

An employer cannot pay lower redundancy payments to older staff because they are getting a pension as well

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The Employment Appeal Tribunal found that a council could not rely on a statutory defence to justify an age discrimination claim. Sefton Council paid redundancy payments in accordance with the Civil Service Scheme. This scheme reduced redundancy payments if employees were eligible to draw a pension as it was thought unnecessary to compensate people drawing a pension for loss of a job to the same extent as if they were still in work.

Some no-doubt pension age or close to pension age judges ruled that in the current climate, individuals over 60 remain in the workforce and require income from their earnings and pension to maintain a standard of living, so the reduction in redundancy payment was not justified and Ms Heron got her full redundancy payment.

Detail

Ms Heron TUPE transferred from the civil service to Sefton council. Her entitlement to the Civil Service Compensation Scheme (which was derived from statute) was incorporated into her new contract with the council. At the age of 61, the council made her redundant and awarded her a redundancy package in accordance with the scheme. However, whilst her younger colleagues under 60 received redundancy packages based on their length of service, Ms Heron's package was capped because of her age. She subsequently brought an age discrimination claim.

The council argued it had not discriminated against Ms Heron because it had awarded her redundancy package in accordance with statute. The EAT disagreed and said that:

1. whilst the scheme is derived from statute, it does not

require different treatment of employees over 60 in terms of redundancy payments (it merely provides for it); and

2. when Ms Heron TUPE transferred to the council, the scheme rules ceased to be statutory and became contractual. This meant that the scheme could not be justified using the statutory defence.

The council also argued that if it was age discrimination, their decision to pay Ms Heron a lower redundancy package than her younger colleagues was a proportionate means of achieving a legitimate aim, because someone who has reached pension age will be better provided for as they can draw their pension. The EAT disagreed and said that in the current climate, individuals over 60 remain in the workforce and require income from their earnings to maintain a standard of living, so the fact that Ms Heron can draw a pension will not justify age discrimination. Accordingly, Ms Heron was entitled to the balance of the redundancy payment.

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