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FLASH REPORT

Country: United Kingdom
Title: Discrimination on grounds of religion and belief
Date: 26 February 2019
Expert: Lucy Vickers
Context
Issue at stake: Whether a faith-based nursery can dismiss teacher for cohabitation
Grounds of discrimination: Religion or belief, Sex
Field of application: Employment
Source: National court decision, Gan Menachem Hendon Limited v De Groen, Employment Appeal Tribunal
UKEAT/0059/18/OO
Applicable law: Equality Act 2010

Content

Case: Ms De Groen was a teacher at a private Orthodox Jewish nursery school affiliated to the Chabad Lubavitch Hasidic movement. She was dismissed because she was cohabiting with a man (whom she later married). Although the school took the view that matters of private life were not its concern, the school had asked the claimant to confirm when asked that she did not live with her boyfriend, even though this was untrue. The claimant refused to comply with this request and was dismissed. The Employment Tribunal held that the nursery had discriminated directly and indirectly against Ms De Groen because of religion. In interviews with the school management leading up to her dismissal other comments were made which were found by the Employment Tribunal to be discriminatory on grounds of sex (e.g. that time was passing for the claimant to have children).

Decision of the court: The Employment Appeal Tribunal upheld the finding of sex discrimination.

In relation to religious discrimination it found that there was no discrimination. The Nursery acted because of its own beliefs, and Ms De Groen's refusal to live in accordance with those beliefs, rather than because of the beliefs of Ms De Groen. Thus, any less favourable treatment was because of the beliefs of the employer, and not based on the beliefs of the claimant. The employer would have treated anyone who cohabited with a partner outside of marriage the same way, regardless of their religion or belief. Therefore there was no less favourable treatment of the claimant in comparison with others with other beliefs. The effect of the decision is that the Equality Act 2010 does not prohibit discrimination on the basis of the discriminator's religion or belief. The Employment Appeal Tribunal rejected the argument that De Groen was dismissed due to a lack of belief in a religious rule forbidding cohabitation. The employer's concern was with the risk of harm to the reputation of the nursery, rather than a free-standing concern that Ms De Groen's beliefs were not the same as its own.

The Employment Appeal Tribunal confirmed that there could be discrimination where both parties shared the same religion.

Key points of analysis: The protection against discrimination on grounds of religion or belief in Directive 2000/78 is in broader terms than the UK Equality Act 2010. For example, it is clear that protection of the Directive does not require that the victim of discrimination have the protected characteristic in question (e.g. *Coleman v Attridge Law*, 2008). Moreover, it is not clear on the wording of the directive that discrimination cannot be on the basis of the discriminator's religion or belief.

Internet link source: <https://www.gov.uk/employment-appeal-tribunal-decisions/gan-menachem-hendon-ltd-v-ms-zelda-de-groen-ukeat-0059-18-oo>.