



## Employment Law Brief

*with*

**Darren Newman**

**We need to be clear that an Employment Tribunal has not just ruled that vegans are protected under the Equality Act. There is nothing in the Act that confers special status on someone's dietary choices.**

What has happened in the case of **Casamitjana v League of Cruel Sports** is that the Tribunal has ruled that this particular applicant's beliefs about the rights of non-human animals was a philosophical belief within the meaning of the Act and therefore amounted to a protected characteristic. There is nothing surprising or ground-breaking about this.

The test for whether or not a particular belief qualifies as a protected characteristic was set out by the EAT in *Grainger v Nicholson* and is derived from decisions of the European Court of Justice. Essentially the belief must:

- be genuinely held.
- be more than just an opinion or viewpoint
- concern a weighty and substantial aspect of human life and behaviour.
- Have a certain level of cogency, seriousness, cohesion and importance.
- be worthy of respect in a democratic society and not conflict with the fundamental rights of others

Mr Casamitjana categorised his belief as that of an 'ethical vegan' but he met these five criteria because his beliefs went much further than not eating animal products. His beliefs shaped almost every aspect of his life from the clothing he wore, to the way in which he travelled around London – he tried to avoid public transport because buses and tube trains cause the deaths of

insects and small animals. Not everyone who is a practising vegan will be able to show that their beliefs meet the *Grainger* criteria in this way.

We should also remember that the fact that someone has a belief that is protected by the Equality Act does not of itself place any kind of burden on an employer. People are entitled not to be discriminated against because of their philosophical beliefs but there are not many employers who are going to be inherently hostile to someone who happens to be an ethical vegan. The employee in this case has shown that his belief qualifies under the Act – a point that the employer did not even contest – but the case now moves on to the rather more tricky question of whether his beliefs were part of the reason for his dismissal.

The facts are not yet entirely clear, but it appears that the dismissal arose because Mr Casamitjana objected to the investment strategy of his employer's pension fund, which he said involved investing in companies that harmed animal welfare. It seems that this led to him making statements to colleagues that the employer believed to be inappropriate and amounting to unauthorised financial advice. The employer's decision to dismiss may have been harsh – but since Mr Casamitjana had less than two years' service the actual fairness of his dismissal is not an issue.

The employer's defence is likely to be that they were not concerned with his beliefs but with his behaviour. They will argue



that any employee who behaved as Mr Casamitjana did would also have been dismissed regardless of their individual beliefs. They may encounter a problem here. The written submissions made to the Tribunal on Mr Casamitjana's behalf quote the dismissal letter as saying that he is likely to persist in his behaviour 'Based on [his] understanding and belief'. The letter also says that the email that Mr Casamitjana sent to staff was 'biased because of your ethical principles'. The suggestion may be that the very deep beliefs held by Mr Casamitjana persuaded the employer to dismiss him because they saw that he was likely to persist in the behaviour they objected to. If that is the finding, then it seems that Mr Casamitjana could well succeed.

But this case is unusual. Situations in which an employee's beliefs about the rights of animals actually lead to less favourable treatment from the employer are likely to be rare – although misjudged jokes from colleagues that amount to harassment are perhaps more of a risk. Some have also argued that there is scope for indirect discrimination claims. The most obvious is the menu in a canteen. If a vegan option is not provided, then that will be likely to be put ethical vegans at a particular disadvantage. Employers who provide work clothes for employees may also be the subject of a claim if they are made of materials that an ethical vegan will not wear. Mr Casamitjana for example obviously does not wear leather, but he also avoids wearing silk and wool. And of course, there might be many other work practices that an employer engages in that may conflict with an ethical vegan's beliefs. For example, the maintenance of public parks will give rise to issues around pest control.

Must an employer change its practices to accommodate vegan beliefs? Not necessarily. I tend to think that much of the commentary around this issue is overblown. The thing about indirect discrimination is that the employer can avoid a claim by showing that its practices

are a 'proportionate means of achieving a legitimate aim' - and it is important to stress that the question is whether the practice in question can be justified rather than whether it would be reasonable to make an exception for the particular employee. When considering justification, a Tribunal has to balance the reasonable needs of the employer with the level of disadvantage caused to the employee. The greater the disadvantage, the harder it will be to justify practice in question. While most menus would benefit from a vegan option, the lack of one is unlikely to have a significant impact if employees are able to go somewhere else for lunch. If there is a vegan alternative to the work clothes or protective equipment provided by the employer, then of course the employer should make it available. But if there isn't, then it is difficult to see what the employer can realistically be expected to do. The role of a pest-control officer can hardly be changed to accommodate the beliefs of an ethical vegan, but it is unlikely that many ethical vegans would apply for such a job in the first place.

I don't anticipate a flood of discrimination claims from vegans. If issues do arise then a reasonable amount of give and take and a generous portion of common sense will usually provide the answer. Mr Casamitjana's case is important to him and interesting for the rest of us, but it is not something to panic about.

**Don't forget to check more about Darren Newman on his blog at [A Range of Reasonable Responses](#) or on twitter at [@DazNewman](#)**