

## **Hopper and others v Virgin Blue Airlines Pty Ltd (2006 QADT 9)**

### **1) Reference Details**

Jurisdiction: Anti-Discrimination Tribunal Queensland, Australia

Date of Decision: 29 March 2006

Link to full case: <http://www.austlii.edu.au/au/cases/qld/QADT/2006/9.html>

### **2) Facts**

The low-cost carrier Virgin Blue was established in Australia in 2000 as a partnership between Sir Richard Branson and Patricks, an Australian transport and logistics company. On 12 September 2001 Australia's second largest airline, Ansett, went into voluntary administration and later liquidation. Thousands of staff members were made redundant, including many cabin crew members who then sought positions at Virgin Blue which was recruiting for staff. A number of older ex-Ansett workers failed to obtain employment at Virgin Blue in spite of them having years of experience as flight attendants.

The eight complainants comprised a group of former Ansett flight attendants, aged between 36 and 56, who had applied for positions at Virgin Blue but had been declined. The recruitment process involved a group assessment following initial application, which each of the complainants attended. The selection process depended on an assessment of various characteristics of the applicants, including "Virgin flair".

### **3) Law**

- Section 10 of the Anti-Discrimination Act 1991 (meaning of direct discrimination)

### **4) Legal Arguments**

#### *The Complainant*

The complainants alleged that they had been discriminated against by Virgin Blue on account of the fact that they were or appeared to be over the age of 35. They alleged that though there was no age-limit imposed on applicants; Virgin Blue had used a subjective assessment process which prevented older applicants from being successful. They presented statistics to show that out of 750 applicants accepted during the period, only one was over the age of 36.

#### *The Respondent*

The respondent argued that the statistics presented reflected the fact that the majority of applicants were below 35 years old and denied that the assessment process was deliberately or inadvertently discriminatory.

### **5) Decision**

The Tribunal opined that though no intentional discriminatory behaviour could be established, the behavioural competency testing had failed to produce an age neutral result, and thus it could be inferred that Virgin Blue assessors had unconsciously discriminated

against the complainants on the basis of age. The Tribunal concluded that the complainants had been treated less favourably than younger applicants, though this has not been intentional, and Virgin Blue was ordered to pay damages.