

Ryan v South West Ambulance Services NHS Trust UKEAT/0213/19/VP

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An important and timely case on age discrimination and indirect discrimination. The Claimant, who was in her 60s, brought a claim in the ET for indirect age discrimination, alleging that she was indirectly discriminated against when she was not able to apply for promotion on two occasions because she was not in the Respondent's "Talent Pool". The ET found that the Respondent had a provision, criterion or practice ("PCP") of only promoting managerial staff who were in their Talent Pool, but it found that there was no causal link between the PCP and the individual disadvantage suffered by the Claimant, because she had not realistically tried to gain entry to the Talent Pool. The ET also considered the issue of group disadvantage (namely, for people of the Claimant's age group); and it was satisfied that the Respondent's actions were justified.

The Claimant appealed contending that the Tribunal had fallen into error by concluding that the Claimant was an 'undeserving Claimant' within the meaning of paragraph 32 of the Supreme Court decision in **Essop v Home Office; Naeem v SoS for Justice** [2017] IRLR 558 (i.e. the ET had erred in concluding that there was no causal link between the relevant PCP and the disadvantage that she had suffered), and that it erred in its analysis of the Respondent's case on justification.

The EAT held that the ET had erred in finding that the Claimant was not put at a disadvantage by the PCP; further, the EAT was satisfied that the decision regarding objective justification could not stand. Before the Tribunal, it had not been appreciated by the ET that the group and individual disadvantage asserted were different. This led to an error in the subsequent analysis.

The group disadvantage was asserted to be a reduced likelihood of membership of a Talent Pool used by the Respondent for recruiting to senior roles for the age group 55-70. The Claimant was in that age group and was also not in the talent pool. The Tribunal erred in its approach to the question of individual disadvantage and had erred in concluding that the

Claimant had not suffered an individual disadvantage. That in turn led to error in its approach to justification.

Paragraphs 28-39 of the judgment provide a useful overview of the development of the law on indirect discrimination, proof of disadvantage, justification and the burden of establishing justification.

[Click here to read the full judgment.](#)

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