



EMPLOYMENT TRIBUNALS

Claimant: Mr M Pollard

Respondents: (1) Aquinas Church of England Education Trust, (2) Ms K Griffiths, (3) Mr S Murphy, (4) Mr P Boughton-Reynolds

Heard at: London South Croydon (by CVP)

On: 17 August 2020

Before: Employment Judge Tsamados (sitting alone)

Representation

Claimant: In person
Respondents: Ms H Iyengar, Counsel

OPEN PRELIMINARY HEARING

RESERVED JUDGMENT

This has been a remote hearing which was not objected to by the parties. The form of remote hearing was video by Cloud Video Platform (CVP). A face to face hearing was not held because it was not practical because of the Covid-19 virus.

The **Judgment** of the Employment Tribunal is as follows:

The Claimant does not hold a philosophical belief within the meaning of section 10 of the Equality Act 2010. His complaint of discrimination on the basis of philosophical belief therefore fails and is dismissed.

REASONS

Background

1. By a claim form received by the Employment Tribunal on 5 August 2019 after a period of Early Conciliation which started and concluded on 1 August 2019, the Claimant brought complaints of direct discrimination on the basis of a philosophical belief, discrimination arising from disability, victimisation in respect of both protected characteristics, automatic unfair dismissal for making a protected disclosure, breach of contract and the denial of the right to be accompanied to a disciplinary hearing against the Respondents.
2. A closed preliminary hearing took place on 5 February 2020 and was conducted by Employment Judge Freer. At that hearing, a full hearing was set for 17-28 August 2020, as well as a number of case management orders intended to prepare the case of that hearing, and an open preliminary hearing was listed for 27 March 2020 to determine the following question:

Whether or not the Claimant held a philosophical belief in the integrity and sanctity of the British educational system pursuant to section 10 of the Equality Act 2010.

3. At a further preliminary hearing which took place by telephone on 27 March 2020, Employment Judge Hargrove postponed the open preliminary hearing to 27 April 2020.
4. That hearing was also postponed and the first day of the full hearing (today) was converted to an open preliminary hearing to determine the above question.

This hearing

5. This hearing was conducted by CVP. At the start I confirmed that I would be determining the preliminary issue with regard to the complaint of philosophical belief and also dealing with the Claimant's application for leave to amend, written answers and disclosure, and the Respondents' application to vary the order for exchange of witness statements, in addition any further case management that was required as well as setting a new date for the further hearing. The case management elements are dealt with in a separate record of the closed preliminary hearing.

Evidence

6. I was provided with a bundle of documents from each party and the parties were in dispute as to which bundle I should use. I determined that I would refer to both bundles as appropriate and was provided with a reading list by the Claimant. The Claimant's bundle was divided into sections A to F and had a total of 282 pages and the Respondents' bundle had a total of 171 pages and a separate index.

7. I will refer to the Claimant's bundle as "C" followed by the relevant section letter and page number where necessary and to the Respondents' bundle as "R" and followed by the relevant page number where necessary.
8. I was provided with a document from the Claimant which was said to be a witness statement but was in fact a mixture of evidence and submissions (R55-68). Reference was made to a number of appendices, some of which were included at R69-67 and some of which were simply references to websites and were not reproduced within the bundle. I did not consider the referenced websites. I heard evidence from the Claimant by way of the witness statement and in answer to questions.

Findings

9. I set out below the findings of fact I considered relevant and necessary to determine the issues that I was required to decide. I do not seek to set out each detail provided to the Tribunal, nor make findings on every matter in dispute between the parties. I have, however, considered all the evidence provided to me and have borne it all in mind.
10. The Claimant's essential position is that his belief in protecting the British education system constitutes a protected belief pursuant to section 10 of the Equality Act 2010. He maintains that his belief in protecting the integrity and sanctity of the British education system from taint of corruption should be recognised. He believes that education plays a vital role in society. Moreover, he genuinely believes that the wealth of legislation, expenditure, public scrutiny, discussion and research that goes into education supports his belief and that there is no cause for further scrutiny on the point.
11. The Claimant has not been able to work in education since his employment with the First Respondent came to an end.
12. His written statement sets out at length the background to his belief. He sets out his experience in the educational field specifically in the field of music. He sets out his experience through his family of the education system and as to his studies. He essentially says that his life has been shaped by his educational experiences, the individuals he has come into contact with and his own opportunities to contribute to the educational experiences of others. His statement talks of his belief that the educational system has allowed the abuse of young people particularly in British music establishments and refers to what he sees as failings in the system which have not been addressed by others.
13. His statement makes reference to the facts relevant to his substantive case. Without treading on the toes of any further Tribunal that will deal with this matter I set out the gist of this as follows without making any comment as to their veracity. In April 2018, the Claimant was employed by the First Respondent as Interim Head of Music and then from May 2018 as substantive Head of music. Shortly after accepting the substantive post he uncovered evidence of malpractice as to examinations and coursework and subsequent anomalies in the results. In September 2018, he brought these concerns to the attention of his line manager. A few days later he was invited to a three-month probation meeting which resulted in criticisms of his

performance. He informed the Head teacher of his concerns over the conduct of other members of staff and what he was observing and experiencing was against what he stood for and believed education to be about and that he would start looking for alternative employment. The Head Teacher informed him that the results were now all in order. In November 2018, the Claimant was suspended from work for alleged safeguarding reasons. After investigation, the First Respondent advised the Claimant that there was a case to answer. He raised a grievance expressing his concerns about the process followed and discrimination. Ultimately, he was called to a meeting which he thought was to discuss his grievance but in fact was a dismissal meeting, his employment being terminated with immediate effect. That decision was upheld on appeal.

14. His written statement then sets out the Claimant's philosophical belief. The Claimant states that he "believes that protecting the integrity and sanctity of the British education system from taint and corruption is paramount". He further states that he believes that education plays a vital role in society and that "the wealth of legislation, expenditure, public scrutiny, discussion and research that goes into education supports his belief and that there is no cause for further scrutiny on this point".
15. The statement goes on to express at length the Claimant's belief in terms of the words "integrity", "sanctity", "taint" and "corruption". The statement also sets out at length his position as to teaching standards and by reference to a number of different sources. He references his allegations against the Respondents as part of this in terms of his concerns as to how the Respondents treated pupils academically, ethnically and personally and how these matters arose during the course of his employment. This statement goes on to talk about his alleged whistleblowing to the Ofqual and he makes reference to Maistry v BBC and A v B Ltd & others, both of which were decided at Employment Tribunal level.
16. In cross examination the Claimant was asked questions as to how his belief manifested itself in his life and how it continues to do so, given that he has not worked in education since his dismissal. The Claimant replied that an adult in any position of responsibility should take such matters very seriously and strive to uphold these beliefs. Whilst he is unable to work in a school anymore, his belief still manifests itself because it is how he advises his neighbours on his children's education, on advising refugees and acting as a mentor of refugees.
17. It was put to him that he was purely putting forward his opinion as to education, everyone has an opinion and all teachers have to abide by professional standards, so does that mean that everyone has such a philosophical belief? He responded that it was not for him to say whether everyone who had an opinion on education held a philosophical belief or that any teacher that abides by professional standards has such a philosophical belief. He was of the view that professional standards in themselves do not amount to a philosophical belief.
18. He was referred to paragraph 41 of his witness statement which refers to his experience as a music teacher which I set out below:

As a music teacher, vocal work formed a vital part of the work he did. Whilst many adults see singing as trivial, the Claimant is aware that the comments he makes, as a professional about a pupil's voice can have long lasting implications. The plethora of programs where the judging of others is the norm is not a great model for education. Vocal work in the classroom is not merely about churning out entertainment for others. The voice is integral to one's identity. Giving value to someone's voice has both musical and existential implications. These concepts are wonderfully articulated and explored in Patsy Rodenburg's book, forward by Sir Ian McKellan 'The Right to Speak. Working with the voice.'

19. He was asked to explain what this meant. He said that it was an example of how we take things for granted and how they impact upon children, changing the way we tell a boy his voice has broken which implies there is something wrong. He said it is something we may not see in education, but it impacts upon a person's life.
20. The Claimant was asked where others could find out what the content of his belief was over and above what was written in his statement? His reply was that as it was a never-ending way of getting better and better, his statement sets out the ways that he defines the belief, not the source.
21. He was asked how his work colleagues would know that he had such a belief? He referred to matters occurring on 13 September 2018 and documents at C Section C 128-132. He explained that he told the Respondents what was wrong and that later on he had to leave because this was against everything he believed in.
22. He was asked how his belief was any different from an opinion held by other teachers holding the same professional concerns. He said he did not know. He said that all he knew was that when he raised his concerns and said he was not going to be a part of it, the relationship between the parties went bad. He then referred to what had gone wrong by reference to C Section D 171-193. He said that it was not just a professional standard it was more than that, he said that he had experienced such matters as a teenager and seen people's lives being ruined by such things, one person having committed suicide and then years later this happens. He said it was personal to him and it upset him.
23. The Claimant was then asked how someone who wants to understand the content of his belief would know about it. He started to read a prepared document. When I asked him what this was, he said that he believed in protecting educational experience from being ruined or abused and that he tried his best to articulate his belief but he was not a legal person.
24. The claimant was again asked how someone would know the content of his belief and that whilst he says he is clear in his mind, how would someone in a new school know what it was, so that they could say we want to respect his belief? His response was that ordinarily he would not need to say. He gave the example of a Christian not having to state that they were Christian. But he added that increasingly he sees the need to say it and will have to say this is not what I want to do and I will not take part in it. He said that was why he had to raise the issue with the Respondents and one would think he would not have to say it, as the second that you do, it is a judgement on the organisation.

25. He was then asked how a fictional new employer taking on a new teacher and training them as to professional standards would be able to train that teacher as to his stated philosophical belief so as to respect that philosophical belief? The Claimant responded that the fictional employer should not have to do anything, but he would say “not to pull a fast one”.
26. He was then asked what if a colleague says, “I act with integrity, but I do not understand what the Claimant says is a philosophical belief as being anything more than my own professional standards”. The Claimant responded that it was a good question and he had not thought about how he would have to say it. But he thinks that everyone should be on the same page or there should be a Hippocratic Oath for teachers.
27. It was then put to the Claimant that some people belong to a religion to please their mother or they want a religious wedding or they like the social side of the religion. So why is it then the case that the matter that he has in mind amounts to a philosophical belief? The Claimant responded that it was the importance and the time it takes up in his mind, he would not go along with certain things, he will stand up and not take screaming and shouting at children and will not shy away from it.
28. He was then asked questions about the “integrity” and “sanctity” of the British education system. His written submissions referred to different types of educational systems in Britain and he was asked what he meant by this. He replied that he meant adults working in the educational system involving children 5 to 16 and including home schooling. He added that this extended to all staff in schools and to the government as well.
29. He was asked whether the British education system was different from others overseas and why there was a special integrity for the British system. He responded that it was not different.
30. He was asked how is it not just important as a human right. He responded that it was a human right and it should be free from “taint of “corruption” and we should do better than just giving an education. It was put to him that is being free from taint of corruption simply abiding by the laws of the land. His response was that taint for him is as set out in his witness statement at R44 and means “somehow ruined”, for example when a school blames the children for something it has done wrong, for example teaching the children the wrong thing, whilst it is not unlawful or prohibited, to him it is taint.
31. I heard submissions from both parties which I considered as part of my deliberations and my conclusions.

Relevant law

32. Section 10 of the Equality Act 2010:

(1) Religion means any religion and reference to religion includes a reference to a lack of religion.

(2) Belief means any religious or philosophical belief and a reference to belief includes a reference to a lack of belief.

(3) In relation to the protected characteristic of religion or belief –

(a) a reference to a person who has a particular protected characteristic is a reference to a person of a particular religion or belief;

(b) a reference to persons who share a protected characteristic is a reference to persons who are of the same religion or belief.

33. Religion and belief are protected characteristics under the Equality Act 2010. The reference to belief is to philosophical belief. Philosophical beliefs may be just as fundamental or integral to a person's individuality and daily life as are religious beliefs (**GMB v Henderson** [2015] IRLR, EAT).
34. In **Grainger plc and others v Nicholson** [2010] IRLR 4, the Employment Appeal Tribunal set out guidelines for deciding whether a belief is covered by the Equality Act 2010. These guidelines are as follows :
- a. the belief must be genuinely held;
 - b. it must be a belief and not an opinion or viewpoint based on the present state of information available;
 - c. it must be a belief as to a weighty and substantial aspect of human life and behaviour;
 - d. it must attain a certain level of cogency, seriousness, cohesion and importance;
 - e. it must be worthy of respect in a democratic society, be not incompatible with human dignity and not conflict with the fundamental rights of others.
35. In arriving at these guidelines, the EAT considered case law under the European Convention on Human Rights, particularly article 9 (freedom of thought, conscience and religion) and article 2 of Protocol 1.
36. It does not matter if no one else shares the philosophical belief in question
37. In **Harron v Chief Constable of Dorset Police** [2016] IRLR 481, the Employment Appeal Tribunal said that these requirements in **Grainger** should not be set to a higher level. "Substantial" in guideline c. just means "not trivial", "cohesion" in guideline d. simply means intelligible and capable of being understood.

Closing submissions

Respondents

38. Ms Iyengar provided written submissions (at R108-133) which in essence made the following points:
- a. The Respondents challenge the Claimant's asserted philosophical belief principally under paragraph d. of the **Grainger** guidelines and it is not intelligible or capable of being understood under **Harron**. She points to the large volume of materials which are referenced in the Claimant's witness statement and appended as illustrating the problem. Namely that what the Claimant asserts to believe in is vague, unclear, imprecise, confusing and hard to pin down. It is not clear what the "integrity" or "sanctity" of the British education system is, or even if they are the same or different things. Further, there are many different

types of educational settings within Britain. The Claimant has not shown what the British education system means or how it differs from other education systems. He appears to assert that the British education system has a special “integrity” or “sanctity” which foreign education systems, or other professional standards frameworks applying to other industry sectors lack. However, he does not explain how so. Further he does not explain in a coherent way what he means by “taint” or “corruption”. Since the basic concept of what the British education system is remains confused and undefined, he has not been able to demonstrate what it would mean if it were to be subjected to “taint” or “corruption”.

- b. The Respondents also assert that the Claimant does not meet paragraph a of the **Grainger** guidelines. As the alleged philosophical belief cannot be defined or understood, it is not possible to ascertain whether or not the Claimant genuinely held that very wide set of thoughts in his mind, including the large quantity of diverse materials which he has included in his witness statement and its appendices.
 - c. The Respondents also assert that the Claimant fails to satisfy paragraph b of the **Grainger** guidelines. His witness statement consists of his opinions and viewpoints based on the present state of information on a wide range of educational topics, as his witness statement and its appendices demonstrate.
 - d. The Respondents further assert that the Claimant does not satisfy paragraph c of the **Grainger** guidelines. The set of thoughts he puts forward, as an experienced teacher, are simply his comments on a range of professional issues, and that a set of pensive reflections is not a belief as to a weighty and substantial aspect of human life and behaviour.
 - e. The Respondents also assert that the Claimant does not meet paragraph e of the **Grainger** guidelines. The Claimant asserts that protecting the integrity and sanctity of the British education system from taint and corruption is paramount. It is clear that there exists a high-level norm of international human rights law that children should have a right to receive an education, and such a human right would be worthy of respect in a democratic society, not be incompatible with human dignity and would not conflict with the fundamental rights of others. Nevertheless, the Claimant’s asserted philosophical belief is quite different to a belief that there should be a universal right to education, or any belief of that nature. As the content of the set of thoughts which he puts forward as constituting a protected philosophical belief remains so unclear, it is not possible for the Tribunal intelligibly to determine whether that set of thoughts is worthy of respect in a democratic society, not incompatible with human dignity, and would not conflict with the fundamental rights of others.
39. Ms Iyengar spoke to her written submissions. In essence she made the following points:

- a. It was clear from the Claimant's written statement and more so from his oral evidence today that he did not satisfy the **Grainger** criteria;
 - b. He still has not been able to explain what his philosophical belief is and how it goes beyond what we expect from all teachers;
 - c. He has not been able to explain what the content is and it remains unintelligible to an outsider;
 - d. Given the statutory protection under the Equality Act 2010, an employer needs to be able to understand what a person's philosophical belief is;
 - e. When these provisions came into force, training was available, for example on Rastafarianism or Jehovah's Witnesses or climate change. This was easy to research, there were resources that employers could go to and to read about what it means and to educate their employees to respect those beliefs;
 - f. However, the Claimant's belief is incoherent and as a result there is no way of instructing employees about it;
 - g. The Claimant just has a strong belief about certain matters. There can be strong disagreements within the teaching profession about such matters which are outside the scope of the law and outside the teaching framework and as to best practice;
 - h. It is impossible for someone working with the Claimant to respect his belief because it is only him that understands it and what "taint" and "ethics" mean;
 - i. The concerns he says that he raised about the examination marks and other matters are exactly the sort of issues for which the whistleblowing provisions were enacted so as to protect workers;
 - j. It is wrong to characterise these matters as a philosophical belief and it is misconceived to do so. If it were right then it would follow that every single whistle-blower would argue the same thing about any matter they blow the whistle on;
 - k. The Claimant's belief amounts to all the things he felt strongly about as a teacher;
 - l. Those things could have been brought under another jurisdiction and indeed they will come before the Tribunal in any event.
40. In response the Claimant said that this was not about whistleblowing, it was a belief that started when he was a child and is a lifelong belief. He came from a family of teachers, his conversations with staff are not just opinions, there is evidence and he has an obligation to find out the best he can and share that with other people. It informs his conversations and how he interacts with other people and it is wider than just education and examination results. It is about protecting children.

Conclusions

41. I have to say that I found the Claimant's evidence both in his written statement and in oral testimony to be nebulous and verbose. I found it difficult to understand what he meant and what relevance his answers were to the questions he was being asked. I have attempted to summarise his salient evidence as best I could.
42. I have considered this as well as the submissions against the **Grainger** principles.
43. Whilst the Claimant might have genuine concerns or beliefs as to the educational system, what was apparent from his evidence was that this did not go any further than strongly held opinions or viewpoints based on the present state of information available as to the educational system.
44. I accept that there would be differing views as to professional and educational standards some of which would simply fall to a matter of opinion, some of which could be outside of those professional and educational standards and some of which were perhaps unlawful.
45. I also accept that such a belief is capable of being a weighty and substantial aspect of human life and behaviour as per paragraph c of the **Grainger** principles.
46. However, the Claimant's evidence was so difficult to follow and to pin down precisely that it was impossible to say that his belief met paragraph d of the **Grainger** principles as further defined in **Harron** as meaning intelligible and capable of being understood.
47. Beyond a strongly held belief as to certain principles to do with the education system, it was hard to identify exactly what the education system was, what standards the Claimant applied to it beyond those matters which ethically or morally he did not system accept.
48. If it is impossible for the Claimant to coherently express what his philosophical belief is and its parameters, then it is impossible for others to understand it, both employers and employees alike, or to have regard to it in terms of respecting it.
49. It did seem to me that what the Claimant was complaining about was something closer to the protection afforded to whistle-blowers and that to equate those types of concerns to the level of a philosophical belief simply went too far.
50. For these reasons I do not accept that the philosophical belief that the Claimant asserts falls within the definition of section 10 of the Equality Act 2010.
51. The complaint of discrimination under section 10 therefore fails and is dismissed.

Case management

52. There were matters to do with case management which fell to be determined at this hearing but which I did not have time to deal with. These matters are set out in a separate case management summary.

Employment Judge Tsamados
Date 10 December 2020