People Management
8 July 2013

Relocation of employee alleging race discrimination was not victimisation

Edward Wanambwa

But employers should tread carefully before relocating staff making allegations

In the case of Burrell v Micheldever Tyre Services Ltd, the Employment Appeal Tribunal overturned a tribunal's decision that an employee who brought a grievance over alleged racist comments, and was then forced to relocate, had been victimised.

Facts

Burrell was employed as a tyre fitter in the employer's Fareham branch, where he was the only black employee. He raised a grievance claiming that management had not done enough to stop alleged racist comments from his colleagues.

After going on sick leave, Burrell issued a claim for race discrimination, He subsequently returned to work without giving his employer advance notice. Shortly afterwards, the firm proposed that ACAS act as a mediator and that Burrell relocate to the company's branch in Micheldever. The employer did not believe that the relocation would involve a longer commute but would have paid any increased travel costs.

Burrell rejected these proposals. Two days later, the company informed Burrell that it had a contractual right to require him to relocate and that it would consider terminating his employment if he still refused.

The employer then wrote to Burrell changing his place of work. When Burrell did not report for work at the respondent's Micheldever branch, he was dismissed. An internal appeal against his dismissal was unsuccessful.

The employment tribunal found that Burrell had suffered direct discrimination, that his relocation was an act of victimisation but that the dismissal was fair.

EAT

The EAT upheld the tribunal's finding of direct discrimination and agreed that the dismissal was fair.

However, the EAT found that the tribunal reached the wrong conclusion in deciding that the reason for Burrell's relocation was his grievance relating to alleged discrimination. In reaching its decision, the EAT placed significant emphasis on the fact that the relocation was proposed only after Burrell had refused the respondent's dual proposals of ACAS mediation and relocation. The EAT also took the view that, in those circumstances, relocation was "arguably the best solution" and that Burrell's proposed solution - dismissing or relocating colleagues who, he alleged, had made discriminatory comments - was not reasonable.

In short, the EAT could find no evidence that the grievance was the reason, or at least part of the reason, for Burrell's relocation – it could not find a causal link.

Comment

Notwithstanding the EAT's decision, employers should still tread very carefully, and ideally obtain legal advice, before relocating an employee who has alleged discrimination – or any other unlawful conduct – or taking other steps that could be perceived as detrimental and/or a form of retaliation. Such caution is needed even in cases involving facts similar to those in the Burrell case.

This case is also a reminder that employers should expect employment judges to carry out a detailed analysis of the facts to establish the "real reason(s)" behind any alleged act of victimisation. The surrounding facts, such as the timing of any alleged victimisation and any related documentary evidence, are likely to be central to an employment judge's findings. For instance, had the respondent's relocation in this case been proposed before Burrell refused ACAS mediation, the EAT may well have reached a different decision.

Edward Wanambwa is a partner at Russell-Cooke