

Different terms for part-time workers is not necessarily discrimination

This second article in a series of digest by **Thomas H. John**, pharmacist and barrister, of cases heard recently in the appeal courts of England and Wales is in two parts. The first part considered aspects of anti-discrimination law in relation to fixed-term employees (*PJ*, 3 September, p287).

This second part focuses on similar issues as regards the rights and obligations of part-time workers

The question

To what extent have employment rights of part-time workers been clarified following the coming into force on 1 July 2000 of the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000 (PTW Regulations)?

The law

As discussed in the first part of this article, the PTW Regulations and the Full-Time Employees (Prevention of Less Favourable Treatment) Regulations 2002 were brought into force in England and Wales as a result of EC Directive 99/70. They are viewed by legal practitioners and academics as part of a series of anti-discrimination legislation to cement and extend the two major anti-discrimination Acts passed during the 1970s, namely, the Sex Discrimination Act 1975 and the Race Relations Act 1976. By their nature as laws prohibiting discriminatory practices on the part of employers, they have their widest application in the field of employment law and industrial relations generally.

Almost paradoxically there is an in-built potential for the legislation to exert a perverse effect since all employers will wish to exercise discrimination in some shape or form within their selection procedures in striving to employ the most suitable people for their businesses.

How, then, does the law address this balance in ensuring that fair and equitable treatment is afforded to all employees and applicants for employment on the one hand against the policies of employers on the other?

The case

Matthews and others v Kent and Medway Towns Fire Authority and others. Employment Appeal Tribunal (Judge Birtles, Mrs C. Baelz and Ms B. Switzer). Judgment given 7 August 2003.

Bruce Matthews and 11 other part-time fire-fighters brought claims shortly after the coming into force of the PTW Regulations, alleging they had been discriminated against in comparison with their full-time, employed colleagues in that:

- They were excluded from the fire service pension scheme
- They were subject to lower additional duties payments
- They were subject to less favourable sick pay arrangements



How to read this article

To obtain optimum benefit it is suggested that practitioners read the question or questions posed at the outset of the digest, then read the facts and the issues arising, then the decision of the court together with the reasoning behind the decision. The question or series of questions should then be reread and consideration given as to whether any lessons can be learnt in terms of practitioners' practices.

For them to succeed in their claims, the law stated that Mr Matthews and his part-time colleagues would have to satisfy the employment tribunal to the civil standard, that is, on a balance of probability, that:

- They were employed under the same type of contract as their full-time counterparts (Regulation 2[3]) or
- They had been doing work of the same or similar nature to the full-timers (Regulation 2[4]) and
- It would have been unreasonable for the employer to have treated them differently from their full-time counterparts (Regulation 5)

The employment tribunal, having heard the full facts, dismissed each of the part-time fire-fighters' claims.

Mr Matthews and his colleagues appealed to the Employment Appeal Tribunal (EAT), the appellate body for employment tribunals throughout England and Wales. The EAT deals only with appeals on points of law, every

tribunal being entrusted to decide any issues of fact arising from claims brought before them.

Since such important issues were at stake in this case, the fire authorities cross-appealed. They maintained that the employment tribunal had erred in law in finding that, if the part-timers had been successful in the first part of their claims, the fire authorities' practices would indeed have been discriminatory. The Secretary of State also joined in the appeal, maintaining that the tribunal had used the wrong legal test in finding that the part-timers were not employed on the same type of contract as the full-timers. The Secretary of State maintained that the correct approach should have been for the employment tribunal to analyse both full-time and part-time contracts on a term-for-term basis rather than simply looking at the overall favourableness of the respective packages.

The decision and reasoning The EAT agreed with the employment tribunal on all the points of law appealed.

Judge Birtles said that the tribunal had correctly assessed that, in this case, although there were many similarities between the part-time and full-time contracts, there were also a number of important differences, the most important of which related to tenure and duration of employment. Therefore it could not be said that the two contracts were of the same type within the meaning of Regulation 2(3).

As to the next ground, whether the part-timers and full-timers were doing the same or broadly similar work, the EAT found that the tribunal had correctly assessed the position in that the two groups had differing patterns of work activities. For example although both groups' activities included putting out fires and both had to maintain the same level of physical fitness, the vital differences were that

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the proportion of time actually spent tackling fires, the variability of work patterns, fire safety work and ongoing training were such that the two groups could not be said to be doing work of the same or a broadly similar nature.

The EAT also agreed with the tribunal that had there been no such differences between the contracts of the two groups there was no reason for the different treatment in terms of pension rights, additional duty and sick pay other than that the part-timers were simply that, ie, part-timers. Consequently there was no objective justification for why those differences existed and the differences were, therefore, discriminatory. The EAT emphasised that the correct approach was indeed to assess the overall favourableness of the two packages to the workers involved and not to consider the contracts on a term-by-term or piece-by-piece basis.

Discussion

A number of important principles emerge from the case.

- First, it is clear that for any claim to succeed before a tribunal each and every legal element must be proven by the person bringing the claim at least on a balance of probabilities. What this means in practice is that claimants must show it is more likely than not that what is being alleged by

them is the true position at their workplaces.

- Secondly, it is submitted that tribunals are taking a restrictive approach to claims of discrimination brought before them. They are examining those claims closely and refusing to afford a liberal interpretation to the regulations. This has the effect of ensuring that spurious or speculative claims brought by disgruntled employees are unlikely to succeed. Any employee thinking of bringing a claim against his or her employer is strongly advised to obtain specialist legal advice at an early stage before embarking on any such claim.
- Finally, bearing in mind that claims must be brought before the tribunal within strict time limits of three months from when the alleged discrimination occurred, early specialist legal advice is vital. There is plenty of scope for obtaining such advice. Although no legal aid is available for employment claims, most firms of solicitors will grant an initial interview free of charge. Some barristers are also able to advise potential clients in employment matters without the need for initial consultation with a solicitor. Further details on the bar's Direct Public Access scheme can be found on the Bar Council's website. A number of Citizen's Advice Bureaux and local Law Centres can also give advice on employment issues.

Diploma in veterinary pharmacy

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The core programme for the diploma consists of four modules, each of which includes a written assignment. Those aiming for the diploma must complete all four modules, undertake recorded practical experience, submit a dissertation, sit an oral examination and complete two consecutive three-day residential periods at Harper Adams University College, near Newport, Shropshire, where a full range of livestock units is available for study. The full diploma course can be taken in one year or spread over up to four years.

The postgraduate certificate is obtained by completing two modules through distance learning and attending a study day at Harper Adams.

Further information and registration forms can be obtained from Lorraine Fearon, Royal Pharmaceutical Society, 1 Lambeth High Street, London SE1 7JN (tel 020 7572 2409; e-mail lorraine.fearon@rpsgb.org).

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