GREAT BRITAIN: RELIGIOUS DISCRIMINATION IN THE AREA OF EMPLOYMENT

This document outlines legislation and case law in Great Britain that prohibit religious discrimination in the area of employment.

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I. Primary Legislation

Title: The Equality Act, 2006

Category:

- Discrimination on the grounds of religion or belief in the provision of goods, facilities and services, the management of premises, education and the exercise of public functions.
- Discrimination on grounds of sexual orientation in the provision of goods, facilities and services, education, the use and disposal of premises and the exercise of public functions.
- Sex discrimination in the exercise of public functions.

Date in Effect: The Equality Act, 2006 (the "***Act***") gained Royal Assent on 16 February 2006. Different sections of the Act came into force at different times.

Link:

1. http://www.opsi.gov.uk/acts/acts2006/20060003.htm
2. www.opsi.gov.uk/acts/acts2006/ukpga_20060003_en.pdf

   Please note that the links refer to the text of the statute as it received Royal Assent. It does not include all subsequent amendments.

Application: The Act extends to England, Wales and Scotland.

Summary:

- The Act has the following functions:
  - To create a single Commission which will replace the Equal Opportunities Commission (EOC), the Commission for Racial Equality (CRE) and the Disability Rights Commission (DRC). This single commission will be called the Commission for Equality and Human Rights (CEHR).
  - To make unlawful (subject to certain exemptions), discrimination on the grounds of religion or belief or sexual orientation in the provision of goods, facilities and services, the management of premises, education and the exercise of public functions.
  - To enable provision to be made for discrimination on the grounds of sexual orientation in the provision of goods, facilities and services, education, the use and disposal of premises and the exercise of public functions.

- To create a duty on public authorities to promote equality of opportunity between men and women and to prohibit sex discrimination and harassment in the exercise of public functions.

- Part 1 of the Act provides for the establishment of the CEHR, a single integrated body to underpin legislation on race, gender, disability, religion or belief, sexual orientation, age and human rights. It sets out the CEHR's duties, general powers and enforcement powers. Among its duties, Sections 8 and 9 list the following:
    - The CEHR will promote understanding of the importance of equality, diversity and human rights;
    - The CEHR will encourage good practice in relation to equality, diversity and human rights;
    - The CEHR will promote equality of opportunity;
    - The CEHR will promote awareness, understanding and protection of human rights.

- Part 2 of the Act sets out provisions prohibiting direct and indirect discrimination on grounds of religion or belief in the provision of goods, facilities and services, education, the use and disposal of premises and the exercise of public functions.
- Part 3 of the Act allows provision to be made by regulations prohibiting discrimination on grounds of sexual orientation in the provision of goods, facilities and services, education, the use and disposal of premises and the exercise of public functions.
- Part 4 sets out provisions prohibiting sex discrimination in the exercise of public functions and creates a duty on all public authorities to have due regard to the need to eliminate unlawful discrimination and harassment and to promote equality of opportunity between women and men.

Title: Employment Act, 2002

Category: Employment.

Date in effect: The Employment Act, 2002 (the "***Act***") received Royal Assent on 8th July 2002.

Link:

1. http://www.opsi.gov.uk/acts/acts2002/20020022.htm

   Please note that the link refers to the text of the statute as it received Royal Assent. It does not include all subsequent amendments.

2. http://www.statutelaw.gov.uk/content.aspx?LegType=All+Legislation&title=employment+act&Year=2002&searchEnacted=0&extentMatchOnly=0&confersPower=0&blanketAmendment=0&sortAlpha=0&TYPE=QS&PageNumber=1&NavFrom=0&activeTextDocId=557122&parentActiveTextDocId=557122&showAllAttributes=0&hideCommentary=0&showProsp=0&suppressWarning=1

   Please note that there are effects on this legislation that have not yet been applied to the Statute Law Database for the following year(s): 2003, 2004, 2005, 2006, 2007.

Application: Please refer to the summary of the Employment Rights Act, 1996.

Summary:

- The main areas covered by the Act are paternity and adoption leave and pay, maternity leave and pay, flexible working, employment tribunal reform and resolving disputes between employers and employees.
- In many cases, the Act amends current legislation. One of the statutes it amends is the Employment Rights Act, 1996.
- More specifically, the Act amends the Employment Rights Act, 1996:
    - To make provision for statutory rights to paternity and adoption leave and amend the law relating to statutory maternity leave;
    - To make provision in connection with the use of statutory procedures in employment disputes, and to introduce a new provision relating to procedural unfairness in unfair dismissal cases.
    - In addition, amendments are made to the Act's provisions relating to the particulars of employment that employers are required to give to employees, and to provisions relating to dismissal procedures agreements.
- Please note that the amendments to the Employment Rights Act, 1996 are not directly related to discrimination on the basis of religion in the area of employment.

Title: The Human Rights Act, 1998

Category: The Human Rights Act, 1998 (the "***Act***") implements the European Convention on Human Rights in UK law.

Date in Effect: The Act received Royal Assent on November 9, 1998 and came into force on October 2, 2000.

Link: http://www.opsi.gov.uk/ACTS/acts1998/19980042.htm

Please note that the link refers to the text of the statute as it received Royal Assent. It does not include all subsequent amendments.

Link to European Convention on Human Rights: http://conventions.coe.int/treaty/en/Treaties/Html/005.htm

Application: This Act extends to England, Wales, Scotland and Northern Ireland.

Summary:

- The purpose of the Act is to give further effect to the rights and freedoms guaranteed under the European Convention on Human Rights.

- The Act makes available in UK courts a remedy for breach of convention rights without the need to go to the European Court of Human Rights.

- In Section 2, the Act provides that a court or tribunal determining a question which has arisen in connection with a convention right must take into account judgments, decisions, declarations or advisory opinions of the European Court of Human Rights, so far as they are relevant to the proceedings in which that question has arisen.

- Section 3 provides that, so far as it is possible to do so, primary and subordinate legislation must be read and given effect in a way which is compatible with the convention rights. However, if the primary and subordinate legislation are found to be incompatible with the convention rights:

    - The validity, continuing operation or enforcement of such incompatible primary legislation is not affected;

    - The validity, continuing operation or enforcement of such incompatible subordinate legislation is not affected if the primary legislation prevents removal of the incompatibility;

- Section 4 provides that:

    - If the court is satisfied that a provision of primary legislation is incompatible with a Convention right, it may make a declaration of incompatibility.

- If the court is satisfied that a provision of subordinate legislation is incompatible with a Convention right and the primary legislation concerned prevents removal of the incompatibility, it may make a declaration of that incompatibility.

- A declaration of incompatibility does not affect the validity, continuing operation or enforcement of the provision in respect of which it is given.

- Section 6 makes it unlawful for a public authority to act in a way which is incompatible with a Convention right, unless:

    - As a result of one or more provisions of primary legislation, the authority could not have acted differently; or

    - The primary legislation cannot be read or given effect in a way which is compatible with the Convention rights.

- Section 10 provides that:

    - If a provision of legislation has been declared under Section 4 to be incompatible with a Convention right and, it appears to a Minister of the Crown or Her Majesty in Council that the provision of legislation is incompatible with an obligation of the United Kingdom arising from the Convention, the Minister of the Crown may by order make such amendments to the legislation as he considers necessary to remove the incompatibility.

    - If, in the case of subordinate legislation, a Minister of the Crown considers that it is necessary to amend the primary legislation under which the subordinate legislation in question was made in order to enable the incompatibility to be removed, he may by order make such amendments to the primary legislation as he considers necessary.

    - A subordinate legislation incompatible with a Convention right may be declared invalid. With regard thereto, please refer to Paragraph 2(b) of Schedule 2.

Title: The Employment Rights Act, 1996

Category: Discrimination in the area of employment.

D **ate in Effect**: The Employment Rights Act, 1996 (the "***Act***") came into force at the end of the three month period beginning with the day on which it was passed. The Act was passed by the UK Parliament in 1996.

Link: http://www.opsi.gov.uk/acts/acts1996/1996018.htm

Please note that the link refers to the text of the statute as it received Royal Assent. It does not include all subsequent amendments.

Application: Subject to certain exceptions, this Act extends to England, Wales and Scotland, but not to Northern Ireland. For further details, please refer to Section 244 of the Act.

Summary:

- Section 94 of the Act provides that an employee has the right not to be unfairly dismissed by his employer.
- Dismissal related to the following are to be considered automatically unfair under the Employment Rights Act:
    1. Pregnancy and childbirth (Section 99);
    2. Health and safety cases (Section 100);
    3. Shop workers and betting workers who refuse Sunday work (Section 101);
    4. Trustees of occupational pension schemes who perform any function as such trustee (Section 102);
    5. Employee representative (Section 103);
    6. Assertion of statutory rights (Section 104); and
    7. Redundancy (Section 105).
- Any worker dismissed in these circumstances can claim for unfair dismissal.

Title: The Race Relations Act, 1976

Category: Discrimination on racial grounds in the areas of employment, the provision of goods, facilities and services, education, public functions, housing, planning, advertising and police.

Date in Effect:

- The Race Relations Act, 1976 (the "***Act***") was passed in 1976 and was wholly in force on September 1, 1977.

- The Race Relations Act Amendment was passed in November 2000 and while some of its provisions came in to force in April 2001, others did not take effect until May 2002.

Link:
http://www.statutelaw.gov.uk/legResults.aspx?LegType=All+Legislation&title=Race+Relations+Act&Year=1976&searchEnacted=0&extentMatchOnly=0&confersPower=0&blanketAmendment=0&TYPE=QS&NavFrom=0&activeTextDocId=2059995&PageNumber=1&SortAlpha=0

Please note that the above link does not include amendments dated 2003-2007, if any.

Application: Section 80 of the Act provides that the Act does not extend to Northern Ireland. The Act does extend to England, Wales and Scotland.

Summary:

- The Act makes it unlawful to discriminate against anyone on racial grounds.

- Racial grounds include not only grounds of race but also those of color, nationality, citizenship, and ethnic or national origin in the fields of employment, the provision of goods, facilities and services, education, public functions, housing, planning, advertising and police.

- The Act covers both direct and indirect discrimination:

    - Section 1(1)(a) of the Act - Direct discrimination occurs when someone is treated less favorably on racial grounds. Section 3 defines "racial grounds" as any of the following grounds, namely color, race, nationality or ethnic or national origins.

    - Section 1(1)(b) of the Act - Indirect discrimination occurs when rules, requirements, or conditions that appear to be fair — because they apply equally to everyone — can be shown to put people from a particular racial group at a much greater disadvantage than others, and the rules cannot be objectively justified.

- The Act incorporates the earlier Race Relations Act, 1965 and Race Relations Act, 1968 and was later amended by the Race Relations Amendment Act, 2000, notably including a statutory duty on public bodies to promote race equality.

II. Subordinate Legislation

Title: Employment Equality (Religion or Belief) Regulations 2003

Category: The ground of discrimination is religion. The area of discrimination is employment.

Date in Effect: The Employment Equality (Religion or Belief) Regulations 2003 (the "***Regulations***") came into force on December 2, 2003.

Link: http://www.opsi.gov.uk/si/si2003/20031660.htm

Application: The Regulations extend to England, Scotland and Wales.

Summary: The Regulations outlaw discrimination in employment and vocational training on the grounds of religion or belief and is the first specific British regulation that deals with these grounds.

- The Regulations apply to discrimination and harassment on grounds of religion, religious belief or a similar philosophical belief.
    - They cover discrimination and harassment on the grounds of perceived as well as actual religion or belief (i.e. assuming – correctly or incorrectly – that someone has a particular religion or belief).
    - The Regulations also cover association, i.e. being discriminated against on grounds of the religion or belief of those with whom you associate.
- Employers are required to protect employees against bullying or harassment suffered in the workplace (i.e. violating an individual's dignity or 'creating an intimidating, hostile, degrading, humiliating or offensive environment' for an individual) because of their religion or belief.
- The Regulations also outlaw discrimination by trade associations (including trade unions), employment agencies, providers of vocational training, and institutions of further and higher education.
- The Regulations apply throughout the employment and vocational training relationship: during the recruitment process, in the training environment and in the workplace, on dismissal and, in certain circumstances, after the employment has finished.
- Under the Regulations, an employer may be liable for discriminatory actions taken by anyone acting on his/her behalf, whether or not it was done with his/her knowledge, unless the employer can show that he/she tried to prevent such actions.
- The Regulations allow specifically religious posts or employers who can claim that for a particular post there is a genuine occupational requirement (GOR) which justifies restricting employment to members of a particular religion, such as priests.
- The Regulations allow specifically religious posts or employers who can claim that for a particular post there is a genuine occupational requirement (GOR) which justifies restricting employment to members of a particular religion, such as priests.

- In most cases, a complaint must be made to an employment tribunal, though in cases involving institutes of further and higher education, proceedings must be brought in the county or sheriff court.
- Once an alleged act of discrimination has taken place, the time limit for bringing a claim in the employment tribunal is three months; in the county or sheriff court it is six months. Tribunals and courts will only extend those time limits in genuinely exceptional cases.

III. Case Law

Title: Copsey v. WWB Devon Clays Ltd., [2005] EWCA (Civ) 932, [2005] IRLR 811, [2005] ICR 1789

Category: The case focuses on freedom of religion / unfair dismissal in employment.

Link: http://www.bailii.org/ew/cases/EWCA/Civ/2005/932.html

Venue: Court of Appeal (Civil Division)

Facts: Mr. Copsey, a Christian employee, did not agree to work on Sundays in the company's plant. The employers offered him a number of alternative jobs within the company, but he refused them because the employers could not guarantee that he would not be required to work on a Sunday. Finally, he was dismissed when he failed to accept any of the options put to him. Mr. Copsey claimed that he had been unfairly dismissed for exercising his right under Article 9 of the European Convention on Human Rights[1] to manifest his religious beliefs by observing Sunday as a rest day.

An employment tribunal dismissed Mr. Copsey's claim. The tribunal found that he had not been dismissed because of his religious beliefs, but because he had refused to agree to a contractual variation in his working hours so as to provide that he should work a seven-day shift pattern, including Sundays. The tribunal therefore found that Article 9 was not engaged.

The tribunal further found that the employers had a sound business reason for requiring the change in working hours and had taken into account the interests of the employees, the fact that the vast majority of them had agreed to the change and the lack of sympathy and support for Mr. Copsey's position. The tribunal concluded that he had been dismissed for "some other substantial reason" within the meaning of Section 98(1)(c) of the Employment Rights Act, 1996. The tribunal went on to find that the employers had done everything they could to find an alternative position for Mr. Copsey within the company and that they had acted reasonably.

The Employment Appeal Tribunal dismissed Mr. Copsey's appeal against that decision and held that Article 9 was not engaged because Mr. Copsey could have resigned and thus been free to manifest his religious beliefs.

[1] Article 9 of the European Convention on Human Rights provides as follows:

"Article 9 – Freedom of thought, conscience and religion:

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

Merits: The employment tribunal was entitled to hold that Article 9 was not engaged. There is a clear line of decisions that Article 9 is not engaged when the employer requires an employee to work hours which interfere with the manifestation of his religion or dismisses him for not working or agreeing to work those hours because he wishes to practice religious observances during normal working hours. The reason given is that if the employer's working practices and the employee's religious convictions are incompatible, the employee is free to resign in order to manifest his religious beliefs.

The same conclusion would have been reached if the tribunal had taken into account the claimant's right to freedom of religious belief under Article 9(1) of the European Convention on Human Rights. While an employer who seeks to change an employee's working hours so as to prevent that employee from practicing his sincere adherence to the requirements of his religion may be acting unfairly if he makes no attempt to accommodate his employee's needs, the tribunal did find that the employers had acted reasonably and done everything they could to accommodate the claimant's religious beliefs. Therefore, the tribunal's view that Article 9(1) was not engaged did not affect the result.

Decision: The court was split as to whether Article 9 applied. In any event, the court held that the employer had acted reasonably by trying to accommodate the employee's refusal to work on Sundays. The dismissal was fair.

Title: Hussain v. Midland Cosmetic Sales plc and others, [2002] EAT/915/00, (2002) WL 499015

Category: The ground of discrimination is religion. The area of discrimination is employment.

Link: http://www.employmentappeals.gov.uk/Public/Upload/EAT915001712002.doc

Venue: Employment Appeal Tribunal

Facts: This is an appeal by Miss Hussain against the decision of the Industrial Tribunal, dismissing her complaint of indirect race discrimination by Midland Cosmetic Sales Limited ("***Midland***"), contrary to Section 1(1)(b) of the Race Relations Act, 1976 (the "***Act***").

In July 1999, Miss Hussain was sent by Tempstaff Limited to work as packer at Midland Cosmetic Sales Limited's packing plant, where all employees were required to wear protective clothing into which their hair or scarves could be tucked. Miss Hussain is a practicing Muslim of Pakistani ethnic origin and wears a headscarf which covers her head and the sides of her face. A supervisor asked Miss Hussain to remove her scarf and wear the protective cap and jacket. Miss Hussain declined to do so, in accordance with her particular religious beliefs, and issued her present claim.

Other than Miss Hussain, Midland had 8 female employees of Pakistani origin. Unlike the 8 female employees, Miss Hussain was not given the choice to keep the scarves, but tuck the hair and scarves in so that the danger from loose hair or from loose clothing was eliminated.

Merits: The tribunal had to decide two issues arising from the provisions in the Act:

1. Did Midland apply to Miss Hussain a requirement which they applied equally to persons not of the same racial group as Miss Hussain, but which was such that the proportion of persons of the same racial group as Miss Hussain, who could comply with it was considerably smaller than the proportion of persons not of that racial group who could comply with it? And, if so,
2. Had Midland shown that the application to Miss Hussain of that requirement or condition was justifiable irrespective of the color, race, nationality or ethnic or national origins of the person to whom it was applied.

Midland admitted that they had required Miss Hussain to remove her headscarf in order to wear the protective headwear. Thus, the first issue became narrowed to this question: Did that requirement have a disproportionate impact in terms of those who could comply with it as between persons of Miss Hussain's racial group and persons not of that racial group?

The tribunal, addressing the justifiability issue, concluded that Midland had failed to seek a possible solution to the problem. This conclusion was not challenged by Midland.

As to the issue of disproportionate impact, the tribunal concluded that Miss Hussain had not shown that the requirement imposed on her had a disproportionate impact so as to amount to indirect discrimination.

In the absence of any substantial or other evidence, the tribunal might have regarded the evidence as to the female members of Pakistani ethnic origin who had obtained work at Midland as too insubstantial in number or as too lacking in detail for any inferences as to ability to comply and substantial disproportion to be drawn. However, the approach they adopted was to consider substantial disproportion by

comparing the number of Muslim female employees of Pakistani ethnic origin who could comply, which they found to be 8 out of 9, slightly short of 90%, with the female employees who were not Muslims of Pakistani ethnic origin of whom they concluded 100% would probably be able to comply.

This comparison was flawed. The 8 employees who had complied with Midland's requirement of them had not complied with the same requirement as that imposed on Miss Hussain. Those employees were required to remove their scarves and wear protective clothing or to wear both the protective clothing and their scarves in such a way that loose clothing (and hair) was secured. They were all given an option which was not given to Miss Hussain.

The tribunal ought to have considered a comparison between a group of Muslim female employees of Pakistani ethnic origin, who were required to remove their scarves and wear the protective clothing without the option of keeping their scarves and securing them, and a comparator group who did not have the same ethnic background but were subjected to the same requirement.

The Employment Appeal Tribunal cannot know with certainty how the 8 Muslim female employees of Pakistani ethnic origin would have responded if presented with a requirement which they never actually had to face. The tribunal did not make any finding as to how many of the 8 employees did in fact remove their headscarves or would have done so if faced with the requirement imposed on Miss Hussain.

Decision: The claim is remitted for hearing by a fresh tribunal.

Title: JH Walker Ltd. v. Hussain and Others, [1996] IRLR 11, [1996] ICR 291

Category: The ground of discrimination is religion. The area of discrimination is employment.

Link:

Venue: Employment Appeal Tribunal

Facts: Mr. Hussain and 16 other Muslims, employed as production workers, complained that they had been indirectly discriminated against on grounds of race when they were disciplined for taking a day off work to celebrate Eid, one of the most important religious occasions in the Muslim calendar, in breach of a new company rule that non-statutory holidays would no longer be permitted during the company's busiest months, May, June and July.

On June 8, 1992, management was informed that Eid would fall on 11 June. They decided that they were not prepared to vary the rule, even though the Muslim employees were willing to work additional hours in order to compensate for the day off. The 17 applicants took the day off work, and when they returned to work, they were given a final written warning. They complained that they had been discriminated against contrary to the Race Relations Act, 1976 (the "***Act***").

An Industrial Tribunal accepted that the company had acted for what it genuinely believed was a good business reason when it introduced the holiday rule. However, it balanced the discriminatory impact of the requirement on the Asian workers with the reasonable needs of the company and concluded that the requirement was not justifiable, especially bearing in mind that the applicants were willing to work additional hours to make up any backlog.

Although the discrimination was indirect, the tribunal awarded each applicant £1,000 compensation for injury to feelings on grounds that the employers failed to satisfy the burden under Section 57(3) of the Act, which provides that no award of damages for indirect discrimination shall be made "if the respondent proves that the requirement or condition in question was not applied with the intention of treating the claimant unfavorably on racial grounds."

The employers appealed against the finding that they were not entitled to the benefit of Section 57(3). There were cross-appeals by the employees on the level of damages awarded.

Merits: Two issues arise on the appeal and cross-appeal:

1. *Whether the Industrial Tribunal erred in law in its construction of "intention" in Section 57(3) of the Act and in holding that the company had failed to prove that it did not intend to treat the applicants unfavorably on racial grounds.*

   The burden is on the respondent company to prove that it did not apply the requirement in question with the intention of treating the claimants unfairly on racial grounds. The respondent has to show a state of non-intention to treat unfavorably on racial grounds. He will fail if the tribunal finds or infers a prohibited intention.

   'Intention' in this context signifies the state of mind of a person who, at the time when he does the relevant act (i.e. the application of the requirement or condition resulting in indirect discrimination),

   a. wants to bring about the state of affairs which constitutes the prohibited result of unfavorable treatment on racial grounds; and

b. knows that that prohibited result will follow from his acts.

Section 57(3) is not concerned with the motivation of a respondent. It is concerned with the state of mind of the respondent in relation to the consequences of his acts. He intended those consequences to follow from his acts if he knew when he did them that those consequences would follow and if he wanted those consequences to follow. A tribunal may infer that a person wants to produce certain consequences from the fact that he acted knowing what those consequences would be.

The Industrial Tribunal was entitled to conclude that the company had failed to establish that it did not have the intention of treating the applicants unfavorably on racial grounds. The tribunal considered the company's knowledge of the consequences of its acts and inferred that it wanted to produce those consequences. The company knew that Eid was important to the Muslim employees, that they were the only employees affected by the application of the requirement, and that they were required to work on that day. Applying that requirement, the company inflicted upon them a disproportionate punishment. The fact that the company's reason in adopting the holiday policy was to promote its business efficiency does not displace the company's knowledge of the consequences, which follow from applying that requirement, or prevent the Industrial Tribunal from inferring that the company wanted to produce a state of affairs in which the applicants were in fact treated unfavorably on racial grounds.

2. *Whether the quantum of damages awarded for injury to the feelings of the applicants was so low as to be erroneous in law on grounds of unreasonableness and perversity?*

The tribunal took relevant factors into account: the nature of the detriment suffered by the applicants; their length of service; their good work records; the upset and distress caused by the company's actions; the threatened consequences; and the imposition of the final written warning. On those facts the Industrial Tribunal was entitled to conclude that £1000 was an appropriate sum to award for injury to feelings and that the same sum should be awarded to each applicant, in the absence of evidence that none of them had suffered an appreciably greater injury to feelings than any other.

Decision: The appeal is dismissed. The tribunal was entitled to find that the company did not have the benefit of Section 57(3). The cross appeal was dismissed, as there was no error in law in the quantum of damages for injury to feelings.

Title: Board of Governors of St Matthias Church of England School v. Crizzle, [1993] IRLR 472, [1993] ICR 401

Category: The ground of discrimination is religion. The area of discrimination is employment.

Link:

Venue: Employment Appeal Tribunal

Facts: Ms. Crizzle, a Roman Catholic but not a communicant and of Asian origin, was deputy head teacher at the appellant voluntary-aided primary school. When the post of head teacher became vacant, the governors advertised it in the following terms: "The governors invite applications from suitably qualified teachers with inner-city experience who are committed communicant Christians." Ms. Crizzle applied but was not appointed. She complained that she had been unlawfully discriminated against on grounds of race.

An Industrial Tribunal held that she had been indirectly discriminated against. It was agreed that the respondents applied a condition that an applicant had to be "a committed communicant Christian" and that this condition had an adverse impact upon Asians. The tribunal concluded that the condition was not justifiable, as the proper primary purpose or objective of the school is efficient education. By applying the condition, the respondents have excluded the possibility of a balanced choice of the most suitable candidate for head teacher in the context of the primary purpose of a school i.e. efficient education.

Merits: The Industrial Tribunal erred in law in finding that the condition requiring an applicant for a post as head teacher in a Church of England school had to be "a committed communicant Christian" was not justifiable within the meaning of Section (1)(b)(ii) of the Race Relations Act, 1976.

In determining whether a condition is justifiable, the approach of the Industrial Tribunal should be to consider (a) Was the objective legitimate? (b) Were the means used to achieve the objective reasonable in themselves? and (c) Were they justified when balanced on the principles of proportionality between the discriminatory effect upon the applicant's racial group and the reasonable needs of those applying the condition?

The governors' objective concerned religious worship and the ethos of the school, and it was in that context that the test of justifiability had to be applied. The objective was to have a head teacher who could lead the school in spiritual worship and who was a full member of the church in order to foster the school's Anglo-Catholic ethos. It was not for the Industrial Tribunal to redefine the objective as "efficient education". The governors' objective was legitimate and reasonable, the means used to achieve it were reasonable when balanced on the principles of proportionality between the discriminatory effect upon the appellant's racial group and the reasonable needs of the governors. Accordingly, the objective was justifiable.

Decision: The Employment Appeal Tribunal allowed the appeal. Leave was given to appeal to the Court of Appeal.

Title: Dawkins v. of the Environment Sub nom Crown Suppliers PSA, [1993] IRLR 284, [1993] ICR 517

Category: The ground of discrimination is religion. The area of discrimination is employment.

Link:

Venue: Court of Appeal (Civil Division)

Facts: Mr. Dawkins is a Rastafarian. He applied for a job as a van driver with the PSA. When he was interviewed, his hair was arranged in dreadlocks. He was informed that PSA expected their drivers to have short hair, but he indicated that he was unwilling to cut his hair. He claimed that in refusing his application, the employers had discriminated against him contrary to the Race Relations Act, 1976 (the "***Act***"). It was accepted by the employers that Mr. Dawkins was refused employment because he was a Rastafarian, but it was denied by them that Rastafarians constitute "a group of persons defined by reference to . . . ethnic . . . origins" within the meaning of the definition of "racial group" in Section 3(1) of the Act.

An Industrial Tribunal upheld the complaint finding that the PSA had been guilty of both direct and indirect discrimination, contrary to Sections 1(1)(a) and 1(1)(b) respectively. The central question before the Industrial Tribunal was whether or not Rastafarians constituted a racial group within the meaning of the Act. By a majority, the Industrial Tribunal decided that Rastafarians did constitute such a group.

The Industrial Tribunal directed itself in accordance with the tests laid down by the House of Lords in Mandla v Lee. The majority held that the fact that the movement had maintained itself for the past 60 years was sufficient to give it "a long shared history, of which the group is conscious as distinguishing it from other groups", that the group had a cultural tradition of its own, a common geographical origin, a common language, some sort of common literature, and a sense of being a minority or an oppressed group.

The Employment Appeal Tribunal allowed an appeal and held that Rastafarians are a religious sect and no more: there is insufficient ground to distinguish them from the rest of the Afro-Caribbean community so as to render them a separate group defined by reference to ethnic origins. The Employment Appeal Tribunal majority took the view that Rastafarians cannot be described as a separate and distinct community derived by racial characteristics within the meaning of the test set out by Lord Templeman in Mandla v Lee. Nor did they have a long shared history so as to fall within the first test laid down by Lord Fraser in Mandla v Lee: "it cannot reasonably be said that a movement which goes back for only 60 years, i.e. within the living memory of many people, can claim to be long in existence."

Merits: The Court of Appeal held that the Industrial Tribunal had erred in law in holding that Rastafarians are a group defined by reference to "ethnic origins" and therefore a "racial group" within the meaning of Section 3(1) of the Act. The Industrial Tribunal had erred, therefore, in finding that the appellant had been unlawfully discriminated against when he was refused employment because he was a Rastafarian and would not cut his hair. The Employment Appeal Tribunal correctly allowed an appeal against the Industrial Tribunal's finding.

Rastafarians could not be held to be a separate racial group. Although they are a separate group with identifiable characteristics, they have not established some separate identity by reference to their ethnic origins. In accordance with the guidance of the House of Lords in Mandla v Lee, the word "ethnic" has a racial flavor. Comparing Rastafarians with the rest of the Jamaican community in England or with

the rest of the Afro-Caribbean community, there was nothing to set them aside as a separate ethnic group. Nor do Rastafarians meet Lord Fraser's requirement in Mandla of a long shared history. The shared history of Rastafarians goes back only 60 years.

Decision: Rastafarians do not constitute a separate racial group. Therefore, PSA did not unlawfully discriminate against Mr. Dawkins. The appeal was dismissed.

Title: Tower Hamlets London Borough Council v. Rabin, [1989] I.C.R. 693

Category: The ground of discrimination is religion. The area of discrimination is employment.

Link:

Venue: Employment Appeal Tribunal

Facts: Following a restructuring of the local authority's library service, the applicant, a librarian and an orthodox Jew, made unsuccessful applications for two posts on a higher grade. Discussions about his future employment then took place during which references were made to the possible effect on his career of the fact that as an orthodox Jew he would be unable to work on Saturdays. He was subsequently given a job on the same grade as before the reorganization.

He complained to an Industrial Tribunal that he had been unlawfully discriminated against on the ground of his race contrary to Sections 1(1)(a) and (b) and Sections 4(2)(b)[2] and (c)[3] of the Race Relations Act, 1976 (the "***Act***") in that the reason for his failure to be selected for posts of a higher grade was the requirement that he should be available to work on the Sabbath.

The Industrial Tribunal found that he had been refused the two jobs he had applied for on professional grounds and that no discrimination had taken place. They further found that at the two meetings when his future career was discussed there was no requirement or condition as to Saturday working so as to amount to indirect discrimination within the meaning of Section 1(1)(b), but that words of extreme discouragement were used which amounted to racial discrimination and that he had been less favorably treated because of his adherence to Sabbath observance within the meaning of Section 1(1)(a). They accordingly upheld his complaint of direct discrimination. The local authority appealed to the Employment Appeal Tribunal.

Merits: Although words of discouragement could amount to discrimination [see Simon v. Brimham Associates], the Industrial Tribunal had failed to identify the words allegedly used and whether the circumstances were such that words used could amount to less favorable treatment. The Employment Appeal Tribunal further found that the evidence did not disclose words of discouragement which amounted to treatment of the applicant less favorably than that given to other persons.

Accordingly, the Industrial Tribunal's decision on that issue was wrong. In addition, there was no evidence that the applicant had suffered any detriment within the meaning of Section 4(2)(c) of the Act.

Decision: The complaint was dismissed.

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[2] Section 4(2)(b) provides as follows: "It is unlawful for a person, in the case of a person employed by him at an establishment in Great Britain, to discriminate against that employee in the way he affords him access to opportunities for promotion, transfer or training, or to any other benefits, facilities or services, or by refusing or deliberately omitting to afford him access to them."

[3] Section 4(2)(c) provides as follows: "It is unlawful for a person, in the case of a person employed by him at an establishment in Great Britain, to discriminate against that employee by dismissing him, or subjecting him to any other detriment."

Title: Nyazi v. Rymans Ltd., [1988] EAT/6/88

Category: The ground of discrimination is religion. The area of discrimination is employment.

Link:

Venue: Employment Appeal Tribunal

Facts: Miss Nyazi is of Muslim faith. She had been employed as a sales assistant by Rymans Limited. She wished to have a day off in order to celebrate the festival of Id al Fitr. When she was refused leave, she felt that she had been discriminated against under the Race Relations Act, 1976 (the "***Act***"). The basis of the argument was that this is discrimination on a religious basis. The Industrial Tribunal found that she failed to prove her case.

Merits: To prove a case under Section 1(1)(a) of the Act, evidence must be brought to prove that there was discrimination against "an ethnic group". In this case, Miss Nyazi had to establish that Muslims are an ethnic group. This is a question of fact, as indicated in the Mandla case.

The Industrial Tribunal considered the question whether the Muslims are a separate ethnic group and held that they are unable to conclude that Muslims satisfy the definition of the Act and come within the meaning of 'ethnic group'. All that can be said is that Muslims profess a common religion in a belief in the Oneness of God and the prophethood of Muhammed. There clearly is a profound cultural and historical background and there are traditions of dress, family life and social behavior. In addition, there is a common literature in the sense that the Holy Quaran is a sacred book. However, many of the other relevant characteristics seem to be missing.

The Muslim faith is widespread, covering many nations, colors and languages. It seems that the common denominator is religion and a religious culture. In other words, Muslims are a group defined mainly by reference to religion. The Act is not intended to outlaw discrimination against a group of persons defined by reference to religion. The Industrial Tribunal therefore held that they have no jurisdiction to hear the application.

The Employment Appeal Tribunal held that the use of the word 'jurisdiction' in that sense is not entirely accurate. The Industrial Tribunal clearly had jurisdiction to hear this application. They found that the applicant failed to prove an essential constituent part of her claim, and therefore, the claim failed.

Decision: The Industrial Tribunal did not err either in the exercise of its discretion, or in the conclusion it reached on the facts which were before it. The appeal was dismissed.

Title: Post Office v. Mayers, [1988] EAT/44/88

Category: The ground of discrimination is religion. The area of discrimination is employment.

Link:

Venue: Employment Appeal Tribunal

Facts: This is an appeal by the Post Office from a decision from an Industrial Tribunal, which decided that the applicant, Mr. Mayers, had been unfairly dismissed.

The applicant had been working as a station postman from May 1966 until dismissal in May 1987. In 1981, the applicant became a member of the World Wide Church of God. One of the tenets of Worldwide Church of God forbids any form of work on their Sabbath. Their Sabbath extends from sunset on Friday to sunset on Saturday. Accordingly, he could not work on his late shifts on Fridays.

The manager of the London Postal Region pointed out that he ought to try to think about a solution as his contract was clear. Nonetheless, the applicant left early on Fridays. Ultimately, he was dismissed, as the Post Office looked upon this as a breach of contract.

Merits: The Employment Appeal Tribunal found that the applicant's dismissal has been fair. One of the reasons that the applicant was unsuccessful was that the Post Office had made efforts, albeit unsuccessful efforts, to accommodate Mr. Mayers' religious convictions. They had attempted to secure him alternative employment with more suitable hours. It was clear that he was unwilling to accept employment on a part time four and half day week basis. It was this attempt to accommodate Mr. Mayers, which made the dismissal fair, and not the mere fact that Mr. Mayers' religious convictions conflicted with his contractual duties.

Decision: The applicant was not unfairly dismissed. The appeal was therefore allowed.

Title: Simon v. Brimham Associates, [1987] IRLR 307, [1987] ICR 596

Category: The ground of discrimination is religion. The area of discrimination is employment.

Link:

Venue: Court of Appeal (Civil Division)

Facts: The respondents, a firm of employment consultants, advertised a job in London. Mr. Simon was interviewed for the post by Mr. Josey. He was informed that the employment involved working for Arabs and was asked his religion. He replied that he was not obliged to answer that question. Mr. Josey explained that the question was asked because "if, for instance, you were of the Jewish faith, it might preclude your selection for the job". Mr. Simon, who is Jewish, withdrew his application. He complained that he had been unlawfully discriminated against contrary to Section 1(1)(a) of the Race Relations Act, 1976 (the "***Act***").

An Industrial Tribunal dismissed the complaint. The Industrial Tribunal found that Mr. Josey did not know that Mr. Simon was Jewish and that he "was treated by the respondents in exactly the same way as any other candidate, whatever his race or religion might have been". The Employment Appeal Tribunal dismissed an appeal against this decision.

Merits: The Court of Appeal held that the Industrial Tribunal and the Employment Appeal Tribunal were entitled to find that the appellant had not been discriminated against on racial grounds.

Although words or acts of discouragement can amount to treatment of the person discouraged less favorable than that given to other persons, the Industrial Tribunal's found that the appellant was treated in exactly the same way as any other candidate, whatever his race or religion might have been. The particular words to which the appellant took exception were words which would have been used to explain the reason for the inclusion of a question about an applicant's religion to any applicant who had been offended by its being asked. Therefore, the Industrial Tribunal was entitled to find that the question did not amount to discrimination within the meaning of Section 1(1)(a) of the Act. The respondents did not treat the applicant less favorably than they would have treated some other person.

The appellant also failed to establish that the act was done on "racial grounds", which means by reason of the racial group to which the person who complains belongs. An individual suggesting that he was discriminated against on racial grounds has to establish that it was on those grounds that he was treated less favorably. The knowledge or lack of knowledge of the alleged discriminator of the racial origin of the person against whom he is said to have discriminated must be material to a finding of whether the alleged act was done on racial grounds.

In the present case, the reason for the words used was to explain the reason for asking the question about the appellant's religion. The appellant failed to establish that he was treated less favorably than the respondents would have treated someone else on the grounds of his faith.

Decision: The appeal was dismissed. The respondents did not treat the appellant less favorably, as the question was asked to all applicants. In addition, the appellant failed to establish that the act in question was done on "racial grounds".

Title: Singh v. British Rail Engineering Ltd., [1986] I.C.R. 22

Category: The ground of discrimination is religion. The area of discrimination is employment.

Link:

Venue: Employment Appeal Tribunal

Facts: The applicant, a Sikh, who in accordance with his religious beliefs always wore a turban, worked for the employers in their carriage repair shop. In 1983, because of concern about safety standards, the employers introduced a requirement that protective headgear should be worn. The applicant, who was unable to wear the hat over his turban, was obliged to take less well paid work with loss of promotional prospects.

On his complaint of unlawful indirect discrimination on the ground of race contrary to Section 1(1)(b) of the Race Relations Act, 1976 (the "***Act***"), an Industrial Tribunal found that fewer Sikhs than non-Sikhs could comply with the requirement to wear protective headgear and that it was discriminatory and to the applicant's detriment within the meaning of Section 1(1)(b)(i) and (iii) of the Act. In considering whether the rule was justifiable within the meaning of Section 1(1)(b)(ii) of the Act, the tribunal took into account various factors including the possibility of the employers incurring legal liability if they allowed the applicant to work without a protective hat and the fact that other employees might also refuse to wear hats. The tribunal concluded that the discrimination was justified and dismissed the complaint.

Merits: It was not disputed that the employers discriminated against the applicant because they applied to him a requirement to wear protective headgear which the employers applied equally to the other non-Sikh employees, but which was such that he could not comply with it whereas the other 23 non-Sikhs could and which was to his detriment because he could not comply with it. The employers sought to escape the consequences of their discrimination by showing that the requirement was justifiable irrespective of the color, etc. of the applicant.

The onus is on the person seeking to justify the discriminatory requirement. That justification is to be proved on the balance of probabilities. An objective justification is called for: a genuine belief that the requirement is justified is not sufficient. But there is no need to prove that the requirement is necessary. It is sufficient that the reasons for it are good or adequate.

The Industrial Tribunal was justified in taking into account the risk of injury and the possibility of ensuing liability on the employers if the applicant did not wear protective headgear, even though the applicant's objection was based on genuine religious grounds, and the fact that the requirement would be more difficult to enforce if an exception was made for him.

In addition, whether a discriminatory requirement was justified was a question of fact for the Industrial Tribunal and since the tribunal's conclusion was supported by the evidence its decision that there was no unlawful discrimination was not perverse.

Decision: The tribunal has considered and weighed all the circumstances. It cannot be said that its conclusion is perverse.

Title: Mandla (Sewa Singh) and another v. Dowell Lee and others, [1983] 2 AC 548, [1983] 1 All ER 1062

Category: The ground of discrimination is religion. The area of discrimination is education.

Link:

Venue: House of Lords.

Facts: Both plaintiffs, father and son, were Sikhs, and, in accordance with their tenets, wore turbans over their unshorn hair. The first defendant, the headmaster of a school owned by the second defendant, refused to admit the son as a pupil at the school because the plaintiffs would not agree to the son cutting his hair and ceasing to wear a turban to comply with the school uniform. The plaintiffs brought an action for a declaration that the defendants committed an act of unlawful discrimination against the plaintiffs within the meaning of the Race Relations Act, 1976 (the "***Act***") . The judge dismissed the action holding that there had been no discrimination contrary to Section 1(1)(b) of the Act, as Sikhs were not a racial group. The Court of Appeal dismissed the plaintiff's appeal.

Merits: Section 17(a) of the Act makes it unlawful for the proprietor of an independent school to discriminate against a person in the terms on which the school offers to admit him as a pupil. The only question is whether racial discrimination has occurred.

Racial discrimination is defined in Section 1(1) of the Act, which provides as follows:

> "A person discriminates against another in any circumstances relevant for the purposes of any provision of this Act if –
>
> a) on racial grounds he treats that other less favorably than he treats or would treat other persons; or
>
> b) he applies to that other a requirement or condition which he applies or would apply equally to persons not of the same racial group as that other but –
>
> I. which is such that the proportion of persons of the same racial group as that other who can comply with it is considerably smaller than the proportion of persons not of that racial group who **can** comply with it; and
>
> II. which he cannot show to be **justifiable** irrespective of the color, race, nationality or ethnic or national origins of the person to whom it applied; and
>
> III. which is to the detriment of that other because he cannot comply with it."

The case against the respondent under Section 1(1)(b) is that he discriminated against the second plaintiff because he applied to him a requirement or condition (namely, the "No turban" rule) which he applied equally to pupils not of the same racial group as the second plaintiff, but (i) which is such that the proportion of Sikhs who can comply with it is considerably smaller than the proportion of non-Sikhs who can comply with it and (ii) which the respondent cannot show to be justifiable irrespective of the color, etc. of the second appellant, and (iii) which is to the detriment of the second plaintiff because he cannot comply with it.

The main question is whether Sikhs are a "racial group" for the purposes of the Act. The answer to this question depends on whether they are a group defined by reference to "ethnic origin".

For a group to constitute an ethnic group, it must regard itself, and be regarded by others, as a distinct community by virtue of certain characteristics. Some of these characteristics are essential. Others are not essential but one or more of them will commonly be found and will help to distinguish the group from the surrounding community. The conditions which appear to be essential are: (1) a long shared history, of which the group is conscious as distinguishing it from other groups, and the memory of which it keeps alive; (2) a cultural tradition of its own, including family and social customs and manners, often but not necessarily associated with religious observance. In addition to those two essential characteristics, the following characteristics are relevant; (3) a common geographical origin, or descent from a small number of common ancestors; (4) a common language, not necessarily peculiar to the group; (5) a common literature peculiar to the group; (6) a common religion different from that of neighboring groups or from the general community surrounding it; (7) being a minority or being an oppressed or a dominant group within a larger community, for example a conquered people and their conquerors might both be ethnic groups.

A group defined by reference to enough of these characteristics would be capable of including converts and of excluding apostates. Provided a person who joins the group feels to be a member of it, and is accepted by other members, then he is, for the purposes of the Act, a member. It is possible for a person to fall into a racial group either by birth or by adherence, and it makes no difference, so far as the Act is concerned, by which route he finds his way into the group.

The defendants admitted that the Sikhs would qualify as a group defined by ethnic origins for the purposes of the Act. It is, therefore, necessary to consider whether the respondent has indirectly discriminated against the appellants in the sense of Section 1(1)(b) of the Act. That raises two subsidiary questions:

1) What is the meaning of the words “can comply” in Section 1(1)(b)(i)? It must have been intended by Parliament to be read not as "can physically," so as to indicate a theoretical possibility, but as "can in practice" or "can consistently with the customs and cultural conditions of the racial group". Accordingly, the "No turban" rule was not one with which the second plaintiff could, in the relevant sense, comply.

2) What is the meaning of the words “justifiable” in Section 1(1)(b)(ii)? The onus under paragraph (ii) is on the defendant to show that the condition which he seeks to apply is not a necessary condition, but that it is in all circumstances justifiable without regard to the ethnic origins of that person. In this case, the principal justification on which the defendant relies is that the turban is objectionable because it is a manifestation of the second plaintiff's ethnic origins. That is not a justification which is admissible under paragraph (ii).

Decision: The Sikhs are a racial group defined by reference to ethnic origins for the purpose of the Act. The "No turban" rule was not one with which the second appellant could, in the relevant sense, comply. The defendants could not justify their conduct as “justifiable”. The defendants’ behavior was therefore unlawful.

Title: Kingston & Richmond Area Health Authority v. Kaur, [1981] IRLR 337, [1981] ICR 631

Category: The ground of discrimination is religion. The area of discrimination is employment.

Link:

Venue: Employment Appeal Tribunal

Facts: Miss Kaur is a Sikh. She wished to be trained as a nurse and was accepted by the Health Authority for a two year training course, with a view to qualifying as a State Enrolled Nurse. As a Sikh woman, she feels that she must wear trousers and that to wear the standard nursing uniform (i.e. a dress) would not be proper or respectable. She therefore made it clear that her convictions required her to wear trousers, but said that she would wear any type of trousers that might be specified and was prepared to wear them under her uniform. The Health Authority said they would not agree to any departure from their standard uniform policy. As a result, the Health Authority withdrew its offer of a training place.

Miss Kaur complained to the Industrial Tribunal that she had been unlawfully discriminated against contrary to the Race Relations Act, 1976 (the "***Act***"). Section 4(1)(b) of the Act provides that it is unlawful to discriminate against a person on racial grounds in the terms on which such person is offered employment.

The discrimination alleged in this case is indirect discrimination (See Section 1(1)(b) of the Act) in that the Health Authority was applying a condition such that the proportion of persons of Miss Kaur's racial group who can comply with the uniform policy is considerably smaller than the proportion of other people who can comply.

The Industrial Tribunal upheld Miss Kaur's complaint. It held that Miss Kaur belonged to a racial group consisting of Sikhs. The wearing of trousers is both a requirement of the Sikh religion and a custom of Sikhs. The Industrial Tribunal decided that the proportion of Sikh women, who could comply with the uniform policy of the Health Authority, was considerably smaller than the proportion of other persons who could so comply. The Industrial Tribunal further decided that such condition was detrimental to Miss Kaur and that the Health Authority had not shown the requirement as to uniform to be 'justifiable' within the meaning of Section 1(1)(b)(ii). The Health Authority appeals against the decision.

Merits: Although there is no statutory obligation to wear a uniform, if a uniform is worn, it must conform to the requirements of the Enrolled Nurses Rules Approval Instrument 1969 (the "***Rules***") and 'no alteration is permitted'. It was common ground that it was highly desirable that nurses should wear some form of uniform and the Industrial Tribunal found that the requirement to wear a uniform was 'justifiable' within the meaning of the Act.

On that basis, the requirement to wear a uniform (which was justifiable) necessarily involves a requirement that the uniform to be worn by enrolled nurses should comply with the requirements of the Rules without any alteration. The addition of trousers to the ordinary nursing dress would be an alteration. Although Miss Kaur would not have become an enrolled nurse until she had completed her two years training, it must be justifiable conduct by the Health Authority to insist that it will not take on as a trainee for qualification as a State Enrolled Nurse a person who will not be prepared to comply with the statutory requirements as to the uniform to be worn once she has qualified.

If so, it would be impossible for the Health Authority lawfully to permit Miss Kaur to wear trousers as part of her uniform. Accordingly, their refusal to permit any variation of the uniform (which they had justifiably required to be worn) must also be justifiable. Looked at another way, how can the Health Authority comply with the recommendation made by the Industrial Tribunal to cease to impose any condition, which requires every female nurse to refrain from wearing trousers onwards, since, in order to do so, they would either have to waive any requirement to wear uniform or vary the uniform in a way which was prohibited by statute?

Although there was no need to decide whether Sikhs are or are not a racial group for the purposes of the Act, the Employment Appeal Tribunal stated that the question raises very difficult points both of fact and of law.

Decision: The appeal was allowed. The Health Authority did not act in violation of the Act by dismissing Miss Kaur from the program, as she would have been unable to comply with the uniform requirements of State Enrolled Nurses.

Title: Pansear v. The Nestle Co. Ltd,. [1980] IRLR 64, [1980] ICR 144

Category: The ground of discrimination is religion. The area of discrimination is employment.

Link:

Venue: Court of Appeal

Facts: Mr. Panesar is an orthodox Sikh. One of the rules of the Sikhs is that they have to keep their hair unshorn and wear a turban. Mr. Panesar wears a turban and a beard.

Mr. Panesar applied for work to The Nestle Company Limited at their factory in response to an advertisement for a maintenance engineer. Before he was seen, the lady who was dealing with the applications, asked if he wore a beard. She was told that he did. She said that, in those circumstances, it was no use his applying for work at their factory because they had a strict rule that beards and excessively long hair styles were forbidden.

Thereupon, Mr. Panesar complained to the Industrial Tribunal, which held that the appellant had not been unlawfully discriminated against. The Employment Appeal Tribunal upheld such decision. Mr. Pansear now applies for leave to appeal against the Employment Appeal Tribunal.

Merits: Mr. Pansear claimed that The Nestle Company was discriminating unlawfully against him. It was 'indirect discrimination' under Section 1(1)(b) of the Race Relations Act, 1976 (the "***Act***"). The great majority of Sikhs wear beards whereas the great majority of the other men do not. Therefore, the proportion of Sikhs who would be denied employment was much greater than the proportion of other men.

Under Section 1(b) of the Act, there is an exception in favor of the employer if he can show that the restriction he imposes is justifiable, irrespective of the color, race or nationality of the applicants. This case depends on whether The Nestle Company can show that the condition that their employees should not wear beards is justifiable.

The prohibition against the wearing of beards was essential in a factory making chocolate in order that it should not be contaminated by bacteria. Having come to that finding of fact, the Industrial Tribunal held that the rule about the wearing of beards was justifiable within the meaning of the section. The Employment Appeal Tribunal did not see any error in point of law in what the Industrial Tribunal had said and therefore dismissed the appeal.

Article 9 of the European Convention on Human Rights is not law in the United Kingdom, but there is much regard to it. That assures to everyone the freedom to manifest his religion. The Sikhs are manifesting their religion in wearing their hair unshorn. But that Article goes on to say: '... subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedom of others'. This rule is for the protection of public health. So, there is no breach of that Article even if it were regarded as law in this country.

Decision: Leave to appeal was refused, as the finding was essentially one of fact. It cannot be said that the Industrial Tribunal erred in law or acted on wrong principle.

Title: Seide v. Gillette Industries Ltd., [1980] IRLR 427

Category: The ground of discrimination is religion. The area of discrimination is employment.

Link:

Venue: Employment Appeal Tribunal

Facts: Mr. Seide, who is Jewish, was employed as a toolmaker on a two-shift basis by the respondents. During 1977, Mr. Garcia, one of his fellow employees, made a number of anti-Semitic remarks to Mr. Seide. As a result, Mr. Seide was transferred to the other shift, so that he was now working with Mr. Murray. In April 1978, Mr. Murray asked for a transfer. He claimed that Mr. Seide was trying to involve him in the antagonism with Mr. Garcia. The management decided that Mr. Seide should be removed from two-shift working and go on to day shifts.

Mr. Seide complained about the company's decision, which resulted in a loss of wages, through the internal grievance procedure. When his appeals proved unsuccessful, he complained to an Industrial Tribunal that he had been treated less favorably on racial grounds contrary to the Race Relations Act, 1976 (the "***Act***").

An Industrial Tribunal dismissed Mr. Seide's complaint and concluded that the company had not been activated by anti-Semitic motives, that they had properly carried out the grievance procedure and that the decision to move Mr. Seide had not been taken on racial grounds.

Merits: The Industrial Tribunal correctly concluded that they had jurisdiction to deal with the appellant's complaint. Although discrimination on the ground of religion is outside the provisions of the Act, "Jewish" can mean a member of a race or a particular ethnic origin as well as being a member of a particular religious faith. The Industrial Tribunal correctly concluded that what happened was not because the appellant was of the Jewish faith, but because he was a member of the Jewish race or of Jewish ethnic origin.

It is insufficient to consider whether the fact that the person is of a particular racial group within the definition of the Act is any part of the background of what happens. The question is whether the activating cause of what happens is that the employer has treated a person less favorably than others on racial grounds. The question is one of fact for the Industrial Tribunal.

In the present case, although the history of the matter began with anti-Semitic remarks to the appellant, an employee, who was found not to be activated by anti-Semitic feeling, was unwilling to work with the appellant because the appellant was seeking to involve him in the antagonism which had arisen. Having found that the company's officials were not activated by anti-Semitism, the Industrial Tribunal were entitled to conclude that the respondents transferred the appellant not because he was Jewish but because of the difficult situation.

The Industrial Tribunal asked themselves the essential question whether the employers had treated Mr. Seide less favorably than other people on racial grounds. Having considered all the findings of fact, they were entitled to reach the conclusion to which they came.

Decision: The appeal was dismissed and the decision of the Industrial Tribunal was upheld. The decision to transfer Mr. Seide had not been taken on racial grounds.

Title: Singh v. Rowntree MacKintosh Ltd., [1979] I.C.R. 554

Category: Religious discrimination on the ground of employment.

Link:

Venue: Employment Appeal Tribunal

Facts: The complainant, a Sikh, applied for a job at one of the company's confectionery factories, where a rule that employees should not wear beards was rigidly enforced on the ground of hygiene. That rule was not rigidly enforced at all the company's factories in the United Kingdom. The complainant would have been offered the job if he had been willing to shave off his heard, which was contrary to his religion. He complained to an Industrial Tribunal that the company had indirectly discriminated against him.

The Industrial Tribunal found that, although fewer Sikhs than other groups could comply with the rule, the public interest that the rule of hygiene should be enforced outweighed the public interest that discriminatory rules should not be applied and that in all the circumstances the rule was "justifiable" within the meaning of Section 1(1)(b)(ii) of the Race Relations Act, 1976 (the "***Act***"). They dismissed the complaint.

Merits: The onus of proving that a requirement is justifiable is on the party who discriminates. It is not a heavy onus, but rather the ordinary burden of proof applicable to a civil case, i.e. a balance of the probabilities. Therefore, under the Act, the company had to prove on the balance of probabilities that their rule that beards were not worn was justifiable irrespective of color, race, nationality or ethnic or national origins.

It was argued that the company had not shown a genuine necessity for their requirement that employees should not wear beards and that it was at best a convenience. The Employment Appeal Tribunal held that a requirement, which is merely convenient, will not suffice. Something more is required and it may be that it is proper to describe it as necessary, provided that term is applied reasonably and with common sense.

In this industry, an employer must be allowed some independence of judgment as to what he deems to be commercially expedient in the conduct of his business. Standards of hygiene may vary between manufacturers and between sections of the consuming public. An employer cannot be said to have acted unjustifiably if he adopts a standard in one of his factories which is supported by medical advice and which has the approval of a local food and drugs officer. He cannot reasonably be said to have adopted such a standard as a matter of convenience. It could more properly be described as a commercial necessity for the purposes of his business.

Decision: The tribunal applied the right test. The appeal was dismissed.

Title: Ahmad v. Inner London Education Authority, [1978] QB 36, [1977] 1 All ER 574

Category: Religious discrimination in employment.

Link:

Venue: Court of Appeal, Civil Division

Facts: The appellant, a devout Moslem, disregarded the education authority's refusal to give him leave and went to the mosque every Friday to pray. In consequence, the school was without his teaching services for 45 minutes every Friday afternoon. The education authority informed him that, if he wished to continue going to the mosque each Friday, he would have to relinquish his full-time appointment and accept a part-time one, doing 4 1/2 days teaching a week, which would mean less pay. He rejected the option of part-time work and resigned.

He applied to an Industrial Tribunal for compensation and reinstatement in full-time employment, on the ground that the education authority's conduct had forced him to resign and constituted unfair dismissal. He contended that he was entitled to take time off to go to the mosque without any loss of pay by virtue of the provision, in Section 30(a) of the Education Act, 1944 (the "***Act***"), that no teacher was to receive any less emolument or be deprived of, or disqualified for, any promotion or other advantage by reason of his attending religious worship.

The Industrial Tribunal dismissed the appellant's application on the grounds, *inter alia*, that (i) in the circumstances Section 30 of the Act had no application and (ii) the education authority had not acted unreasonably. Therefore the dismissal was fair. On appeal their decision was upheld by the Employment Appeal Tribunal. The appellant appealed to the Court of Appeal contending that his rights under Section 30 of the Act and under Article 9(b) of the European Convention on Human Rights had been infringed by the education authority.

Merits:

Lord Denning - Section 30 of the Act must be read subject to the qualification "if the school time-table permits'. So read, it means that Mr. Ahmad is to be entitled to attend religious worship during the working week if it can be arranged consistently with performing his teaching duties under his contract of employment.

The school time-table was well known to Mr. Ahmad when he applied for the teaching post. If he wished to have every Friday afternoon off for his prayers, he ought not to have applied for this post or he ought to have entered into a 4 1/2 day engagement only.

As to Article 9 of the European Convention on Human Rights, Mr. Ahmad's right to "manifest his religion [...] in [...] practice and observance" must be subject to the rights of the education authorities under the contract and to the interests of the children whom he is paid to teach. There is nothing in the European Convention to give Mr. Ahmad any right to manifest his religion on Friday afternoons in derogation of his contract of employment and certainly not on full pay.

Lord Orr - Section 30 of the Act cannot be construed as a breach of contract by a teacher in absenting himself during school hours for the purpose of attending religious worship. In addition, Article 9 of the European Convention on Human Rights "to manifest his religion" is subject to the education authority's rights under the contract of employment. Accordingly, Article 9 does not entitle the appellant to absent

himself from his place of work during working hours and in breach of contract. This would be so even if his absence would cause only a small inconvenience to the school. Allowing small inconveniences would impose a detailed investigation as to the degree of difficulty involved. In addition, absence without leave in school hours would be a breach of contract even if the convenience involved were slight.
Lord Scarman dissenting - Section 30 of the Act was incorporated in appellant's contract and overrides any contractual provision inconsistent with it. It was, therefore, a contract whereby the teacher undertook to be at school and available for teacher's duty during school hours subject to his rights under Section 30 to be protected from discrimination on the ground of his religion.

Section 30 should be broadly construed to mean that the teacher is not to receive less emoluments by reason only that during school hours he attends religious worship. The right to go to church, chapel, temple or mosque, which the Section confers on the teacher, has to be read into his full-time contract. To give business efficacy to a contract which incorporates the section while imposing an obligation of full-time service, it is necessary to imply a limitation that the period of absence be no longer than is reasonably necessary, nor so frequent or of such duration as to make it impossible for the teacher to offer full-time service.

It is impossible to say that the 45 minutes' absence from class every Friday to go to the mosque constitutes a breach of this contract.

Decision: The appeal was dismissed. The appellant was neither compensated nor reinstated as Section 30 and Article 9 were not infringed.

Title: Esson v. London Transport Executive, [1975] IRLR 48

Category: Unfair dismissal of an employee due to religious observance of Saturday as a rest day.

Link:

Venue: Industrial Tribunal

Facts: Mr. Esson was employed as a London Transport bus conductor. Under the rules of the London Transport Executive, it was stated that "there shall be no guaranteed rest days on Saturdays". Mr. Esson told the garage manager that because of his religious beliefs, he could no longer work on Saturdays. He was then informed he should make every endeavor to arrange mutual exchanges himself. He was also reminded that it was a term of the contract that he should work as rostered on any day of the week.

Mr. Esson avoided working on Saturdays either by changing his rest day, by being off sick or simply absenting himself from work. Eventually, after being warned, he was dismissed. Mr. Esson claims that he was unfairly dismissed.

Merits: The Industrial Tribunal held that in absenting himself from work on Saturdays in order to fulfill his religious obligations, the applicant was in clear breach of his contract of employment. For the applicant to have always had one of his rest days scheduled for Saturday would have meant finding someone else to work on Saturday instead of having that day as a rest day. This would have been wholly unreasonable, unless it could have been achieved by mutual agreement and there was no evidence that it could.

In view of the conflict between the applicant's religious beliefs and his obligations under his contract of employment, the respondents had no alternative but to dismiss him and that dismissal was not unfair.

Decision: The dismissal was not unfair.

Title: Singh v Lyons Maid, [1975] I.R.L.R. 328

Category: Fair/unfair dismissal on religious grounds.

Link:

Venue: Industrial Tribunal

Facts: Singh, a production worker who worked for an ice-cream manufacturer, was dismissed for breach of hygiene rules in wearing a beard despite a promise to shave. He was beardless when employed, but later refused to shave on religious grounds. There was no suitable alternative for employment for bearded personnel.

Merits: It was not relevant to consider the justification of the hygiene rule nor to compare it with those in other branches of the industry.

Decision: The dismissal was reasonable.