

FAIR EMPLOYMENT TRIBUNAL

CASE REF: 00040/98 FET

APPLICANT: John Brannigan

RESPONDENT: Belfast City Council

DECISION

The unanimous decision of the Tribunal is that the respondent unlawfully discriminated against the applicant on the ground of his religious belief. The tribunal orders the respondent to pay the applicant £6,908.00 computed as appears below.

Appearances:

The applicant was represented by Mr Wolfe, Barrister-at-Law, instructed by the Equality Commission.

The respondent was represented by Mr Ferrity, Barrister-at-Law, instructed by Belfast City Council Legal Services.

The tribunal found the following material facts.

1. The applicant, a street cleaner, has worked for the respondent from July 1995. He worked out of the Dunbar Link depot ("the depot"). He is a Roman Catholic ("Catholic"). At all material times, the religious make-up of the depot was roughly 50/50 Catholic and Protestant. Sometime in early 1996 the Andersonstown News criticised the display of a portrait of the Queen at the depot. It was known in the depot that the applicant sought clarification about the article from Councillor O'Meilleor (Sinn Fein). This article divided the workforce along well-recognised lines i.e. Catholic and Protestant and the men ceased to eat or sit together. In response, senior management represented by the Head of the Cleansing Department, Andrew Cassells and the Equal Opportunities Manager, Julie Eastwood, visited the depot and spoke directly to the workforce. This was a very fraught meeting. They reminded the men of the respondent's Equal Opportunities Policy and in particular outlined that the respondent was committed to providing a neutral working environment. They put it plainly to the workforce that offensive items and behaviour would not be tolerated and gave examples such as inappropriate clothing (Rangers/Celtic scarves, jerseys etc.), party tunes and graffiti. They also announced that an audit would be carried out throughout all of the respondent's premises to look for offensive material. The question

of the Queen's portrait was raised but no decision was taken about it at that time. It was not disputed that the matter of the Queen's portrait hanging at the depot touched a raw nerve with the workforce.

2. The matter of the Queen's portrait, like the matter of the Union flag flying at the City Hall, was tackled at a higher level than that of the manual workforce at the depot. Senior management, trade unions and Councillors became involved. As Julie Eastwood indicated this was a very slow process. Eventually on 18th September 1997 the respondent issued a Joint Declaration of Protection ("Declaration") signed by the Lord Mayor and by representatives of management and trade union at joint committee level. This Declaration, amongst other things, reiterated the respondent's commitment to providing a "neutral and harmonious working environment" and its condemnation of intimidation or harassment based on religious belief, political opinion, gender or any other such matter. It also stated that the respondent would only permit the display of flags and emblems authorised in line with the spirit and purpose of the Declaration and which were consistent with a neutral and harmonious working environment. The respondent's Chief Executive sent a copy of the Declaration to all employees. The respondent was unable to inform the tribunal as to how exactly the Declaration was delivered to the workforce. This was followed by another letter from the Chief Executive dated 22nd September 1997 informing all employees that the Declaration would be implemented from 6th October. This letter, among other things, advised all employees to remove offensive items themselves and to support management in their removal. According to Julie Eastwood the issuing of the Declaration caused "quite a buzz" and her workload went up as a result of it. The respondent proposed to implement the Declaration as regards the Queen's portrait at the depot through the auspices of a management/trade union Working Group. The Working Group was mooted in mid-1997 and eventually had its first meeting in November 1997. The tribunal found that the Working Group was not an effective engine for change during the period covered by these complaints and did not become effective until much later in 1998.
3. After the meeting in early 1996 between Andrew Cassells (Head of Cleansing), Julie Eastwood (Equal Opportunities Manager) and the workforce, equal opportunities training was arranged for all employees. This training was general in nature and did not specifically address sectarian harassment in the context of the provision of a neutral and harmonious working environment even though it was intended to be a direct response to the fraught depot meeting. In addition, not all depot employees attended the training and there was no effective system in place to ensure that absentees were trained. Apart from this incomplete training session in June 1996, senior management had no further personal interface with the workforce in the depot regarding its policies on the provision of a neutral and harmonious working environment until further discrimination training was provided in March 1998. Instead the respondents communicated through the provision of documents to all employees e.g. in September 1996 the respondent's Director of Corporate Services sent a memorandum accompanied by the respondent's Equal Opportunities Policy; its policy on Sexual Harassment and its policy on Sectarian Intimidation/Harassment. And, of course, the Declaration was issued on 18th September 1997 and sent out on 22nd September 1997. Julie Eastwood told the tribunal that Andrew Cassells had been back to the depot between the early 1996 meeting and the issuing of the Declaration. The tribunal does not accept that those visits had anything to do with the tension surrounding the Queen's portrait because the depot manager, Dermott McManus who worked at and was in charge of the depot told the tribunal that Andrew Cassells' visits were not concerned with equal opportunities matters.
4. Dermot McManus told the tribunal that the issuing of the Declaration in September 1997 reopened the wounds caused by the matter of the Queen's portrait. Julie Eastwood told the tribunal that no action could be taken on the Queen's portrait until the Declaration had been agreed. In the circumstances the tribunal was satisfied that the respondent's management

knew or ought to have known that the Declaration would refuel tension in the depot. It was not disputed that no-one from senior management, such as Andrew Cassells or Julie Eastwood visited the depot to clarify the respondent's position about the Declaration and the Queen's portrait either before or after the promulgation of the Declaration.

5. On 24th September 1997, two days after the Chief Executive notified all employees on the implementation of the Declaration, the applicant came across graffiti on the door of a toilet cubicle which read "Your next Brannigan UVF". This was the first of four incidents of sectarian harassment of the applicant. The second incident occurred in early October and consisted of his locker being turned upside down and "UVF" being scratched lightly on it. The tribunal is satisfied that the applicant did not report this incident at the time because he considered it to be no more than a joke. However, he took a more serious view of it on 20th October when a loyalist paramilitary magazine called "Combat" was left in a works van used by himself and a fellow Catholic worker while they were in the depot having lunch. While reporting the "Combat" incident the applicant reported the interference with his locker. Finally, it was not disputed that on 31st December 1997 the applicant again had his locker interfered with and this time "UVF" was written prominently on it. This was the last straw for the applicant and he finally availed of the offer of a permanent transfer. It was not disputed that the graffiti amounted to sectarian harassment and constituted discrimination on the ground of religious belief. It was not disputed that the respondent was vicariously liable to the applicant for this unlawful discrimination unless it could establish a defence under Article 35 (3) of the Fair Employment Act 1976 as amended by Article 36 (4) of the Fair Employment and Treatment (NI) Order 1998 ("the Order") which provides:

"In proceedings brought under this Order against any person in respect of an act alleged to have been done by an employee of his, it shall be a defence for that person to prove that he took such steps as were reasonably practicable to prevent the employee from doing that act or from doing in the course of his employment acts of the same description"

6. The tribunal now turns to consider how the respondent dealt with the acts of sectarian harassment in this case. All incidents were reported to Sam Skimin as the designated Harassment Officer for the depot. He recorded his interviews with the applicant. The tribunal was satisfied that the applicant was made aware of the respondent's procedures for investigating his complaint and was offered welfare and medical assistance. He did not avail of either of the latter. The tribunal accepted that Sam Skimin, in response to the Combat magazine incident, advised that the van in question should not be left unlocked and that it should be parked inside the depot at all times and that it should not be used by anyone other than the applicant and his fellow Catholic worker, Patrick White. The tribunal found that those suggestions were sufficient to satisfy Article 36(4) above insofar as they prevented the van being used for sectarian harassment purposes. However, in the overall context of what was happening to the applicant at that time in the depot the tribunal was not satisfied that these measures alone were sufficient to prevent acts of sectarian harassment being perpetrated against the applicant. The tribunal will elaborate on this overall context approach below.

7. The tribunal accepted that the graffiti in the toilet cubicle and the interference with and graffiti on the locker occurred in the toilet area and the locker room. These two separate areas are located opposite each other across a corridor. It was not disputed that camera surveillance inside these two areas would amount to an invasion of privacy and therefore was not an option open to the respondent. The tribunal accepted that a system of random monitoring was put in place whereby Dermot McManus and the yardman checked both areas. The applicant's shop-steward, Damien Cassidy who gave evidence on the applicant's behalf told the tribunal that this monitoring was carried out by the yardman before the

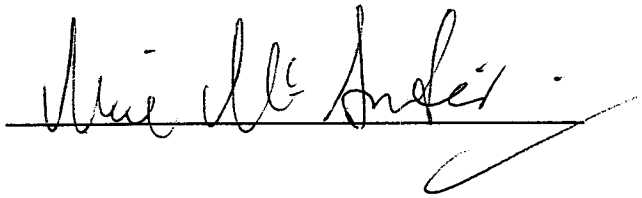
applicant left and the tribunal accepted Dermot McManus's evidence that he checked both himself. The Tribunal accepted his evidence because it is likely that he visited both areas regularly as part of his managers duty to keep an eye on the depot generally and he also went into that area when looking for particular individuals. Given the location and nature of the incidents the tribunal was satisfied that the monitoring was carried out as well as possible given the nature and location of these incidents. Mr Wolfe submitted that more could have been done to prevent these incidents and argued that the respondent could have employed full-time personnel to stand in the respective areas and to constantly check toilet cubicles. The tribunal does not accept that these steps would have been reasonably practicable because they would have necessitated the employment of two men to cover the two areas over the 20- hour opening period of the depot and would likely have met with opposition from the workforce.

8. Mr Wolfe, Barrister-at-Law, submitted that a camera should have been installed in the corridor to identify those going in and out of the two areas and to record when they were doing so. Sam Skimin told the tribunal that he had considered this as an option but rejected it because he did not think it would catch the perpetrator or perpetrators. The tribunal considers that the respondent, by rejecting the idea of this camera, failed to take a reasonably practicable step in preventing the incidents that befell the applicant. The tribunal considers that the installation of a camera in the corridor had the potential for prevention because it would have enabled the respondent to record who was coming and going in the designated areas and when they were doing so. This in turn would have enabled the respondent to make a list of workmen who could be interviewed about what they had seen or heard. Also, such surveillance, by increasing the risk of detection, would have made it that much harder for the perpetrators to indulge in such activities. Finally, the tribunal considers that a reasonable employer of unskilled manual workers, who knows that there is a particular problem polarising the workforce, would have realised that such surveillance and follow-up would be a more powerful tool for communicating and reinforcing its policies than written memoranda, letters and policy statements.
9. The respondent laid significant emphasis on the fact that it had trained the depot's workforce about its equality policies. It was submitted that this training was, amongst other things, a reasonably practicable step within Article 36(4). The tribunal accepts that it is important for employers to train employees about equality. However, the tribunal does not accept that the respondent's training of the depot workforce in June 1996 amounted to the taking of a reasonably practicable step in preventing these incidents of sectarian harassment for the following reasons. The training, which was supposed to be in response to the problem that existed at the depot, was general when it should have been specific i.e. it covered all aspects of discrimination instead of focusing on the respondent's neutral and harmonious working environment policy. No training on sectarian harassment per se was attempted as a result of these incidents. Finally, the training that was given in 1996 was not given to everyone because absentees were never followed-up.
10. Apart from its failure to install a camera in the corridor and its failure to provide proper and adequate training, the tribunal was not satisfied that the respondent, within the overall context of what was happening at the depot, took such reasonably practicable steps to prevent these incidents of sectarian harassment. The tribunal is satisfied that the respondent did not do so either before the incidents occurred or during the four-month period between the first incident and the final incident which drove the applicant from the depot. It was not disputed that the workforce at the depot consisted of unqualified manual workers and the tribunal was satisfied that such a workforce was likely to have had little interest in dealing with policy documentation. Yet, the only means of communication utilised by the respondent's senior management to the particular problem polarising this workforce was the written word. The tribunal considered that the applicant's complaints of sectarian

harassment fell on deaf ears at senior management level at a time when it knew or ought to have known that relationships between Catholics and Protestants at the depot would be uneasy. The tribunal does not criticise the respondent for the manner in which it sought to care for the medical and welfare needs of the applicant or for the manner in which it advised him of his statutory rights. However, the tribunal was not satisfied that the respondent took reasonably practicable steps to prevent the sectarian harassment of the applicant in the overall context of the on going dispute about the Queen's portrait at the depot. In the circumstances the tribunal accepts Mr Wolfe's contention that after the issuing of the Declaration the respondent "rested on its laurels". Whilst the tribunal finds that the Declaration was a means of dealing with the problem of the Queen's portrait, it did not deal with the problem of a polarised workforce and the sectarian harassment of the applicant. The tribunal considers that senior management ought to have visited the depot and spoken to the workforce rather than resort to written communications. The tribunal considers that speaking to the workforce would have been a more effective means of preventing these complaints of sectarian harassment than the issuing of written communications. In the circumstances, the tribunal finds that the respondent's failure to speak to the workforce about the Declaration and about how it intended to implement it and how it would not tolerate any sectarian harassment as a result of it amounted to a failure to take such reasonably practicable steps prescribed by Article 36 (4) of the Order. Their failure to do so was unreasonable in that senior management ought to have anticipated the possibility of sectarian harassment as a result of issuing the Declaration. Even if the respondent did not anticipate such a reaction they were aware of the problem from the occurrence of the first incident on 24th September 1997 and from subsequent incidents that the applicant was being subjected to sectarian harassment. In the absence of a "hands-on" management approach, the tribunal finds in the context of this case that it is not surprising that the sectarian harassment of the applicant persisted unabated from September to December 1997.

11. The applicant had worked in the depot for over two years. It was not disputed that he particularly enjoyed working there and was reluctant to leave. He was subjected to sectarian harassment for over four months. It was not disputed that although he did not leave immediately or seek medical assistance, the incidents caused him distress and impacted on his family life. It was not disputed that the applicant was offered immediate transfer out of the depot after each incident. The tribunal accepted the applicant's evidence that he remained at the depot because he liked his work and because he wished to deny the perpetrator(s) the satisfaction of achieving their aim of scaring him out of it. The tribunal also accepted the applicant's evidence that he visited the respondent's Equality Unit after the first incident to ascertain what was to be done about his situation. The tribunal accepted his evidence and that of Damien Cassidy that they were frustrated by the respondent's response i.e. the offer of formalising a complaint when the perpetrators were anonymous; the offer of welfare and medical assistance and the ultimate offer of moving him out of the depot. The tribunal accepts, for the reasons appearing above, that their frustration was based on a feeling that senior management, between September 1997 and December 1997, was not coming up with practical solutions to prevent the continued sectarian harassment of the applicant. The tribunal finds that the sectarian harassment was serious and prolonged and that ultimately the applicant could no longer tolerate it and had to transfer out of the depot as a result. The tribunal considers that an appropriate figure for injury to feelings in this case is £5,000. This takes into account the duration of the harassment and would have been higher but for the fact that the applicant did not leave immediately after the 31st December 1997. The act of discrimination, for the purposes of the 1998 Order occurred on 31st December 1997. Interest at 8% p.a. on £5,000 from 31st December 1997 to the 28th November 2001 (the day of calculation by the tribunal) is approximately £1563.00 Therefore the respondent is ordered to pay the applicant £6,563.00 compensation for injury to feelings.

12. The parties have agreed that the applicant suffered a financial loss of £300 in this case. Interest on £300 from 14th December 1999 (mid-point date) to 28th November 2001 (the day of calculation) at 8% p.a. is approximately £45. The applicant's total financial loss is therefore £345 and the respondent is therefore ordered to pay £345.00 compensation for financial loss.
13. This is a relevant decision under the Fair Employment Tribunal (Interest) Order (Northern Ireland) 1992.



Date and place of hearing: 19 to 23 November 2001, Belfast

Date decision recorded in register and issued to parties:

16 JAN 2002
GR

INTEREST NOTICE

FAIR EMPLOYMENT TRIBUNAL (INTEREST) ORDER (NORTHERN IRELAND) 1992

FAIR EMPLOYMENT TRIBUNAL (REMEDIES) ORDER (NORTHERN IRELAND) 1995

Under the provisions of the above-mentioned Orders interest shall accrue on a sum of money payable as a result of a decision of the Fair Employment Tribunal where that sum remains unpaid in whole or part 42 days after the day the decision of the Tribunal was issued to the parties. In such circumstances interest shall accrue from the day immediately following the day the decision containing the award is issued to the parties. Interest does not accrue on costs or expenses awarded by the Tribunal.

In this application, please note that -

1. the decision day is 16 January 2002 being the day the decision was sent to the parties;
 2. the calculation day is 17 January 2002 being the day immediately following the decision day; and
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3. the stipulated rate of interest is 8% being the rate of interest in force on amounts awarded by decree in the county court on the decision day.


Secretary of the Tribunals