

John McCririck loses age discrimination claim

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It was widely publicised before Christmas that John McCririck, horse-racing pundit, lost his age discrimination claim against Channel 4. The Tribunal appears to have found that the decision to dismiss Mr McCririck was not age-related but due to his sexist views, unpalatable presenting style and controversial appearances on reality TV shows. That said, the

Tribunal judgment stands up poorly under legal scrutiny and the factual basis for the decision is not entirely clear.

In 2012, Channel 4 secured the exclusive rights to broadcast horse racing 'crown jewel' events on terrestrial TV. This was a real coup and the broadcaster decided to use this opportunity to 'to grow new audiences'.

As part of a shake-up of its presenting team designed to achieve this growth, Mr McCririck, aged 72, was dismissed. He claimed that he lost his job to younger rival, Clare Balding, because of his age and sought £3m in damages.

In age discrimination cases, the legal analysis is as follows:

- Stage 1 – the employee must show evidence from which discrimination can be inferred in the absence of an adequate explanation;
- Stage 2 – if the employee is successful at (1), the burden of proof shifts to the employer to prove that discrimination did not occur i.e. to provide a non-discriminatory explanation for its actions; and
- Stage 3 – if discrimination did occur (i.e. the employer cannot provide a non-discriminatory explanation), it has a second bite of the cherry as it has a chance to argue that its actions are justified in any case.

Mr McCririck satisfied Stage 1 as he convinced the Tribunal that there was sufficient evidence to infer that discrimination had taken place. That evidence included: (1) that Mr McCririck's co-presenter, Ms Tanya Stevenson, aged 42, was retained as a presenter on Channel 4 racing; and (2) all of the presenters whose contracts were terminated as part of Channel 4's 'revamping' were over 50.

The Tribunal then went straight on to Stage 3 and considered whether the decision to dismiss Mr McCririck could be justified. That suggests that either Channel 4 was unable to provide a non-discriminatory explanation or the Tribunal got

confused as to the legal test to be applied.

At the very end of its judgment, the Tribunal suggests that McCririck was *“dismissed because of his persona emanating from his appearances on celebrity television shows...together with his appearances as a broadcaster on Channel 4 Racing where, as he accepted, his style of dress, attitudes, opinions and tic tac gestures were not in keeping with the new aims’*. That appears to be a non discriminatory explanation for the dismissal but if that is the case, why did the Tribunal go on to consider justification at all?

In terms of justification, the Tribunal found that Channel 4’s aim of attracting a wider audience to horse racing was legitimate and the means used to achieve it were proportionate. Unfortunately, no explanation is provided of why the Tribunal decided the means used were proportionate and there is no discussion of what alternatives Channel 4 might have implemented in order to achieve the same aim.

Is Mr McCririck’s case really so different to that of presenter Miriam O’Reilly who successfully won her age discrimination case against her BBC bosses after being culled from the long-running ‘Countryfile’ series to be replaced by a younger presenting team? In that case, the wish to appeal to a primetime audience, including younger viewers, was found to be a legitimate aim but it was not proportionate “to do away with older presenters simply to pander to the assumed prejudice of some younger viewers”. It is unclear why the same does not apply in the present case.

Bearing in mind the flaws in the judgment, it seems likely we have not seen the last of Mr McCririck.

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