



17 December 2018

PRESS SUMMARY

Williams (Appellant) v The Trustees of Swansea University Pension & Assurance Scheme and another (Respondents)

[2018] UKSC 65

On appeal from [2017] EWCA Civ 1008

JUSTICES: Lord Kerr, Lord Carnwath, Lord Hodge, Lady Black, Lord Kitchin

BACKGROUND TO THE APPEAL

Mr Williams was employed by Swansea University from 12 June 2000 until he retired for ill-health reasons on 30 June 2013 at the age of 38. He suffers from Tourette’s syndrome and other conditions satisfying the definition of “disability” under section 6 of the Equality Act 2010 (“the 2010 Act”). He had been an active member of the university’s pension scheme (“the pension scheme”) throughout his employment.

He was employed by the university for 13 years. For the first 10 he worked full-time and then, for the final three, he worked between 17.5 and 26 hours per week when he was fit to do so. The reduction in working hours arose from his disabilities. When he retired he was working half his full-time hours (17.5 hours a week).

The pension scheme provided for accrual of benefits on a final salary basis until 1 August 2009, from which time it was amended so that accrual of benefits on and after that date was on the basis of Career Average Revalued Earnings. Under the ill-health early retirement provisions, Mr Williams was entitled to a lump sum and annuity, calculated on the basis of his actual salary at relevant times, whether full or part-time. The amount of this part of the pension was not in dispute. He was also entitled to an enhancement, calculated on the basis of his actual salary at the date of retirement. This element was the point of dispute.

Section 15(1) of the 2010 Act provides that:

- A person (A) discriminates against a disabled person (B) if –*
- (a) A treats B unfavourably because of something arising in consequence of B’s disability, and*
 - (b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.*

Mr Williams claimed that the calculation of the enhancement constituted discrimination within this section, as it was based upon his final part-time salary, rather than his full-time salary. He said this was unfavourable treatment because of something arising in consequence of his disabilities, namely his inability to work full-time. The Employment Tribunal agreed with Mr Williams, but this was overturned by the Employment Appeal Tribunal and the Court of Appeal. The central issue for the Supreme Court is the meaning of the expression “*treats ... unfavourably*”.

JUDGMENT

The Supreme Court unanimously dismisses the appeal. Lord Carnwath gives the lead judgment.

REASONS FOR THE JUDGMENT

The Supreme Court held that in most cases, including this one, little is likely to be gained by seeking to draw distinctions between the word “unfavourably” in section 15 of the 2010 Act and analogous concepts such as “disadvantage” or “detriment” found in other provisions of the Act, or between an objective and a “subjective/objective” approach [27].

Passages in the Equality and Human Rights Commission’s Code of Practice (2011) provide helpful guidance as to the relatively low threshold of disadvantage sufficient to trigger the requirement to justify under section 15 of the 2010 Act, but they do not overcome the central objection to Mr Williams’ case [27-28].

First, it is necessary to identify the relevant treatment to which section 15 of the 2010 Act is to be applied. In this case it was the award of a pension. There is nothing intrinsically unfavourable or disadvantageous about that. The appellant’s argument depends on an artificial separation between the method of calculation and the award to which it gave rise. The only basis on which Mr Williams was entitled to any award at this time was by reason of his disabilities. Had he been able to work full-time, the consequence would have been, not an enhanced entitlement, but no immediate right to a pension at all. In those circumstances the award was not in any sense “unfavourable”, nor (applying the approach of the Code) could it reasonably have been so regarded [28].

References in square brackets are to paragraphs in the judgment.

NOTE

This summary is provided to assist in understanding the Court’s decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:

<http://supremecourt.uk/decided-cases/index.html>