The Scottish Trades Union Congress v Mr Zaffir Hakim

We have been successful in defending an appeal at the Employment Appeal Tribunal in Edinburgh, which confirmed that the Scottish Trades Union Congress (STUC) victimised Zaffir Hakim when it selected him for redundancy. A previous Employment Tribunal in Glasgow had found that the STUC’s decision to select Mr Hakim for redundancy was linked to his previous claim of racial discrimination. We represented Mr Hakim at the appeal.

Zaffir Hakim, who is of Pakistani origin, was employed for over 11 years on a series of fixed term contracts by the STUC, the representative organisation for Trade Unions in Scotland. Mr Hakim, a Development Officer on the STUC’s One Workplace Equal Rights Project, claimed victimisation when he was selected for redundancy in early 2015 and argued that options for his redeployment within the STUC were not properly explored. He argued successfully at that Tribunal that he was selected for redundancy because he had made an allegation of racial discrimination, based on an unsuccessful application for promotion, against the STUC the previous year.

Victimisation is defined in the Equality Act 2010 (the Act) as treating someone badly because they have done a ‘protected act’ – or because there is a belief that a person has done or is doing to do a ‘protected act’. A ‘protected act’ is: making a claim or complaint of discrimination under the Act, helping someone else to make a claim by giving evidence or information, making an allegation that you or someone else has breached the Act, or doing anything else in connection with the Act.

In lodging their appeal, the STUC argued that to prove victimisation Mr Hakim’s treatment needed to be compared to that of other staff considered for redundancy. We argued that under section 27 of the Act the legal test for victimisation did not require Mr Hakim to show he had been treated worse than his colleagues, only that he had been selected for redundancy because he had previously made a race discrimination claim.
At the appeal hearing, the STUC accepted that there was no need to show Mr Hakim had been treated less favourably than others, but said the Tribunal had been wrong in the way it dealt with shifting the burden of proof. Our arguments that the Tribunal had taken the right approach when deciding if there had been victimisation were upheld by the court.

In the EAT decision dismissing the appeal, Lady Wise said the Tribunal had applied the correct legal test to the facts of the case and had properly considered the relationship between Mr Hakim’s previous discrimination claim and his dismissal. Lady Wise said “nothing in the [tribunal's] judgment suggests the tribunal derogated from its responsibility to find the real reason for the dismissal”.

Had the appeal the STUC lodged been upheld, workers would now have to prove that not only were they victimised but they were also treated differently from other staff. We felt that this was an unnecessary burden which could restrict workers’ rights to redress in the future.

The case will now go back to the Employment Tribunal to consider the amount of the award to be made in Mr Hakim’s favour.