RadcliffesLeBrasseur

Employment Briefing

April 2009

Case of the Month

It seems a simple enough rule: tribunals should give reasons for their decisions. They do get it wrong and ***Teva (UK) Ltd. V Goubatchev*** (UKEAT/0490/08) is a good example of how not to decide a case. The employee was not promoted. He exercised the grievance procedure, was not satisfied and concluded that he had been discriminated against because he was Russian. He brought his claim to an employment tribunal which found in his favour.

The reasons the employee won, according to the tribunal, were that his employers had not complied with a Code of Practice which the tribunal inferred was on racial grounds. The tribunal also decided the employee had made out a case that entitled the tribunal to conclude discrimination had taken place in the absence of an adequate explanation from the employer which had not been forthcoming and also concluded that the employee had been the subject of stereotyping.

The key issue in all discrimination cases is that the reason for any detrimental treatment is in fact the discrimination complained of, in this case nationality or ethnic origin. There can be all kinds of unfair and improper behaviour that can cause detriment but if it is not caused by the unlawful discrimination the claim fails.

Because it can be difficult to find direct evidence of discrimination tribunals are permitted to draw inferences from facts that they find proved.

What is essential in those cases is that the primary facts are found by the tribunal and that all of the facts are assessed, including any explanations given by the employer, in deciding whether it is legitimate to make inferences of what were the effective causes of the acts causing the detriment.

In this case Employment Appeal Tribunal held that the tribunal appeared to have failed to consider whether there were any non-discriminatory reasons for not complying with the Code and generally had not appeared to take into account the possibility of non-discriminatory reasons for the employer's decision. The successful candidate had been scored marginally higher than the claimant and the tribunal gave no reason why this was not decisive or of substantial significance.

The pity of this case was the tribunal may well have been able to satisfy the required tests but it failed to give adequate reasons for its decision and as a result the whole hearing will have to be repeated. Pity the parties!

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Further Information

If you would like further information or to comment in general regaring this case, please contact

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