

Court of Appeal rules that poor treatment of vulnerable migrant workers because of their immigration status was not race discrimination

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Court of Appeal rules that poor treatment of vulnerable migrant workers because of their immigration status was

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The Court of Appeal has held that the poor treatment of vulnerable migrant workers because of their immigration status is not race discrimination.

Miss Onu was a Nigerian migrant worker who was exploited by her employers who failed to pay her minimum wage, did not provide appropriate accommodation and told her that if she tried to leave she would be arrested and imprisoned. Miss Onu brought race discrimination claims. After bringing these claims, her employer had telephoned her sister and said that 'she would suffer for it' resulting in Ms Onu bringing a victimisation claim.

The EAT held that Ms Onu had not been discriminated against directly because of her race and found that her poor treatment was not the immediate cause of her treatment which had been because of her subordinate position and earlier life. It upheld Ms Onu's victimisation claim holding that the fact that her employer had not directly referred to Ms Onu's discrimination claim in his call did not mean that there was no victimisation.

Mrs Taiwo was working on a Nigerian domestic worker visa for a Nigerian man and his wife. She was paid less than minimum wage, subjected to verbal and physical abuse, denied breaks and had poor living and working conditions. She resigned claiming direct and indirect race discrimination. These claims were rejected by the tribunal which held that: (i) there was no direct race discrimination because she had not shown that

the treatment she received was because of her nationality, rather, the reason was her status as a vulnerable migrant worker; and (ii) there was no indirect race discrimination because she did not show that people of Nigerian origin were more likely to be employed on a domestic visa in comparison to persons of non-Nigerian origin. The EAT upheld both of these arguments.

On appeal, the Court of Appeal held that there was no race discrimination in either case. In relation to direct race discrimination, it found that on the facts it was clear that the employers were influenced by their employees' immigration status in their treatment of them and whilst there was sufficient evidence of this, that did not amount to a finding that they were mistreated because of their nationality. The Court of Appeal also upheld the EAT's decisions in both cases that there was no indirect discrimination. Indirect race discrimination occurs where an employer operates a provision, criterion or practice which although theoretically applicable to all nationalities, in practice affects one or more groups worse. The court said the mistreatment of migrant domestic workers was not a provision, criterion or practice and therefore the terms of the Equality Act 2010 would not extend to it. However, the Court of Appeal did uphold Ms Onu's claim for victimisation and held that the tribunal ought to have considered that he was aware of the race discrimination proceedings when he made the call to Ms Onu's sister.

Onu v Akwiwu and another; Taiwo v Olaigbe and another [2014] EWCA Civ 279

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