

THE JUSTICE PAPERS

The Bar Council

Fighting for Rights



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'Every day in the courts and tribunals of this country, the names of people who brought cases in the past live on as shorthand for the legal rules and principles which their cases established.'

Lord Reed, Supreme Court, R (Unison) v The Lord Chancellor

In the play 'A Man for All Seasons', the great lawyer Sir Thomas More says, 'this country is planted thick with laws, from coast to coast', and so it is. And in no place more so than the work place. A rich web of rights which has grown up and around us over time, which protect workers, but also exist to give employers a framework of ways in which to behave, and in turn shape and define our values as a society.

Below are the stories of three ordinary people whose cases shaped the future. There are many more besides happening every day. None of those people realised when they went to work that their lives would be turned upside down, or that the cases they would bring would improve the laws and rules we live and work by, for all that come afterwards.

The Gas Engineer

Paul Singh was a gas engineer; an excellent one. He had spent over 25 years learning and honing his trade to the highest level of qualification and skill. In Leeds he was known as 'Paul the Gas Man' and people

would call out in greeting when they saw him, so well respected he had come to be, so many people had he helped. He was also an active trade unionist, who had always sought to improve and safeguard the working conditions of the others in the company he worked for.

One summer day in 2016 Mr Singh was called out to do a complex gas repair outside. He spent the entire day doing hard physical work cutting and welding pipes in the hot sun, wearing the thick dark fire retardant overalls he was required to wear. It had not been known before he started how long the job would take, and as a result he had not brought food. Nevertheless, as he was obliged to do, he stayed and finished the job, until the repair was safe and then returned his equipment to work. The job had taken from about 8am to after 8pm in the evening

Shortly after returning from work, exhausted, he went straight to sleep at home, but was very quickly called out to do another job by his company. Despite telling the company that he was exhausted and despite the fact that there were others available who could have done the job, he was repeatedly called to get him to take an emergency call out. Not wanting to let his fellow engineers down, he finally agreed. Because he had not eaten all day, and knowing once he started the job, he would have to stay with it till it was fixed, he stopped briefly to buy some food from KFC, which he ate as he drove to the job. The company had a 1 hour service level

agreement within which engineers were supposed to get to a job. Because he was only called out some 20 minutes after that clock had started ticking, his food stop meant he was 5 minutes late getting to the job. For that, despite a 25 year blemishless career record, he was dismissed.

Mr Singh brought a claim in the Employment Tribunal. The tribunal found that where others were not dismissed for similar, and much worse, defaults, he had been treated more harshly by the manager running the investigation, and that the reason why he was dismissed was because of Mr Singh's trade union activity on behalf of himself and his colleagues.

At the time of his dismissal, the case law stated that when looking at a dismissal for something like trade union activity or whistleblowing, you only look at the motivation of the dismissing manager (not those doing the investigating). As such the employer appealed arguing that because it was the investigating manager (who they had not called), and not the dismissing manager, who had the trade union motive, then that could not be taken into account.

On appeal it was found that the law should be changed to give more protection to workers. It was found you could take into account not only the motive of the dismissing manager, but also an investigating manager in deciding if a dismissal was lawful or for some improper motive like whistleblowing, trade union activities or standing up for health and safety. As such, Mr Singh's was one a number of cases that markedly

improved the protection of employees from unscrupulous and unlawful dismissal. Meaning that an unscrupulous employer could not escape the consequences of its unlawful behaviour on what might seem like a technicality.

Paul Singh still works as a gas engineer today. If the truth be told, his job is not as good, and his life is not as easy as it was before. But, he will tell you, he is proud that in bringing and fighting his case he has ensured that unscrupulous employers will be less readily be able to manipulate a disciplinary process to get rid of employees they don't like for unlawful reasons. Proud also that the integrity of potentially career ending investigations can now be the subject of proper scrutiny and redress. And Deshpal Panesar was proud to represent him.

The Care Worker

Mrs Tomlinson-Blake is a highly qualified and extensively trained care support worker employed by Mencap since 2004. She provided care and support to two autistic men with substantial learning difficulties in private properties. She worked a day shift and a morning shift, but also what is known as a sleep-in shift from 10pm to 7am for which she was paid £22.35 plus one hour's pay of £6.70.

During the sleeping-in shift, she needed to listen out in case any of any problems and in case her support was needed during the night. As it happens, over a 16 month period

she needed to get up and do something six times. What happened with her pay? She was not paid for the first hour, but she was paid for any further hours in full.

What about the hours when Mrs Tomlinson-Blake was on a sleep-in shift but not required to get up and do something in the night, but to keep a listening ear out? She claimed that she should be entitled to count these hours as her working time and to receive the national minimum wage for them.

In the appeal heard in the Supreme Court in February 2020, together with the case of Shannon, which brings up similar issue, the highest Court in the land will decide what the Claimants are entitled to. This will have a huge impact on what other workers in their position carrying out sleeping-in shifts are entitled to including by way of back pay. It will make a huge difference to employers' costs and budgets depending on what the outcome is as well.

Those acting for the Claimants in these appeals are effectively fighting for the rights of many thousands of other workers who will be affected by the decision.

The Receptionist

Something that has perhaps erroneously been attributed to the legendary actress and dancer Ginger Rogers is the phrase "backwards and high heels", which was meant to reflect the fact that unlike her partner, Fred Astaire, she had to do all of

the dancing both backwards and in her high heels. In other words, as a woman, her task was that bit harder. In fact, she explained in her autobiography *My Story* that she practised in low heels and only put the high heels on for filming and the line probably came from the cartoonist Bob Thaves. Still, high heels have still been giving some of us trouble!

In 2016 receptionist Nicola Thorp went to work in some perfectly proper flat shoes. However, she was informed that the company dress code required her to wear heels of between 2-4 inches in height. She took her employer to the Employment Tribunal (which is a special forum for hearing cases about working rights) and won not only for herself, but for others. Why, she argued, should she have to wear heels when the male employees did not? Was this not an act of sex discrimination? Little did she or her legal team know that this case would spark great media interest and prompt discussions around workplace dress codes. In time, the Equality and Human Rights Commission and Government Equalities Office became interested and involved and there is now guidance for employers as to dress codes. Ideas around what is "smart" or "acceptable" are being considered and challenged where necessary to avoid falling into classic stereotypes about men and women. Hopefully, the result of this high heels litigation will not go backwards!

Eleena Misra, another barrister at Old Square Chambers, has spent many years

representing clients in sex and other discrimination claims including women whose worth in the workplace has been denied or abused. She and Deshpal Panesar also help employers in diverse sectors ranging from investment banks to hospitals and charities, both an advisory and representative capacity.

Conclusion

In the play, a character says to Thomas More that he would gladly cut down all the laws in England to get after the Devil. Thomas More replies 'And if you cut them down, do you really think you could stand upright in the winds that would blow then?'. Laws carefully planted, pruned and tended protects us all, and in

part define us all. They are shared values an infrastructure as vital as roads, and hospitals and banks. As barristers it has, and continues to be, our privilege to work with them.

"And if you cut them down, and you're just the man to do it, do you really think you could stand upright in the winds that would blow then?"

Sir Thomas More

"Never doubt that a small group of thoughtful, committed citizens can change the world: indeed it's the only thing that ever has."

Margaret Mead, Anthropologist.