

Is a belief in the moral importance of copyright a ‘philosophical belief’?

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Gray v Mulberry [2019] EWCA Civ 1720

Background

The Respondent is a well-known design company. The Claimant was employed by the Respondent as a Market Support Assistant, but is also a writer and film-maker.

In order to protect its intellectual property rights, all employees are asked to sign a Copyright Agreement, giving the Respondent the copyright to anything an employee invents or produces during their time as an employee. The Claimant, fearful that this would affect her writing and film-making, refused to sign this agreement. In an attempt to alleviate the Claimant’s concerns, the Respondent provided an amended agreement (making it clear that the copyright only related to matters related to her employment with Mulberry), which the Claimant also refused to sign. The Claimant was ultimately dismissed for not signing the agreement.

The Claimant brought claims of direct and indirect discrimination on the grounds of philosophical belief (defined in s10 EqA 2010).

Philosophical belief (ET, EAT and Court of Appeal)

The belief relied on was *“the statutory human or moral right to own the copyright and moral rights of her own creative works and output, except when that creative work or output is produced on behalf of an employer”*.

The ET followed the five criteria set out in *Grainger plc v Nicholson* [2010] ICR 360. It accepted that (i) the belief was genuinely held, (ii) it was a belief (rather than an opinion), and (iii) that it concerned a weighty and substantial aspect of human life and behaviour. It also accepted the fifth criterion, that the belief was worthy of respect in a democratic society. However, the Tribunal did not accept that the belief had the sufficient level of cogency, seriousness, cohesion and importance required by the fourth *Grainger* criterion. Whilst the ET accepted that the Claimant strongly believed in the right of ownership to her own creative output, it did not accept that she held the belief as any sort of philosophical touchstone to her life.

The EAT agreed. It held that the fact she had not made her belief known to the company, led to the conclusion that belief was not sufficiently cohesive to form any cogent philosophical belief which could be protected under the Act.

The Court of Appeal took a different approach. It found that the Claimant's belief as she had framed it did not put her at a disadvantage at all. What in fact led her to refuse to sign the agreement, was her concern about whether the wording of the Copyright Agreement (both in its original form and as amended) sufficiently protected her interests. The Court held that the wording or interpretation of the agreement cannot be a philosophical belief within the meaning of s 10.

Direct discrimination (ET)

The ET dismissed the claim of direct discrimination on the basis that the dismissal was for the failure to sign the agreement, and that other employees who did not sign, for whatever reason, would have been treated in the same way. This point was not the subject of any appeal.

Indirect discrimination (ET, EAT and Court of Appeal)

The ET and EAT rejected the claim of indirect discrimination on the basis that there was no evidence that the requirement to sign the Copyright Agreement (PCP) put others sharing the Claimant's belief at a particular disadvantage. Furthermore, the requirement to sign the Copyright Agreement (particularly in its amended form) was justified as a proportionate means of achieving the legitimate aim of protecting the Respondent's intellectual property.

The Court of Appeal agreed. The issue for the Claimant lay in the fact that there was no evidence that any other employees (even those who may have shared her belief) had the same difficulty. As explained above, the Court held that in reality the Claimant's issue was as to the wording of the agreement and that "[her] crisis of about signing and/or refusal to sign was not the result of her belief, as defined, but the result of her wish to achieve greater protection for her own creative works."

In relation to justification, the Court of Appeal agreed that the ET had been entitled to find that the Copyright Agreement (in its original and amended forms) was reasonable and requiring all employees to sign it was proportionate.

Comment

The bar is high for a belief or world view to be protected as 'philosophical belief' under the Equality Act. At first sight, this case appeared to pose an interesting question about whether a moral belief, such as belief in copyright, can be protected. However, given the way the belief was defined, the Court of Appeal was able to dodge the question. While, in my view, the reasoning is correct, it is a shame that the Court of Appeal did not have the opportunity to grapple with the issue. Nevertheless, it is one of a number of cases working its way through the tribunals. For example, whether vegetarianism (*Conisbee v Crossley Farms Ltd*) and veganism (*Casamitjana v League Against Cruel Sports*) can be philosophical beliefs are questions of recent and imminent judgments. In an age where people are defining themselves less by religious beliefs, and more in other ways, it can be expected that this issue will arise again and again.



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