



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

AND

Respondent

Mr Navdeep Singh

Ramgarhia Board Sikh Temple

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT Birmingham

ON

9 May 2017

EMPLOYMENT JUDGE Gilroy QC

Representation

For the Claimant: Mr S Ghataore (Lay representative)

For the Respondent: Mr M Stephens (Counsel)

JUDGMENT ON A PRELIMINARY HEARING

The judgment of the Tribunal is as follows:

1. The Claimant was not at any material time within the “employment” of the Respondent within the meaning of s.83.2(a) of the Equality Act 2010.
2. The Claimant’s claim is therefore dismissed.

REASONS

Introduction

1. This is a claim of race discrimination. The Claimant, a Sikh who maintains that he is of the Ramgarhia caste, alleges that he was discriminated against by the Respondent on the basis that he was perceived to be of the Labana caste. There is an issue between the parties as to whether he is of the Ramgarhia caste or the Labana caste, but that issue is of no relevance to this judgment.
2. It is the Claimant’s case that caste or the perception of caste falls within s.9(1)(c) of the Equality Act 2010, “EqA”.

3. The Claim Form was issued against Mr Amarjit Virdee, the General Secretary of the Ramgarhia Board Sikh Temple. With the agreement of the parties, “the Ramgarhia Board Sikh Temple” was substituted for Mr Virdee as the Respondent.
4. The matter came before the Tribunal for a Case Management Preliminary Hearing on 3 January 2017. At that hearing, further particulars of the alleged discrimination were provided, and it was directed that there be a Preliminary Hearing for the Tribunal to determine whether the Claimant was, applying s.83(2)(a) EqA, within the employment of the Ramgarhia Board Sikh Temple at the relevant time. It was agreed between the parties that in the absence of such a finding, the Claimant would have no claim.
5. The matter duly came before the Employment Tribunal for the above-mentioned Preliminary Hearing on 9 May 2017. The Claimant did not attend. He was represented by Mr Ghataore, a lay representative, and the Respondent was represented by Mr Stephens of Counsel. Mr Ghataore informed the Tribunal that the Claimant was not well enough to attend on the grounds of illness. Mr Ghataore made an application to adjourn the Preliminary Hearing.
6. Mr Ghataore’s application was foreshadowed by an e-mail Mr he had sent to the Tribunal at 10.02 am on 8 May 2017, the day before the Preliminary Hearing, in which he stated:

“We would like to apply for the case to be deferred as the claimant is depressed and is unlikely to be well enough to attend the hearing tomorrow. There was a last minute mediation/reconciliation attempt yesterday with the temple trustees that failed as the issue of his caste was raised again. He has had a sleepless night and is feeling very low after being told there were more doubts about his caste and will require further evidence/proof will be required (sic)”.

At the Preliminary Hearing on 9 May 2017, Mr Ghataore provided no further information in support of his application for an adjournment. He informed the Tribunal that he had advised the Claimant to obtain a medical certificate to substantiate his illness and the need for an adjournment, but no such certificate was produced, nor was it even suggested that the Claimant had followed Mr Ghataore’s advice in this regard.

7. The adjournment application was resisted. Mr Stephens observed that the matter had been listed since January 2017, all of the Respondent’s witnesses had been proofed and had attended, the Respondent is a charity, no medical evidence had been produced to substantiate that the Claimant was ill, and there had been no engagement by the Claimant’s representative with the Respondent’s representatives. The Claimant had produced witness statements in the name of Mr Prabhdyal Singh Juss and Mr Gurbux Singh Flora, but neither of those witnesses had attended either. The Claimant had previously instructed a barrister. He could have arranged for his barrister to be present for the purposes of the Preliminary Hearing.
8. The Tribunal refused the application to adjourn, essentially for the reasons advanced by Mr Stephens.

9. Of particular concern to the Tribunal was the fact that not only was there no medical evidence to substantiate the Claimant's claimed illness, it appeared that no attempts had been made to obtain such evidence. Having regard to all of the circumstances it was not appropriate for the matter to be adjourned.
10. The Preliminary Hearing of 9 May 2017 and this judgment are exclusively concerned with the issue referred to at paragraph 4 above. Although other matters were raised in the evidence and other material presented to the Tribunal on 9 May 2017, those matters had no bearing on the Tribunal's determination of that issue.
11. There is a dispute as to whether the Claimant is of the Ramgarhia caste or the Labana caste. There is even a dispute between the parties as to the Claimant's identity and name. Whereas those disputes may be of relevance to the substantive issues in the case, they are not relevant to the issues the Tribunal had to determine for the purposes of the Preliminary Hearing on 9 May 2017.
12. A substantial amount of the content of the witness statements on each side related to matters which were of no relevance to the issues the Tribunal was required to consider for the purposes of the Preliminary Hearing on 9 May 2017.

Evidence and Material before the Tribunal

13. On behalf of the Claimant, the Tribunal was provided with witness statements in the name of the Claimant, Mr Juss (ex-General Secretary) and Mr Flora (ex-President). For the Respondent, witness statements were provided in the names of Mr Amarjit Virdee (General Secretary), Mr Amrik Singh Sammi, Mr Avtar Singh Soori, Mr Harbans Singh Sembhi, Mr A Bansal (Vice President), and Mr Avtar Singh Bansal.
14. Oral evidence was given on behalf of the Respondent by Mr Virdee, Ms Khalsa, Mr Singh, and Mr Bansal.
15. The Tribunal was provided with an agreed bundle of documents [R1].

The Relevant statutory provisions

16. Part 5 of EqA deals with discrimination in the employment field. It contains s.83, which, insofar as is material, provides as follows:

“83 Interpretation and exceptions

(1) This section applies for the purposes of this Part.

(2) 'Employment' means -

(a) Employment under a contract of employment, a contract of apprenticeship or a contract personally to do work”

Factual background

17. The Respondent is a Sikh Gurdwara. It is located in Wolverhampton and is governed by a written constitution.
18. It is the Claimant's case that he has been attending the Ramgarhia Board Sikh Temple on a regular basis since 2012. He maintains that he comes from a religious background and believes in doing as much "seva" (or "selfless service") as he can. He has been trained to recite the Holy Book, the Guru Granth Sahib. It is his position that every time he goes to any temple he participates in washing up the dishes and doing other general "seva".
19. In his witness statement prepared for the Preliminary Hearing, the Claimant said this:

"I handed a written application letter to the managing committee in July 2015 to become part of the executive committee that would enable me to do one of the several jobs listed in the constitution of the temple. I understand these jobs are only open to the executive committee members as they involve a commitment of two years. I fulfilled all the requirements to become part of the executive meeting".
20. It is the Respondent's position that there is no necessity for someone to have membership of the Executive Committee in order to be employed by the Respondent. For example, the Granthis (priests) are employed by the Respondent and do not need to be members of the Executive Committee in order to be so employed.
21. The Respondent's position is that the Claimant was never employed by the Respondent in any capacity and indeed the Respondent points to the Claimant's own evidence in this regard as patently falling short of demonstrating employment status.
22. It is the Claimant's case that from January 2014 to December 2015 he had a chance to work very closely with the Respondent's Managing Committee. He arranged for external Gianis to perform Shabad Kirtan at the Temple, which he paid for. He and a friend cooked meals for the congregation on many occasions. He and a friend organised a Smagam event involving the attendance of groups of famous Gianis attending from abroad, again at the expense of the Claimant and his friend.
23. The Claimant's application for membership of the Executive Committee was declined. He maintains that it was declined on the grounds that he did not belong to (or at least was not perceived as belonging to) the Ramgarhia caste. The Respondent accepted that the Claimant's application for membership of the Executive Committee was declined.
24. The Claimant's case that his application was declined on the grounds that he did not belong to Ramgarhia caste was supported by the witness statement of Mr Juss (general secretary of the Respondent from January 2014 to December 2015) and Mr Flora (president of the Respondent from January 2014 to December 2015). However, neither Mr Juss nor Flora attended the Preliminary

Hearing on 9 July 2017, and in any event the relevance of this aspect for the purposes of this judgment is questionable.

25. In his witness statement Mr Juss also stated that the Claimant was a regular attendee at the Respondent Temple, and that he participated regularly in seva. Mr Flora produced a similar account.
26. The Respondent produced a document bearing the names and most of the signatures of members of its Executive Committee, "the list of signatures". The document stated in its heading:

"We, the following members of the Executive Committee GKN (RBST) solemnly and sincerely declare the following in relation to NAVDEEP SINGH'S attendance of our weekly congregation and his contribution as a volunteer work (sic) done at GKN (RBST). We declare that we have seen Navdeep Singh on the following occasions".

All but one of the Executive Committee members who signed the document put a cross or a tick in the box which stipulated "*Never seen him*". There was only one dissenter, who ticked the box "*Last 12-18 months*". A substantial number of the names listed did not bear any signature or "tick" designation in any of the available boxes.

27. Mr Amrik Singh Sammi gave evidence that he had never seen the Claimant attending congregation or performing any seva such as cooking, cleaning or doing voluntary work. Mr Soori gave evidence that he had never seen the Claimant attending Gurdwara congregations or performing voluntary seva.
28. Mr Sembhi informed the Tribunal that he was the president of the Respondent from January 2012 to December 2013 and that during "our committee time" he can truthfully say that he never saw the Claimant attending any of the congregational gatherings or performing any seva, nor has he ever seen him attend Gurdwara, whereas he himself, (Mr Sembhi) is a regular attendee.
29. The Respondent's Constitution deals at Section 11 with the "*Duties and powers of Office Holders*". It then sets out the duties and powers of the President, the Vice President, the Honorary General Secretary, the Joint Secretary, the Treasurer, the Joint Treasurer, the Building Supervisor, the Librarian, the Internal Auditor and the Marriage Registrar. Section 13(II) of the constitution stipulates:

"No member whether of the Charity or of the Managing or Executive Committees may receive any payment of money or other material benefit whether direct or indirect from the charity..."

Clause 13(II) then sets out certain exceptions which are not relevant for present purposes.

Clause 13(III) of the Constitution stipulates:

“A Member may not be an employee of the Charity, but a Member or connected person may enter into a contract with the Charity to supply goods or services in return for a payment or other material benefit, but only if:

(a) the goods or services are actually required by the Charity;

(b) the nature and level of the benefit is no more than reasonable in relation to the value of the goods or services and is set at a meeting of the Members in accordance with the procedure in sub-clause 13.4; and

(c) not more than one half of the Members are interested in any such contract in any one financial year”.

30. In his Claim Form, the Claimant alleged that he had been “unfairly sacked” by the Respondent but did not expand on this.

Submissions

31. For the Respondent, Mr Stephens said that in order to bring himself within s.83(2)(a) of EqA, the Claimant needed to have a contract of employment or a contract of apprenticeship or a contract personally to do work. He submitted that the Claimant had none of these.
32. There is a distinction between a religious duty and a contractual duty to serve as an employee or personally to do work. Mr Stephens referred to *X v Mid Sussex Citizens Advice Bureau and Another [2012] UKSC*, a case in which the Appellant had become a volunteer adviser for the Citizens Advice Bureau (“CAB”) following an interview. The position was unpaid and no contract was signed but both parties signed the volunteer agreement setting out the nature of the role and what was expected of each of them. The volunteer agreement was said to be not legally binding. The Appellant completed a period of training. In due course she was asked to cease to act as a volunteer in a way that she contended amounted to discrimination on the grounds of disability. She sought to bring proceedings against the CAB in the Employment Tribunal. The Employment Tribunal, the EAT and the Court of Appeal held that the Employment Tribunal had no jurisdiction to hear the case. Each held that the Appellant, as a volunteer rather than an employee, fell outside the scope of protections against discrimination on the grounds of disability afforded by the Disability Discrimination Act 1995 and Directive 2000/78/EC (“the Framework Directive”). The Appellant appealed to the Supreme Court, contending that her voluntary activities constituted an “occupation” for the purposes of Article 3(1)(a) of the Framework Directive, that the protection against discrimination on the grounds of disability intended to be afforded by the Directive should therefore extend to her, and that effect should be given to this conclusion. She also contended in the alternative that the matter should be made the subject of a reference to the Court of Justice of the European Union (“CJEU”) for the purposes of clarifying whether the Directive applies to at least some categories of volunteer.
33. The Supreme Court unanimously dismissed the appeal. On the basis that the Appellant had no contract, she did not on the face of it benefit by the domestic

protection afforded by the 1995 Act. Whether she could have any claim thus depended on whether it was the intention of Article 3(1)(a) of the Framework Directive that there should be wider protection, covering volunteers in her position. In the Court's unanimous view, that was not its intention. There was no need for the matter to be referred to the CJEU. The legislative history confirmed that it was not intended that Article 3(1)(a) should encompass voluntary work. First, no reference was made to voluntary work in the European Commission's original proposal or in the annexed impact assessment. Second, a proposed amendment emanating from the European Parliament which would have extended Article 3(1)(a) to include "unpaid or voluntary work" was not accepted by the Council.

34. In *Halawi v WDFV UK Ltd (t/a World Duty Free)* [2015] IRLR 50, the Court of Appeal held that the criteria laid down by EU law for the existence of a contract of employment included a requirement that the putative employee should agree personally to perform services, and a requirement that the putative employee should be subordinate to the employer, that is, generally be bound to the act on the employer's instructions.
35. In *Unite the Union v Nailard* (UKEAT/0300/15/BA), the EAT held, applying *Allomby v Accrington & Rossendale College* [2004] IRLR 334, *Jivraj v Hashwani* [2011] IRLR 827, and *Halawi*, that the elected officers of a trade union were not employees.
36. The leading case on the law related to the extended definition of employment under s. 83(2) of EqA is *Jivraj*, in which it was held by the Supreme Court that the meaning of "employee" had to be determined in accordance with EU law.
37. Mr Stephens submitted that whereas (although there was a substantial dispute on this topic) the Claimant may have provided some form of "service" for or on behalf of the Respondent, the whole concept of seva is that it is *selfless* service. Apart from anything else, submitted Mr Stephens, the list of signatures clearly pointed towards the conclusion that the Claimant was hardly ever present at the Respondent Temple, let alone that he was serving there as an employee.
38. Mr Ghataore submitted that the Claimant had a strong case and that he had been denied the job that he wanted to do.

Conclusions

39. Notwithstanding the Claimant's absence from the Preliminary Hearing, the Tribunal examined with care the basis upon which it might be suggested that his relationship with the Respondent satisfied the definition of "employment" for the purposes of s.83(2)(a) of EqA.
40. There was no evidence of any written contract of employment. The Tribunal was not satisfied that there was an express or implied oral contract of employment. The Tribunal was not satisfied that there was in existence a contract personally to do work. Putting to one side the not inconsiderable dispute as to how much work, or service, or seva, the Claimant performed for

the Respondent, and even assuming that the Claimant's case on that issue was correct, the Tribunal concluded that, insofar as the Claimant "served" (or provided any form of service to) the Respondent, he did so as a volunteer.

41. On the basis of the Respondent's Constitution, even if the Claimant had been made a member of the Respondent's Executive Committee, such membership would not have entitled him to become "employed" by the Respondent. He appears to have aspired to certain "office holder" positions set out at Section 11 of the Respondent's Constitution. Had he obtained one of those positions, he would not have brought himself within s.83(2)(a) of EqA.
42. The Claimant failed to indicate in his written evidence what he was employed to do, what his hours were, how much he was to be paid or indeed any of the normal features of an employee/employer relationship or a relationship between two parties whereby one of those parties agrees personally to do work.
43. The Claimant provided no evidence of what amounted to his "sacking". He did not specify how his "sacking" took place, who sacked him or from what employment he was "sacked".
44. In all the circumstances, the Tribunal was not satisfied that the Claimant was the subject of "employment" within the meaning of s.83(2)(a) of EqA.
45. The Claimant's claim is therefore dismissed.

**Employment Judge Gilroy
7 July 2017**