

## **Miles v. Gilbank (Case No: A2/2005/2196)**

### **1) Reference Details**

Jurisdiction: United Kingdom, Court of Appeal (Civil Division)

Date of Decision: 11 May 2006

Link to full case: <http://www.bailii.org/ew/cases/EWCA/Civ/2006/543.html>

### **2) Facts**

Ms Gilbank had been employed by a hairdressing salon where the appellant, Ms Miles, was her line manager. She became pregnant and notified Ms Miles, who made no attempt to adjust working practices or to make a risk assessment. Ms Gilbank submitted to an Employment Tribunal a complaint detailing allegations of sex discrimination. The Tribunal held that Ms Gilbank had been subjected to inhumane treatment, a sustained campaign of bullying and discrimination that had been targeted, deliberate, repeated and conscious, showing a total lack of concern for the welfare of Ms Gilbank and her unborn child. It found that there had been a catalogue of vicious behaviour towards Ms Gilbank on the part of Ms Miles and other managers. The Tribunal made an award of GBP 25,000 for injury to feelings, being the top end of the bracket for an award of that kind. Ms Miles and the company were made jointly liable for the compensation on the basis that Ms Miles had aided the unlawful discrimination under s. 42 of the Sex Discrimination Act 1975 by knowingly fostering and encouraging the discriminatory behaviour. The decision was upheld by the Employment Appeal Tribunal. Ms Miles and the company appealed against this decision.

### **3) Law**

- Section 42 of the Sex Discrimination Act 1975 (which provides that a person who knowingly aids another person to commit acts of unlawful discrimination is treated as himself doing those acts)

### **4) Legal Arguments**

#### *The Appellant*

The appellants submitted that the Tribunal had failed to focus on the specific aid which was given in respect of each specific act of discrimination, and that the award made was manifestly excessive.

#### *The Respondent*

The respondent, Ms Gilbank, submitted that Ms Miles was the manager, she knew of the discrimination and she was properly jointly and severally liable because she had failed to act to prevent the other managers' acts of unlawful discrimination towards her.

### **5) Decision**

The appeal was dismissed on the grounds that whilst in order to aid an act of unlawful discrimination a person must have done more than merely create an environment in which discrimination could occur, care had to be taken by the Tribunal to identify the acts of

unlawful discrimination and to examine whether the acts of the person who was alleged to have aided the commission of those acts had in fact done so.

The Court of Appeal opined that the Tribunal had made detailed findings about the acts which it found to have been unlawful discrimination and determined that the acts of Ms Miles went well beyond simply creating an environment in which discrimination had occurred. The Court of Appeal agreed with the Tribunal's finding that Ms Miles had assisted the other managers to act in a discriminatory manner as she had been dismissive of Ms Gilbank's complaints against the other managers in their presence and in addition had committed acts of discrimination herself, thereby making it clear that such acts were also acceptable for the other managers. The Court found that the compensation awarded had not been excessive in the light of the repeated acts of discrimination which were found to have been deliberate and very hurtful and distressing.