Worker who lost her role after she expressed gender critical beliefs on Twitter succeeds in direct discrimination and victimisation claims against employer

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An Employment Tribunal has ruled that an employer discriminated against and victimised a worker who lost her role after she had made straightforward statements of her gender critical beliefs on Twitter and in the workplace.

What happened in this case?

Ms Forstater was a visiting fellow of CGD Europe and also worked on specific projects for them on a consultancy basis. CGD Europe is linked to the Centre for Global Development based in the US.

Ms Forstater believes that:

- Being male or female is a biological fact which is not capable of being changed and is not a feeling or identity. As a result, in her view, a trans woman is not really a woman and a trans man in not really a man.
- A person can identify as another sex, ask people to refer to them by their identified sex and change their legal sex, but this does not, in fact, change their actual sex.

In late 2018, Ms Forstater began expressing her beliefs on her personal Twitter account. Colleagues from the Centre for Global Development in the US saw her tweets and raised concerns that they were transphobic and offensive. The

matter was investigated.

Ms Forstater maintained that her statements were factually correct, but she said that out of courtesy she would respect a person's preferred pronouns. She agreed to avoid discussing her views at work unless there was a particular need to do so. She also added a disclaimer to her Twitter account to make it clear that her views were her own and not those of CGD Europe. Nevertheless, the decision was taken not to renew Ms Forstater's visiting fellowship, to end her consultancy work and not to offer her a contract of employment.

Ms Forstater claimed that she had suffered discrimination, victimisation, and harassment because of her philosophical beliefs. In June 2021 the Employment Appeal Tribunal decided that Ms Forstater's beliefs qualified as protected philosophical beliefs under the Equality Act 2010. Having surmounted that hurdle, the case returned to the Employment Tribunal to decide whether she had, in fact, been discriminated against because of those beliefs.

What was decided?

The Tribunal decided that the way in in which Ms Forstater had manifested her beliefs had significantly influenced CGD Europe's decision not to renew her fellowship or offer her a contract of employment. However, it could not be said that Ms Forstater's tweets, or the other ways in which she manifested her beliefs, were objectively offensive or unreasonable. Rather, they were simple assertions of her belief and not unreasonable, particularly given the tone of the wider public debate on the issue. Therefore, CGD Europe's actions were found to be directly discriminatory. Because Ms Forstater succeeded in this claim, it was not necessary to consider her complaints of harassment and indirect discrimination arising out of the same facts.

The Tribunal also decided that CGD Europe's decision to remove

Ms Forstater's profile from their website after The Sunday Times had published an article about her legal case was an act of victimisation. Ms Forstater had also argued that the withdrawal of an offer of consultancy work was an act of victimisation. However, the Tribunal found that CGD Europe had not, in fact, withdrawn an offer of consultancy work and so this part of the claim failed.

What does this mean for employers?

This decision underlines that where a belief is protected, the expression or manifestation of that belief is also protected – to a point. The key question will be how the belief is expressed or manifested. Where the belief is expressed in a straightforward and objectively reasonable way, the worker will be protected from detrimental treatment. Interestingly, where the wider debate on the belief in question is polarised, the worker may be afforded greater latitude in exactly how they express themselves. Here, the "common currency" of the debate about trans rights meant that the use of mockery and satire was acceptable.

The difficulty for employers will be understanding when a worker's behaviour tips over into being an unacceptable way of expressing their protected belief. Where the behaviour causes another worker to feel harassed it is likely to be on the wrong side of the line, for example "misgendering" a trans worker (i.e. using pronouns different to those that relate to the gender that the person concerned identifies as being). Indeed, in the recent case of Mackereth v DWP a doctor's refusal to use vulnerable service users' chosen pronouns was sufficient grounds for dismissal and was held not to be discriminatory.

What practical steps can employers take to manage this clash of rights?

- Update relevant polices to reflect the fact that those

holding gender critical beliefs and trans workers are protected from discrimination.

- Set out the standards of behaviour expected from staff, including the need to treat colleagues with dignity and respect. Give examples of what is and is not acceptable. Explain that disciplinary action will follow where staff fail to meet such standards, up to and including dismissal.
- Ensure that such policies are actually communicated and read by staff. Consider asking staff to provide a written acknowledgement that they have read and understood them.
- Deliver equality training to staff, ensuring that it is thoughtful and forcefully presented and refreshed at regular intervals.
- Respond quickly and effectively to complaints of discrimination or harassment.

Forstater v CGD Europe and others

BDBF is a law firm based at Bank in the City of London specialising in employment law. If you would like to discuss any issues relating to the content of this article, please contact Principal Knowledge Lawyer Amanda Steadman (amandasteadman@bdbf.co.uk) or your usual BDBF contact.

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