



AGE DISCRIMINATION

The Employment Equality (Age) Regulations 2006 came into effect in Northern Ireland on 1 October 2006 making it unlawful for employers and others to discriminate on grounds of age in the area of employment and occupation. Direct and indirect age discrimination may be permitted by an employer where it can demonstrate that its actions or provisions, criteria or practices are objectively justified.

Objective justification means that an employer must demonstrate that any treatment which may result in age discrimination is a 'proportionate means of achieving a legitimate aim'. What is a legitimate aim and what is proportionate is clearly a matter of fact based on each

individual and each scenario. A recent decision in the tribunal in England considered specifically the issue of what would be an objective justification.

Mr Baker was aged 50 in August 2007 when he applied to National Air Traffic Services Limited (NATS Ltd) for the post of trainee air traffic control officer. Mr Baker had a degree in physics, a private pilot's licence and had completed all the theoretical training to become a commercial pilot.

Mr Baker satisfied all the eligibility criteria to apply, with the exception of age. NATS Ltd operated an absolute bar on considering applications from anyone aged 36 or over. Mr Baker brought a claim to the employment tribunal in London on the basis that he had been directly discriminated against on the grounds of his age.

There was no dispute that this was direct age discrimination and the case proceeded on the basis that the employer sought to justify this discrimination. The employer argued that the age bar reflected its business needs. These included: achieving a high success rate in training; providing a reasonable period of postqualification service, so as to justify the £600,000 that NATS Ltd asserted it cost to train an air traffic control officer; providing an adequate supply of air traffic control officers for the UK and ensuring that safety processes and systems are not compromised.

The tribunal noted that nowhere in the evidence provided by the employer was there any suggestion that alternatives to the age bar had been seriously considered. Although there had been expert evidence the tribunal held that its value was dubious. The evidence did demonstrate a link between age and a decrease in the cognitive functions necessary to be an air traffic control officer but that the effect of that decline could be mitigated by experience. The employer had been unable to show that any air traffic control officer had had the accreditation withdrawn due to an age related decline in performance and there was 'no statistically reliable empirical evidence of increased risk with age'.

The tribunal therefore held that the age bar relied on by NATS Ltd was not a proportionate means of achieving any of its aims and Mr Baker was successful in this claim of age discrimination.

It was noted by the tribunal in this case that the evidence showed that experience was more important than age in determining a candidate's success. The tribunal felt that NATS Ltd had relied on speculation and assumption to apply an absolute age bar, which excluded a number of suitably qualified candidates.

It is vital that employers when setting age limits in relation to any of its policies, practices or procedures that it considers carefully the justification upon which it intends to rely on the age and failure to do so could result in successful claims being taken against the organisation.