Racial stereotypes were discriminatory and justified dismissal without notice

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Racial stereotypes were discriminatory and justified dismissal without notice

In Lamonby v Solent University the Employment Tribunal had to consider whether it was fair to dismiss an employee who had made remarks which betrayed a tendency to stereotype according

to race, even where such stereotypes were sometimes positive.

What does the law say?

Misconduct is a potentially fair reason for dismissal. In order to show that it has dismissed fairly for misconduct, an employer must show that:

- it believed the employee to be guilty of misconduct;
- it had reasonable grounds for believing the employee was guilty of misconduct; and
- in forming such a belief on reasonable grounds, it carried out as much investigation as was reasonable in all the circumstances.

Most employers will stipulate within their disciplinary rules that discriminatory acts will be treated as gross misconduct warranting dismissal without notice. Typically, separate internal policies (e.g. equal opportunities / anti-harassment) set out what constitutes discrimination, and this will include discriminatory remarks.

What happened in this case?

Mr Lamonby was a 73-year old part-time lecturer in engineering at Solent University (**the University**). During a meeting with his course leader, Dr Bonar, it was alleged that Mr Lamonby made the following remarks:

- Black people "…didn't have the heritage in their DNA to be able to do engineering" but that he had a "soft spot" for young black men because they are "underprivileged and many without fathers" and "need all the help they can get";
- People from Africa and Lithuania "…had no basics in engineering. No family involved and no practice";
- Jewish people were "…the cleverest people in the world" and that they had a "…particular gift" for physics;and
- Germans were "good at engineering" as they were "exposed

> to a high level of industry from an early stage in their lives".

He also asked Dr Bonar if she was Jewish because of her ability in maths and physics.

Dr Bonar raised a complaint, stating that she had found the comments personally offensive and that she was concerned that students were being taught by someone with racist views. The University instituted disciplinary proceedings on the basis that Mr Lamonby had breached the University's Behaviour at Work Policy and the Solent Values Policy.

Mr Lamonby accepted he had made the remarks, save for the remark concerning DNA. He apologised and said that he had not intended to be racist or upset Dr Bonar. Yet, during the investigation and disciplinary process he continued to make inappropriate comments about racial and ethnic groups, including that black males "need extra help" and that Jews had "a special mind" and had "neurological differences".

The University found that Mr Lamonby was guilty of gross misconduct and he was dismissed without notice. Mr Lamonby brought claims of unfair dismissal and breach of contract in respect of the notice period.

What was decided?

Firstly, Mr Lamonby argued that the comments made to Dr Bonar were made in a casual, public environment (i.e. the canteen) and not within the workplace. This was rejected outright by the Judge, who considered that a professional meeting on University premises clearly amounted to a workplace conversation.

Secondly, Mr Lamonby argued that his comments were sympathetic towards or positive about the groups mentioned and were not racist or offensive, meaning his dismissal was unfair. However, the Judge concluded that ascribing certain abilities

or talents (or the opposite of them) to a group by virtue of their nationality, race, ethnic or religious group was potentially racist and offensive. For example, a Jewish person might feel such positive stereotypes demeaned their personal intellectual ability and hard work. The Judge added that "…as with any such group, talents or abilities will vary wildly from individual to individual".

The Employment Tribunal found that the dismissal was within the range of reasonable responses and dismissed the claims.

What does this mean for employers?

This decision serves as a helpful reminder that discrimination can occur even where the perpetrator has not intended to cause offence and/or does not believe they have behaved in a discriminatory manner. In this case, despite having a clean disciplinary record, Mr Lamonby's failure to recognise his wrongdoing meant that the University lost confidence in his ability to change (e.g. through training). The decision also highlights that even positive racial stereotyping can be viewed as racist and offensive.

It's worth noting that the University was assisted by the fact that it had clear anti-discrimination policies in place which had been well-publicised to staff. This meant that Mr Lamonby understood the standard of behaviour expected of him, even though he hadn't, in fact, read them.

Employers should ensure that their policies are clear (e.g. highlighting that positive racial stereotyping is discriminatory) and are circulated to employees on a regular basis. Ideally, employees should be asked to acknowledge that they have read them and should also attend regular dignity at work training.

Lamonby v Solent University (Southampton)

If you would like to discuss any of the issues raised in this

article please contact Amanda Steadman (amandasteadman@bdbf.co.uk) or your usual BDBF contact.

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