

Race Relations Act 1976 thirty years on

This year sees the thirtieth anniversary of the Race Relations Act 1976. Through the Act many victims have been awarded substantial sums in compensation. For example, out of the 3,638 cases presented to the employment tribunals alleging race discrimination for the year 2002 to 2003 the maximum payout in compensation was £814,877 and the average was £27,041. Statistically speaking, looking at it another way, on an average of 14 cases presented per working day during the said period there was an average weekly payout of around £378,574. A lot of money! This would indicate that the Act has been a success. Admittedly, what is deemed successful is open to debate. In an earlier debate on one of the forerunners to the Act, the Race Relations Act 1965, the then Secretary of State for the Home Department and Lord Privy Seal, Mr R.A. Butler told the House of Commons, “Racial discrimination has no place in our law and responsible opinion everywhere will unhesitatingly condemn any attempt to forment it.” Furthermore, what is deemed a success would depend mainly I suspect on whether the party is the payer or payee. But, however one looks at it, it would seem ‘but for the Act’ such claimants would have been uncompensated. Sadly, however, this would also indicate that there are still racial discriminatory acts for which compensation is required. When one considers that the above awards were compensatory and not punitive the scale of the ‘problem’ becomes even starker.

Assuming respondents/defendants do not ‘actually’ like to be found to have racially discriminated against, for example, one or more of their employees and consequently their having to pay such high compensation, the question remains why, despite all the diversity awareness and equal opportunities training, there are today so many racially discriminatory acts still taking place in the workplace?

Controversially, one answer could be the perceivably wide definition of “racial grounds” on which if a respondent treats a claimant less favourably than it treats or would treat other persons it is deemed to have discriminated against the claimant in any circumstances relevant for the purposes of any provision of the Act. For the purpose of ‘direct’ racial discrimination, such less favourable treatment must be on racial grounds, which ‘is’ deemed to mean, “any of the following grounds, namely colour, race nationality or ethnic or national origins”.

Confusingly, it is not uncommon for we practitioners at employment tribunals to be asked at the outset of hearings to what ‘race’ does the claimant ‘say’ (s)he belongs. Apart from the word, ‘race’ in its title, the Act’s legal definition, when referring to direct discrimination, of “racial grounds” provides no meaningful assistance to one’s identifying a claimant’s ‘race’. In other words, the legal definition, “racial grounds”, bares no resemblance to ‘race’, a social construct. Of course, the similarly worded Sex Discrimination Act 1975 does not have such inherent problems because there we are dealing with ‘sex’, which is biological. Although, I think there would be a good

argument for suggesting on many occasions the discrimination under the 1975 Act is not so much one of 'sex' but of 'gender', which again takes us back to another troubling social construct. Hence, I believe, the confusion.

Understandably, therefore, one is infrequently asked to 'prove' one's 'race' because, I suggest, in the 21st century it would be nigh impossible to prove. Ask an anthropologist. And yet, a tribunal's decision would say that the claimant was or was not discriminated against on the grounds of his or her 'race', when the 'race' of the claimant often remains unknown, uncertain or unproven. However, I would go so far as to argue that in some cases the perceived 'race' of the claimant is secondary if not irrelevant when considering a complaint under the Act.

Take the recent case of **Redfearn (appellant) v Serco Ltd t/a West Yorkshire Transport Service (respondent)**. The appellant, a bus driver and escort for children and adults with special needs, was dismissed by the respondent after a newspaper article identified him as a candidate for the British National Party (BNP) for the 2004 local elections, and after representations were made to the respondent by some of its workforce and the unions Unison and the GMB. Membership of the BNP, according to its constitution, was "open to whites only". 70% to 80% of the respondent's passengers were of Asian origin as were 35% of its workforce.

The reason given for the appellant's dismissal was, "on the grounds of health and safety". The respondent feared violence and/or anger by other employees; the feared reaction of Asians with whom the appellant might travel or assist in the course of his work; and general annoyance or anger against the respondent and/or the appellant by virtue of his party membership. The appellant brought a complaint of race discrimination based on the 'broad definition of discrimination' on racial grounds. He was unsuccessful in the employment tribunal but appealed successfully against that decision at the EAT. It is arguable that the perceived 'race' of the appellant was secondary because it was not 'his' race that was the key factor but the 'racial ground' on which his was dismissed; the respondent's concern in relation to its passengers and employees of Asian origin. Support for this view could be found, it is suggested, from the EAT's citing of *Browne-Wilkinson P* from the case **Showboat Entertainment Centre v Owens**, "We can see nothing in the wording of the Act which makes it clear that the words "on racial grounds" cover only the race of the complainant". In the leading House of Lords case, **Nagarajan v London Regional Transport**, Lord Nicholls stated, "If racial grounds...had a significant influence on the outcome, discrimination is made out". In **Redfearn**, the EAT was of the view that, "if some step is required to be taken to limit those who can take advantage of s1(1)(a) of the Act that can, and should, be considered by Parliament, and not by judicial legislation."

Whether the 1976 Act would have a role to play in the English legal system 30 years from now with high compensatory payouts would, I suspect, depend more on social attitudes and behaviour than any fine tuning of subsequent 'race relations' legislation. Save for the 1965 Act, of course, each of the major Race Relations Acts has built upon the firm foundations laid by its predecessor. And now, due to the Race Relations (Amendment) Act 2000 that amends the Act many public bodies now have a general statutory duty to eliminate unlawful racial discrimination, and to promote equality of opportunity and good relations between persons of different racial groups". Therefore, the pendulum has swung from not only a duty not to unlawfully racially discriminate but also to the said 'positive' duty. The late James Callaghan, during the Second Reading of the Race Relations Bill to the 1968 Act, referring to the 'successful' 1965 Act, said, "the mere passage of the law probably decreased the incidence of discrimination".

As the United Nations Secretary-General, Kofi Annan said on receiving the Stephen P. Duggan award for the international understanding from the Institute for International Education in New York on 27 November 2001, "None of us is born intolerant of those who differ from us. Intolerance is taught and can be untaught". Judging by the number of cases still being presented on the grounds of racial discrimination and the 'high' compensatory awards given by employment tribunals, my guess is the Act still has a central and prominent role to play in such lessons to be taught for many years to come.

Since this article was first published on 26 May 2006 in New Law Journal, "Happy Birthday RRA?" N.L.J. (2006) Vol.156 No.7226 page 875, the EAT decision in **Redfearn** has been overturned by the Court of Appeal. For a commentary on the Court of Appeal decision see "Racial grounds or racial consideration?" by Ryan Clement, New Law Journal N.L.J. (2006) Vol.156 No.7232 pages 1094-1095: Publication Date: 7 July 2006. A version of the Court of Appeal decision will appear in the next NEWSLETTER

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