

Landmark ruling opens way to change in workplace policies on religion

A flood of workplace reviews is expected following a European Court of Human Rights (ECHR) ruling which has said that a Christian employee of British Airways had her human rights breached when she was not allowed to wear a crucifix with her BA uniform.

The landmark judgment in the case of *Eweida and Others v. The United Kingdom* (Applications nos. 48420/10, 59842/10, 51671/10 and 36516/10) looked at the limits of religious freedom in the case of Nadia Eweida, a practising Coptic Christian, who lost her job with British Airways after refusing to keep her crucifix necklace out of sight when wearing her uniform.

In a majority judgment from the Court, it was said that Ms Eweida's right to manifest her religion under article 9 of the European Convention of Human Rights had been breached. Finding in favour of Mrs Eweida, the ECHR said that a fair balance had not been struck by the domestic Courts between her desire to manifest her religious belief and to be able to communicate that belief to others, and on the other side, her employer's wish to project a certain corporate image.

The judges pointed to the fact that other BA employees had been authorised to wear items of religious clothing such as turbans and hijabs without any negative impact on BA's brand or image. They also said that the fact that the company subsequently amended its uniform code to allow for visible wearing of religious symbolic jewellery showed that the earlier ban had not been of crucial importance.

Mrs Eweida brought her appeal to Europe, along with three other Christian applicants, after their cases were dismissed in the UK Employment Tribunals and Courts. But the three other Christian applicants – Lilian Ladele, a local authority registrar who also lives in London, Shirley Chaplin, a nurse from Exeter, and Gary McFarlane, a Bristol marriage counsellor – who also claimed they had suffered religious discrimination lost their appeals.

All four applicants are practising Christians. Together with Mrs Eweida, Ms Chaplin, a geriatrics nurse, complained that her employer had placed restrictions on her visibly wearing a Christian cross while at work. Ms Ladele, a Registrar of Births, Deaths and Marriages, and Mr McFarlane, a Relate counsellor complained about their dismissal for refusing to carry out certain duties which they considered would condone homosexuality.

Although Ms Chaplin's case appeared almost identical to Mrs Eweida's, the EHRC dismissed her appeal, saying that the British Courts had resolved the competing rights in the case more equitably. She had been asked to remove her necklace by her NHS employer, on the grounds of health and safety to prevent infections spreading on the ward, and the judges found those issues were inherently more important, and agreed that hospital managers were well placed to make decisions around clinical safety.

For Ms Ladele and Mr McFarlane, the Court dismissed their appeals saying that their employers had a duty to avoid discrimination against their clients, and so could not support staff who refused to work with homosexual couples.

But in dissenting judgments by two of the ECHR judges, it was argued that Ms Ladele's right to freedom of conscience had been infringed, saying: "no one should be forced to act against one's conscience or be penalised for refusing to act against one's conscience".

The four cases had courted controversy throughout their various hearings, with Prime Minister David Cameron commenting that legislation would be passed to protect employees' rights to wear religious symbols if the ECHR ruling did not go in favour of the employees.

The ruling in favour of Mrs Eweida points to a duty on employers to accommodate workers' desires to manifest their religious belief and the Court emphasised the importance of freedom of religion as one of the foundations of pluralistic, democratic societies.

Simcocks director Irini Newby said: "This decision is a warning to employers to review their policies on how they handle religious views in the workplace. They need to make sure they strike a balance between corporate requirements and duties, and the employee's right to practice and express their religion."

She added: "For example, any organisation that bans jewellery must have a legitimate reason for the ban if it amounts to indirect discrimination. That could be health and safety risks, as in the case of Ms Chaplin, or where employees are operating potentially dangerous machinery."

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