RASTAFARIANS AND DREADLOCKS

In the case of *Harris v. NKL Automotive Ltd and Matrix Consultancy UK Ltd,* the employed conceded that being a Rastafarian constituted a "philosophical belief" in accordance with the Employment Equality (Religion and Belief) Regulations 2003. The Employment Appeal Tribunal which heard the appeal in the case did not suggest that this was an inappropriate concession. This is most probably right and employers should also bear in mind that the concession was made before the amendment to the Regulations made by the Equality Act 2006.

Before the Equality Act 2006 the Employment Equality (Religion and Belief) Regulations 2003 protected employees and contract workers from less favourable treatment on the grounds of religion or "similar philosophical belief." This gave rise to confusion about whether a philosophical belief needed to involve the belief in a god, or be non-secular in nature. To clarify matters, with effect from 30 April 2007, the Equality Act 2006 amended the 2003 Regulations so that "religion or similar philosophical belief" became simply "religion or belief" and "belief" is now defined as " religious or philosophical belief." In short, the protection covers any form of philosophical belief even if it is atheism. Rastafarianism is unarguably a philosophical belief.

Years ago there was some debate about whether Rastafarians were a race, but this was rejected in repeated cases. As such until the 2003 Regulations they had no protection. However, there are in practice no differences between the protection afforded under the Race Relations Act 1976 and that afforded under the Employment Equality (Religion ad Belief) Regulations 2003.

In the *Harris* case, the claimant, a driver, argued that he was not being allocated as much work as others and was not being offered a permanent post. He asserted that this was because he wore his hair in dreadlocks and did so because he was a Rastafarian. The company using his services said that it was not aware that Mr Harris had his hair in dreadlocks and that he appeared just to have long curly hair tied back. However, the company said it reached a stage where it became untidy and did not comply with the company dress code. The company said that this was one of the reasons he was not given more work.

Essentially, Mr Harris lost his claim for direct discrimination under the 2003 Regulations was because the Tribunal concluded that the reason for the less favourable treatment was the untidiness of his hair, no more. Mr Harris also alleged indirect discrimination on the basis that the criterion of tidy hair had a disproportionate impact on Rastafarians. In the Employment Appeal Tribunal this last point was rejected on its face but the EAT said that the argument had not been properly argued below and that key facts had not been presented to the Tribunal.

Where does this leave the employer? In essence, a rule requiring tidy and neat hair is highly unlikely to result in a successful claim by a Rastafarian claimant under the 2003 Regulations, or under any other legislation. That is unless the employee can produce good evidence before the Tribunal that dreadlocks can never be neat and therefore such a rule would indirectly discriminate against this group. But even if an employee was able to provide that evidence (which is doubtful given it can be tied

back) most employers would be able to justify it if there are good reasons to require tidy and neat hair in the workplace. This will require employers providing witness evidence showing this and also, if possible, evidence of having disciplined non-Rastafarians guilty of having untidy hair.

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