



24 October 2012

PRESS SUMMARY

Birmingham City Council (Appellant) v Abdulla and others (Respondents) [2012] UKSC 47
On appeal from [2011] EWCA Civ 1412

JUSTICES: Lady Hale, Lord Wilson, Lord Sumption, Lord Reed, Lord Carnwath

BACKGROUND TO THE APPEALS

The issue in this appeal is whether the court should exercise its discretion to strike out the equal pay claims of the respondents, which have been brought in the High Court, on the ground that they could more conveniently be disposed of in an employment tribunal, notwithstanding the fact that the claims there would be time-barred.

The respondents are former employees of the appellant council ('Birmingham'), 170 of them women and 4 men. They left their employment on various dates between 2004 and 2008. They allege that Birmingham was in breach of the 'equality clause' inserted into their contracts of employment by section 1(1) of the Equal Pay Act 1970 ('the Act'), as substituted by section 8(1) of the Sex Discrimination Act 1975, by failing to provide certain benefits and other payments which were payable to workers of the opposite sex employed on work rated as equivalent. The respondents could have brought their claims in the employment tribunal, provided that they did so within the time limit applicable to them of up to six months after leaving their employment. They did not do so, however, and instead issued the claims later in the High Court, for which the time limit was six years from the date their cause of action accrued. Birmingham asked the High Court to exercise the discretion provided by s 2(3) of the Act (as amended) to strike out the claims on the ground that they 'could more conveniently be disposed of separately by an employment tribunal'.

Birmingham's application was dismissed by the High Court. Its appeal to the Court of Appeal was also dismissed.

JUDGMENT

The Supreme Court by a majority (Lord Sumption and Lord Carnwath dissenting) dismisses the appeal. The judgment of the majority is given by Lord Wilson; the judgment of the minority by Lord Sumption.

REASONS FOR THE JUDGMENT

Birmingham contended that, although the High Court did have concurrent jurisdiction under the Act to determine the respondents' claims, those claims should have been presented to the employment tribunal. It invited the court to rule that, except where respondents could provide a reasonable explanation for their failure to do so, their claims should be struck out. It argued that there would be no purpose in providing a strict time limit for the presentation of claims to the tribunal under the Act, if those who failed to comply with it could have their claims heard elsewhere [11-13].

In reviewing the history of s 2 of the Act since its enactment, Lord Wilson observed that it was a striking feature of the six month limitation period set by the Act for claims in the employment tribunal that Parliament had never made it extendable. This suggested that Parliament recognised the availability of an alternative claim in court [20]. The statutory objective of s 2(3) was the distribution of judicial business for resolution in the forum more fitted for it. In most cases it would be more convenient for an employment tribunal to dispose of a claim in respect of the operation of an equality clause, provided that it could still be brought there, rather than for the court to do so. The reasons for the failure of a claimant to bring the claim in the tribunal were not, however, relevant in any way to the notion of convenience [26], nor was a multi-factorial inquiry into the interests of justice required [27]. Such claims, barring an abuse of process, could never be more conveniently disposed of by the tribunal if they would there be dismissed for being out of time [29]. Parliament might wish to consider introducing a relaxation of the usual limitation period for such cases in order to allow their convenient disposal in the tribunal in future [31].

In these circumstances there was no need to consider whether the procedural rules might infringe the EU principle of equivalence, by which the rules for proceedings in respect of rights afforded to individuals through the direct effect of Community law should not be less favourable than those governing similar domestic actions. This was a point linked to the proper exercise of the discretion under s 2(3) and would have been unlikely to succeed in this case [32-33].

Lord Sumption, dissenting, considered that allowing the claims to proceed in court frustrated the policy underlying the provisions of the Act relating to limitation [36]. It was difficult to resolve the construction of s 2(3) by reference to the mere language of the Act and therefore important to examine Parliament's underlying purpose in conferring jurisdiction on employment tribunals over equal treatment claims and providing special periods of limitation to apply to such claims in those tribunals [39]. There were substantial advantages for both the parties and for the broader interests of justice in having claims heard in employment tribunals [40]. Limitation was a particularly important defence for employers facing equal treatment claims [41], and this point more plausibly explained the absence of any provision to defer the running of time [44]. Lord Sumption would have held that 'convenience' under s 2(3) went further than the narrow question of the more efficient distribution of judicial business. The fact that a claim would be time-barred in the employment tribunal was a highly relevant but not conclusive factor [47].

References in square brackets are to paragraphs in the judgment

NOTE

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:

www.supremecourt.gov.uk/decided-cases/index.html