

zd

Reserved Decision

THE EMPLOYMENT TRIBUNALS

BETWEEN

Applicant

AND

Respondent

Mr C Shoebridge

Commissioner of Police
of the Metropolis**DECISION OF THE EMPLOYMENT TRIBUNAL****HELD AT:** London (North)**ON:** 29, 30 June and
1 July 1999**CHAIRMAN:** Mr D H Roose**MEMBERS:** Mrs C I Ihnatowicz
Mr M E Blick**Appearances****For Applicant:** In person**For Respondent:** Mr M Ley-Morgan of Counsel**DECISION**

The unanimous decision of the Tribunal is that the Respondent unlawfully discriminated against the Applicant by reason of his sex.

EXTENDED REASONS

1 The Applicant was employed by the Respondent from 15 August 1988 latterly at the rank of Sergeant with responsibility for the Fulham Vehicle Crime Squad. This was a unit once seen as failing which the Applicant has been credited with having turned round during his 18 months in the post. If at the time of these events there were plans afoot to move the Applicant at short notice to other duties, they had not been discussed with him. Up to November 1997 the Applicant a former Army Officer with an impressive academic record had been held in high regard by the Respondent and colleagues both male and female.

2 On 5 November 1997 the Applicant was seen by Chief Superintendent Wills ("Mr Wills") in company with Chief Inspector Jones and advised that complaints of over-bearing

behaviour had been received from three members of staff, that the nature of the allegations warranted an independent investigation by the Area Complaints Unit and that he would be formally notified of the allegations made against him through the normal procedures. He was then transferred to uniformed duty with two days special leave, something that the Applicant did not pick up at the time, and a weekend before taking up his new duties with the A Team led by Inspector Pike. At no time was the Applicant given details of the complaints or of the complainants who were female. Furthermore he was not allowed to make any response nor any representations about his removal from the post in which he was regarded to have done extremely well. Upon Mr Wills advising Inspector Pike of the transfer he described the Applicant to him as manipulative and therefore dangerous.

3 By e-mail sent the following day to Mr Richards of Personnel who was fully apprised of the situation the Applicant indicated that he wished to invoke the grievance procedure and/or instigate an official complaint with regard to the handling of an apparent allegation made against himself on 5 November 1997. While Mr Wills had picked up the apparent dissatisfaction of the complainants from rumours circulating in the office, he had interviewed them first in company with their Police Federation representatives and assisted them in formulating their complaints. Once he forwarded them to the Area Complaints Unit he had no further dealings with them.

4 Notwithstanding that the Applicant communicated his grievance/complaint on 5 November the Respondent in the person of Mr Richards, neither registered nor processed it. If indeed there were as claimed by Mr Richards, defects in the wording of the communication, no one for the Respondent contacted the Applicant to ask for further information.

5 At all relevant times Mr Wills was known to hold extremely strong and positive views about women in the Police Force and less favourable negative views about his fellow men.

6 While Mr Wills had recommended PC Moira Chalmers for a Royal Humane Society award for attempting to save the life of a dying person, PC Richard Sparks had not been recommended for any award notwithstanding that he made a similar attempt to do so on another occasion and that the incident had been particularly distressing for him as he had been unsuccessful.

7 From the above findings of fact we draw inferences that the Respondent unlawfully discriminated against the Applicant on account of his sex in that on the balance of probabilities male complainants would have been treated differently from the female complainants in this case and that a female officer would not have been transferred in the same circumstances as was the Applicant.

8 We will deal with our conclusions under the following headings.

Legal Background

The Applicant brings his claim under sections 1(1)(a) and 2 of the Sex Discrimination Act 1975. Two questions arise for decision in this case. First, was the Applicant treated less favourably than the Respondent treated or would treat other persons in the same circumstances? If so, was that less favourable treatment by reason of his sex. It is for the Applicant who complains of sex discrimination to make out his case and if he does not do so on the balance of probabilities he will fail. It is recognised that it is unusual to find direct evidence of sex discrimination. Few employers would be prepared to admit such discrimination even to themselves. The outcome of the case will therefore usually depend on what inferences it is proper to draw from the primary facts found by the Tribunal. The test is an objective one and one for the Tribunal.

The Applicant's case

The Applicant complained about the circumstances in which he was referred for discipline to a Central Board and transferred to other duties. He complained that Mr Wills had been angry and had shouted at him. We heard from Mr Richards that Mr Wills had a naturally loud voice of which he was aware. The Police Federation representative could not recall a supervisor having been sent to such a board in the last 30 years and was surprised that the Applicant was formally reported at all as two of the complaints involved the use of a swear word to reinforce a point of view which was a commonplace in the Police Force. He was unaware of any female officer having been the subject of formal discipline while Mr Wills had been at Fulham and added that formal discipline against anyone was quite rare. We accepted that evidence. We also accepted that the representative had not told Mr Richards not to process the grievance/complaint. The matter with regard to the grievance/complaint does not appear in the Originating Application. It appears at the end of paragraph 9 in the Applicant's statement and has been treated as relevant background information.

The complaints against the Applicant

Two of the complaints are serious but only if one takes the view that Police Officers lack a strong sense of purpose and do not swear. The third is more complex and more serious than the others. The details are set out in the memorandum prepared by Mr Wills on 5 November and appear at page 26 in the first of the Respondent's bundles. It was recognised by Mr Wills that had there been one isolated complaint he might have acted otherwise. It is significant that the note made by Mrs Kelly in the Equal Opportunities office records that advice was sought about an incident involving one woman Police officer. Both parties supplied their own bundles for the benefit of the Tribunal and both sides included a number of photocopy statements which we were invited to read. The Applicant drew our attention to parts

of the statements of the first two complainants in which they indicated that it was not their intention to take the matters further.

The Treatment

It was the Respondent's case that Mr Wills was constrained by direction and procedure in his approach. He was prevented from identifying the complainants or their complaints or discussing the move because otherwise he would be interfering with the conduct of the investigation which would take place. If he gave the Applicant the opportunity to speak one thing would lead to another. The Applicant would be moving soon anyway hence that move was just brought forward. It was denied that the Applicant had invoked any procedure. Alternatively if he had his representative had countermanded it. What ever the Respondent had done it was put that it was done with the welfare of the Applicant in mind and notwithstanding that only one of the three complainants and one with the less serious complaints was left in the squad, it was the Applicant who had to be moved.

Role of the Chairman

For the Respondent Mr Ley-Morgan conducted his case in a spirited if not aggressive manner notwithstanding that the Applicant was not represented. It is the Chairman's duty to identify the issues and to maintain the momentum of the hearing. Where an applicant is unrepresented it is the duty of the Chairman to ascertain what the Applicant's case might be and if necessary to restate it at a point when aspects of it are being deliberately obscured by the Respondent. The point with regard to the differential in the way that complaints were treated was one made by the Applicant of which the Chairman reminded the witness at a time when he denied that a complaint had ever been made. He also reminded the witness that there was a conflict of evidence between the opposing parties. He gave no indication that having heard the Applicant's case he did not believe the witness. At this stage both of the members indicated that they supported what the Chairman said.

Conclusions

The events in which the Applicant became embroiled on 5 November 1997 were extraordinary and were dealt with in such a manner as to deal a massive blow to his career prospects. Eighteen months later he is still suspended. This is a complaint of sex discrimination and any observations that we might have a procedure are not relevant. It is a case where the Originating Application has very clearly been prepared by the Applicant. There is also a great deal of surrounding information and documentation. Having considered the complaint, having regard to the evidence given and the documentation that we have read we find that on the balance of probabilities he has succeeded in proving that if he had been a woman facing complaints of similar

weight from male complainants in this environment the outcome would have been different. We find that he succeeds in his complaint of unlawful sex discrimination.

9 The matter will now be listed for a remedy hearing. Although we have heard no submissions from the Applicant on the matter of injury to feelings or any other losses he may have we believe that it would be helpful to give a ballpark figure for injury to feelings which may well lead to a settlement. We are very conscious of the fact that the Applicant was soon after overtaken by further events of a more serious nature, of which he was later found not guilty, within a short time of these events, and any figure for injury to feelings must be limited. Our provisional view is that the figure must be in the ballpark of £1500 to which should be added interest at 8% from 5 November 1997.

RESERVED DECISION

15 JUL 1999 London (North)

Date and place of signing



Chairman

DECISION SENT TO THE PARTIES ON

..... 19 July 1999
AND ENTERED IN THE REGISTER

..... R.F. Axtell
FOR SECRETARY OF THE TRIBUNALS