

## Transcript of Podcast

April 2008

Hello and welcome to this month's D&W Employment Vox, our regular podcast designed to update you on news and developments in the field of employment law.

My name is Alasdair Anderson and in this D&W Vox, prepared by our employment team, we take a look at a selection of news highlights:

- **Transsexual Trucker wins Sex Discrimination Case**
- **EAT upholds Constructive Dismissal claim against manager who gave the hairdryer treatment**
- **Age Matters - the Benefits of Retaining Older Workers**

**But first, a transsexual trucker, who secretly dressed as a woman for 20 years, has won his sex discrimination claim after being forced out of a job weeks after turning up for work dressed as a woman.**

Former soldier Mike Gaynor was supplied as a driver to haulage firm Exel Europe through employment agency Blue Arrow. In February of last year Mr Gaynor informed bosses that he intended to undergo gender reassignment and began turning up to work as Vikki-Marie, wearing make-up and jewellery. Exel then began cancelling shifts and removed him from his usual run. He also became subject to abuse and offensive gestures from his colleagues.

Mr Gaynor resigned weeks later and raised a sex discrimination claim against Exel and Blue Arrow. The Tribunal found that Exel had discriminated against Mr Gaynor by removing him from his normal run in part because of his intention to proceed with gender reassignment. It also found that Blue Arrow had discriminated against him in the manner in which it dealt with two grievances he had raised. However the Tribunal dismissed a number of other allegations, including a claim that removal of some of Mr Gaynor's property from a cab was discriminatory. The parties are now attempting to agree a figure of compensation.

This case demonstrates the importance of treating all employees fairly and equally, irrespective of sex or gender. Under the Sex Discrimination Act 1975 it is discriminatory to treat a person less favourably on the ground that they intend to undergo, are undergoing or have undergone gender reassignment. The circumstances were, no doubt, challenging for the parties to manage but a response of this nature is always like to cause concern on the part of Tribunals. Better communication and greater sensitivity could have led to an alternative outcome.

**Now, from lorry drivers to car salesmen... and a case of constructive dismissal caused by nicknames, mini motor-cycles and the hairdryer treatment.**

Mr Parsons was a Peugeot dealer who worked for Bristol Street Motors. In July 2005 he resigned and brought a claim for constructive dismissal against them, claiming that he had been forced to resign due to the irretrievable breakdown of the employment relationship. His claim focused on a sequence of events that began soon after the arrival of a new manager, Mr Lawrence. Mr Parsons claimed Mr Lawrence was 'indiscriminately tactile with staff', used foul language and called Mr Parsons an 'old buzzard' and 'old git'. Mr Parsons also alleged that Mr Lawrence condoned the use of an airgun, mini motorbike and go-cart in the workplace and addressed the team in terms of what might be described as the 'hairdryer treatment'!

The EAT found that not all of the alleged incidents had, in fact, taken place and decided that Mr Lawrence's behaviour was not directed particularly at Mr Parsons. However they overturned the

Tribunal's decision and agreed with Mr Parsons that Mr Lawrence's behaviour had indeed destroyed the employment relationship and he had been constructively dismissed. The EAT thought that while Mr Parson's subjective reaction to the conduct was not determinative the Tribunal were entitled to take it into account.

Such extreme cases are difficult for employers to legislate against but are, thankfully, rare. Measures such as training managers in diversity and the meaning of harassment should help to reduce the possibility arising. It is important to note that these incidents pre-dated the introduction of protection from age discrimination; otherwise there could have been an age claim as well, potentially regarding the age related verbal bullying.

### **And finally... Age Matters - the Benefits of Retaining Older Workers**

A recent study presented at the CIPD annual reward conference has highlighted the positive benefits that older employees can bring to the workplace.

Many older workers have spent many years building up skills and experience which can be very valuable to employers. They can also often play key roles in mentoring and developing younger workers. Allowing all this knowledge and experience to simply "disappear out the door" as older workers retire could mean that employers are missing a trick.

The study suggests that employers should be considering a broad spectrum of rewards in order to find something that will help retain older workers (and their knowledge!). Many older workers will not have a mortgage or dependent children therefore monetary rewards may not be as important to them. Something like extra holidays, for example, may be more desirable. It is unlawful to link any pay or benefits to an employee's age unless there is objective justification, which is a high test to have to meet. However, operating a flexible benefits package, with the opportunity for employees to select their preferred options, may certainly help on the retention side.

And that's the D&W employment Vox News for April 2008.

Find out more about our new E3 Ask Series with topics covering 'Mastering Negotiation Skills'; 'Managing Change' and 'The "Glass Ceiling" and Implications for Business and Legal Risk'. More information can be found at [www.dundas-wilson.com/news/seminars](http://www.dundas-wilson.com/news/seminars)

Each month the employment team take an in depth review of a practical issue in their written bulletin.

And if you want to find out how to access our bulletin or find out more about any of the issues covered in this D&W Vox please contact **Catriona Aldridge** on 020 7240 2401. Details on how to subscribe to our written bulletins can be found on our website at [www.dundas-wilson.com](http://www.dundas-wilson.com). Each D&W employment Vox will also be archived on the website in case you want to listen again or tell a colleague about us. Our website also contains information on future events and seminars.

And that's all for this D&W Vox.

This podcast is correct to the best of our knowledge and belief at the time of going to press. It is however written as a general guide, so it is recommended that specific professional advice is sought before any action is taken. We are required by law to protect personal data.

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If you would like any further information on any of these cases or news items, or any other Employment issues, please call the person at D&W with whom you normally liaise, or one of the following specialists:

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