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Case law

The Employment Appeals Tribunal underlines the need to demonstrate group disadvantage for the establishment of indirect discrimination

Ms E, a devout Christian, was employed by British Airways (BA) as a member of its check-in staff. BA's uniform policy allows an employee to wear any item of jewellery s/he wishes under the uniform, provided it is not visible; however, there is an exception for employees whose religion requires them to wear items of religious clothing, such as hijabs or turbans, which could not be concealed under the uniform.¹⁴⁸ In 2006, Ms E began wearing a silver Christian cross on a necklace outside her uniform; when she refused to conceal the cross she was suspended. Attempts were made to resolve the issue but they were unsuccessful. Then Ms E alleged direct and indirect religious discrimination and harassment against BA.¹⁴⁹

At first instance, the Reading Employment Tribunal dismissed the case, finding that the claim of indirect discrimination was not established on the basis that British Airways' policy did not disadvantage Christians as a group. However, the Tribunal stressed that if BA's policy had given rise to such group disadvantage, then the policy would not have been objectively justified. In this case, the Tribunal concluded that the uniform policy was designed to achieve a legitimate aim, namely that of brand uniformity. On appeal, the Employment Appeals Tribunal (EAT) stated that the onus was on the claimant to prove group disadvantage. It considered that while in some cases (such as Sunday working) a tribunal could assume the existence of a group disadvantage that would affect some Christian groups, in this case there was no evidence that a sufficient number of persons other than Ms E shared her strong religious view that she should be allowed to visibly wear the cross; therefore there was no evidence of any form of group disadvantage stemming from BA's policy. However, the EAT also agreed with the Reading Employment Tribunal that if there had been evidence of group disadvantage, the inflexibility of BA's policy would not have been a proportionate response to a legitimate aim.

The EAT's decision is interesting in its emphasis on the need to demonstrate group disadvantage, and also because it rejected Ms E's argument that the requirement of group disadvantage would be fulfilled in respect of any religious belief where it was 'inconceivable' that there would not be some other persons who shared the relevant belief in question. This means that where a religious belief is particularly subjective and not widely shared amongst a specific religious group, a claimant will find it difficult to establish indirect discrimination.

http://www.bailii.org/uk/cases/UKLAT/2008/0123_08_2011.html

¹⁴⁸ See *European Anti-Discrimination Law Review (EADLR)*, Issue No. 5, p. 101.

¹⁴⁹ *Eweida v British Airways plc* [2009] IRLR 78.