

VICTIMISATION CLAIM - HOUSE OF LORDS FIND IN FAVOUR OF DINNER LADIES

Recently the House of Lords handed down its decision in the highly publicised case of St Helens Borough Council v Derbyshire and others involving school dinner ladies who had allegedly been victimised after they brought equal pay claims. Employers should note the need to be very careful when corresponding with individuals that have brought proceedings against them.

The House of Lords ("HL") allowed the dinner ladies' appeal agreeing with both the Employment Tribunal ("ET") and the Employment Appeal Tribunal ("EAT") that the dinner ladies had been victimised. A group of dinner ladies claimed that they should receive the same rates of pay as road sweepers on the grounds that they carried out work of equal value. The majority of the dinner ladies involved reached a settlement with the Council, however some brought equal pay claims in the ET.

Prior to the hearing of the equal pay claims the Council sent a letter to all the staff including the dinner ladies bringing the claims and a second letter specifically to each individual bringing a claim. Both letters warned of the long-term consequences should an ET find in favour of the dinner ladies. The increased cost of providing the service was highlighted and the fact that this would mean that the school-meal provision would have to be scaled back and that this would also lead to redundancies. The letter was sent only to the individual Claimants and urged them to settle in view of the consequences of an ET decision against the Council. The dinner ladies brought a second claim alleging by sending the letters the Council had victimised them for bringing a claim in the ET.

The Court of Appeal ("CA") disagreed with the decision of the ET and EAT holding that the dinner ladies had not necessarily been victimised as it was open to an employer to take reasonable steps to protect its position in proceedings without victimising those bringing claims. The CA held that the Council's motive (being to encourage settlement) in sending the letters did not mean that the dinner ladies had been victimised and described the letters as being "an honest and reasonable attempt by the Council to compromise proceedings. The CA ordered that the case should be remitted to the ET.

However the HL held that the CA had focused too narrowly on certain aspects of the ET's decision. The ET had clearly recognised that an employer can make honest and reasonable attempts to settle a claim, but had decided that the letters did not amount to such an attempt. The ET had found that the object of the letters was to put pressure on the dinner ladies to settle and that they were treated less favourably than those not pursuing equal pay claims. Further the letters amounted to a detriment in that the dinner ladies had suffered distress as a result. The HL therefore held that there was no reason for interfering with the ET's original decision.

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