asked the claimant to state precisely what the belief was. Her reply was:

“A fear of catching Covid 19 and a need to protect myself and others.”

12. Ms Quigley noted that for the purposes of this hearing and the determination of this preliminary issue, the respondent did not dispute that the claimant genuinely held the belief claimed, although the respondent reserves the right to do so in the event that I decided that the belief was within the definition at section 10 EQA. Accordingly, the claimant’s evidence provided in her witness statement was not challenged at the hearing but, should it be relevant, would be at the final hearing.

Analysis.

13. I have considered and applied the Nicholson criteria. In doing so I have considered the submissions made by both parties.

The belief must be genuinely held

14. It is not disputed for the purposes of determining this preliminary issue, that the claimant has a genuine concern or fear that she might catch Covid-19 and that she needs to take steps to protect herself and others.

It must be a belief and not, as in McClintock, an opinion or viewpoint based on the present state of information available

15. I do not find that the claimant's fear amounts to a belief. Rather, it is a reaction to a threat of physical harm and the need to take steps to avoid or reduce that threat. Most (if not all) people, instinctively react to perceived or real threats of physical harm in one way or another.

16. It can also be described as a widely held opinion based on the present state of information available that taking certain steps, for example attending a crowded place during the height of the current pandemic, would increase the risk of contracting Covid-19 and may therefore be dangerous. Few people may argue against that. However, a fear of physical harm and views about how best to reduce or avoid a risk of physical harm is not a belief for the purposes of section 10.

It must be a belief as to a weighty and substantial aspect of human life and behaviour.

17. As noted above, I do not accept that the claimant's fear of contracting Covid-19 amounts to a belief.

18. Fears about the harm being caused by Covid-19 are weighty and substantial. They are certainly not minor or trivial. They are about also aspects of human life and behaviour.

19. In her submissions Ms Quigley disputed that this criterion was met in that the claimed belief was a time specific reaction to her own concerns. I agree that it is time specific, in the sense that the fear will only last as long as dangers caused by the current pandemic remain present although I do not accept that (in itself) avoids this criterion being met.

20. I also note that whilst the claimant did indeed explain her fear in terms of returning to the workplace, I understand her fear to be wider than this and that it impacts on the claimant's decisions about attending other places. However, I do agree with Ms Quigley that it is about the claimant herself and the protection of herself and her own steps to protect others (principally her partner). The claimant does not rely on a belief in wider terms than this and for this reason I find this criterion is not met.

It must attain a certain level of cogency, seriousness, cohesion and importance.

21. I accept that the belief as described is intelligible and capable of being understood. Applying the guidance at paragraph 23 of Williamson, therefore it meets the requirement of cohesion.

22. The fear of contracting Covid -19 and the claimant's requirement to take steps to avoid harm to herself and others, is serious and important.

23. The claimant's belief is cogent. This criterion is met.

It must be worthy of respect in a democratic society, be not incompatible with human dignity and not conflict with the fundamental rights of others

24. Sensibly, the respondent does not dispute that the claimed belief meets this criterion.

Conclusion

25. The claimed belief does not meet the 5 Nicholson criteria and is not a philosophical belief with s10(2) EQA.

Employment Judge Leach

Date: 13 December 2021

RESERVED JUDGMENT AND REASONS
SENT TO THE PARTIES ON

15 December 2021

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