

## Wide interpretation of “detriment” caused victimisation claim to succeed

The Employment Appeal Tribunal (EAT) decision in the case of *Warburton v The Chief Constable*.

25 March 2022

The Employment Appeal Tribunal (EAT) decided in the case of *Warburton v The Chief Constable of Northamptonshire Police* that the Employment Tribunal (ET) had not:

- asked itself the correct question when deciding that the Claimant had not suffered detriment, or
- applied the correct legal test to the causation question.

The Equality Act 2010 sets out that a person (A) victimises another person (B) if A subjects B to a detriment because:

- (a) B does a protected act, or
- (b) A believes that B has done, or may do, a protected act.

The Claimant applied to be a police officer with the Respondent. In the vetting form, he gave details of employment tribunal proceedings he had commenced against another police force, Hertfordshire Constabulary. He was informed that his application was unsuccessful due to failing to meet the Respondent's requirements in respect of vetting. It was stated that the Respondent would not start his vetting until the outcome of the employment tribunal proceedings was known.

There was no dispute that the Claimant had performed a protected act by bringing a discrimination claim against Hertfordshire Constabulary.

The ET had dismissed the claim, finding that the Claimant had not suffered the alleged detriment and even if he had, it was not because of the protected act.

The EAT took a wide view on detriment. It stated that the ET must ask itself: “is the treatment of such a kind that a reasonable worker would or might take the view that in all the circumstances it was to his detriment?”. It was said to be enough that a reasonable worker would or might take such a view.

The EAT then went on to consider causation. It considered that it was not clear whether the ET applied the correct causation test as to whether any detriment was “because” the Claimant had done a protected act. The EAT found that the question was whether the protected act had a significant influence on the outcome. The EAT concluded that it could not be confident that the ET had applied the correct legal test.

This case demonstrates that there is a relatively low threshold for employees to successfully establish a detriment. Employers should be aware of this and the fact that attention will then turn to the other part of the test for a victimisation claim, being whether that detriment was because of a protected act. Any decisions taken by an employer where it is likely a detriment will be established must be carefully considered, such that they could not be interpreted as being linked to the employee having done a protected act.

Mark Hickson  
Head of Business Development

onlineteaminbox@brownejacobson.com

+44 (0)370 270 6000

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