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PRESS RELEASE

Age discrimination decision against Gallaher Ltd

The Industrial Tribunal has found that Bernard Barlow (66), who worked for Gallaher Limited for 27 years, was discriminated against on the grounds of his age as he was excluded from its enhanced severance package when its factory in Ballymena closed. The Equality Commission supported Mr Barlow in taking his case.

Mr Barlow was employed as a machine worker at the factory owned by Japan Tobacco International Limited since October 1998. In May 2014, Mr Barlow notified the company that he wished to work after he had reached 65 in February 2016. This ambition was frustrated when the company announced that it intended to close its Ballymena factory, a decision it confirmed in January 2015.

Following this decision, discussions took place between the management and Unite (the recognised trade union) on the redundancy package. The package was based on a contractual redundancy scheme in place from 2009 which stated "*entitlement... only applies up to age 65*" with employees over 65 only receiving statutory redundancy pay. This scheme had not been amended following the removal by Government of the Default Retirement Age in October 2011.

The Tribunal noted that during the negotiation process the views of the workers over 65 years were not specifically canvassed by either the management side or trade union side, nor did management undertake an equality audit to ascertain whether the scheme might potentially discriminate against that group of workers.

A final severance package was agreed between Management and the Trade Union in February 2015. Following this, all employees were asked to sign a settlement agreement. Mr Barlow did not sign up as the sum he would receive was less than employees under 65 years. He believed this was discriminatory on the grounds of his age. An internal grievance was unsuccessful and he lodged a claim with the industrial tribunal on 12 May 2015.

The company did not dispute that the scheme adversely affected employees over 65, but contested the case on the ground of objective justification – a proportionate means of achieving a legitimate aim.

In its decision, the Tribunal accepted that the company was *“genuine in its desire to see that the resources for enhanced redundancies payments would be spread fairly and equitably across the workforce, but the inescapable reality was that those employees who, like Mr Barlow, were over 65, were completely excluded from the benefits of the company’s enhanced severance scheme.”*

The Tribunal noted that the company *“when the Age Discrimination Regulations were first introduced, had been made aware of the potential for breach of those Regulations and had recognised their impact as is evidenced from meetings between management and trade union from June 2007 onwards.”*

In its decision, the Tribunal found *“no evidence that the company seriously considered any alternative methods which could have constituted a proportionate way of achieving its aims i.e. by tapering provisions or amending the net pay limitations ... no transitional measures were considered, which could have mitigated the discriminatory effects of the scheme”*.

The Tribunal found that Mr Barlow suffered both direct and indirect discrimination on the ground of age. The Tribunal signalled its intention to issue a short supplementary decision to deal with compensation.

Mr Bernard Barlow said after the decision: “I had worked for Gallaher’s for 27 years and hadn’t had a sick day in over ten years. I considered myself to be a loyal and dedicated employee. It was hurtful and upsetting to be told after all those years of service that I was being treated differently than some colleagues simply because of my age. I found it offensive to be excluded from the company’s redundancy scheme just because of my age and it is still distressing when I consider how I have been treated. I am grateful to the Equality Commission for its support throughout this difficult process.”

Dr Michael Wardlow, Chief Commissioner of the Equality Commission, said: “In this decision, the Industrial Tribunal found that Mr Barlow’s claims were well-founded. Figures show a definite trend of people over 65 remaining in work since the removal of the Default Retirement Age and given the state pension age continues to increase, this trend is unlikely to change. Employers must accept that older workers are entitled to the same consideration as workers of other ages when decisions regarding their contracts, performance standards, continued employment or in this case redundancy are being made.

“This Tribunal decision is clear that employers must consider if there are other ways of achieving their desired result which do not discriminate against anyone – and be prepared to explain and justify their decision.

“The Commission can provide advice to employers on managing older workers and redundancy to help them ensure they are operating within the law.” concluded Dr Wardlow.

- Download the [Tribunal decision in full](#) (*pdf*)