

# AHEAD NEWSLETTER

Volume 1, Issue 2

November 2004

[www.annehayfield.com](http://www.annehayfield.com)

## Inside this issue:

Another gay case lost	1
Stats on SO cases	2
1st R o B case fails	3
"Loyalty to the flag"	3
Stats on R o B	5

## GAY HAIRDRESSER LOSES HARASSMENT CASE

A Gay man has lost his tribunal case in which he alleged that he was harassed and then sacked because of his sexual orientation. In **Matthews v Markham-Stott t/a Lesley Markham Skin Care & Beauty Centre**, heard at the Liverpool tribunal on 9<sup>th</sup> July 2004 (**2101057/04**), Matthews told the tribunal that his ex-employer made derogatory comments about him. These can be summarised as follows: that she stated to a colleague that she "should never have employed a gay boy"; "that she verbally harassed him in front of his colleagues by muttering under her breath and calling him a "queer" and a

"faggot"; and that she dismissed him (or selected him for dismissal) on 4 February 2004 because of his sexual orientation".

When giving evidence Matthews also said that Markham "did not wish her business to be associated



with the his appearance in drag at the opening of a local gay club; that when he injured himself while performing in drag, she stated that it was his own fault for wearing women's shoes; that he was verbally abused while

at the workplace by local schoolchildren who called him a "queer" and a "bender" and not allowing his boyfriend to enter the workplace premises, while allowing the partners of his colleagues to do so; that she yet further treated him differently from his colleagues by not allowing him to treat male clients; that on one occasion she called him a "stupid queer"; that on a further occasion she referred to "poofs" in his presence; that she made other derogatory remarks or comments about his sexuality in a number of ways; in particular, she stated in relation to advertisements for gay pornography and male escorts in a gay magazine that she was disgusted and

(Continued on page 2)

Work Out  
See Back Page

## GAY HAIRDRESSER LOSES HARASSMENT CASE

horrified that men could do that sort of thing to each other”

Matthews had offered two ex-employees as witnesses. His ex-boss called four witnesses, one an ex-employee, and two were currently employed by Markham and another employed by Markham's mother.

The tribunal did not find either Matthews, (the gay man) or Markham (his ex-boss) to be “entirely satisfactory witnesses”. In many respects they found his Matthews's allegations “vague, unparticularised, undated and uncorroborated”. Nor did it consider him to be “wholly reliable”. The tribunal also said of his ex-boss Markham that “she did herself little credit in asserting that she was not aware that the applicant was gay”.

**The tribunal made several findings of fact;** it said that the verbal abuse could not be proved; that the salon had a general rule of not allowing partners to visit, that Markham had reported the alleged homophobic abuse to the school and as a result further incidents of abuse had not taken place during the school holidays or when the new term began. The tribunal also accepted

Markham's stated view that Matthews's appearance as a drag artist had no effect on her business. Furthermore Markham also stated that clients usually make the choice about who administers their treatments. Markham confirmed that she did look at a picture of Matthews in the gay magazine *Attitude* but said she did not want to look at the adverts for gay pornography and male escorts in the back of the publication.

To support her contention that Matthews was not dismissed because he was gay, Markham was able to produce financial records showing her business to be in financial trouble. Markham claimed that Matthews was singled out for dismissal because the relative inexperience of other employees made them comparatively

*There have been 223 cases filed using the S.O. Regulations ( up until the end of August )*

cheaper to keep on as overheads were squeezed. That Markham was able to produce financial documentation appears to have had a strong effect on the tribunal. *This case raises an important issue : how can it be proved that harassment has taken place if derogatory*

*comments are not made within earshot of witnesses.? In this instance, Matthews could have backed his claims with, for example, the names of customers that were in the shop at the time - evidence which could be corroborated by the salon's appointments book .*

*Is it a good idea to make a tape recording of someone abusing you? The answer to this is not clear-cut. On the one hand it could be argued that by using a secret microphone an employee breaches the employer's trust and confidence. However it is also arguable that an employer infringes an employee's rights by verbally abusing him/her.*

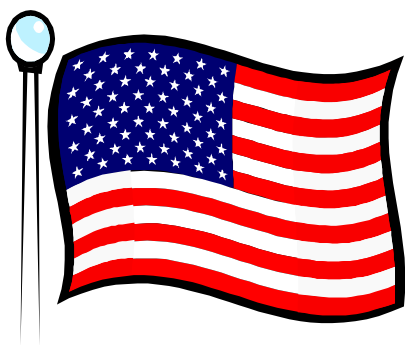
*There is also the issue of whether a tape made without the subjects knowledge or permission is admissible as evidence as evidence in tribunal proceedings . In a recent high profile case a tribunal accepted as legitimate a secret recording of Prince Harry at Eton made by the art teacher Sarah Forsyth, so it would see that such covertly obtained evidence can indeed be valuable.*

## RELIGION & BELIEF CASES FAIL

There have been five cases decided under the Religion or Belief Regulations up until the end of August 2004.

Taking these in order of the date of their tribunal hearing, the first of these is **Amin v Brittainia Airways Ltd** (case number **2301843/2004**), heard at the London South tribunal on 2<sup>nd</sup> July 04. Here Mr Amin failed to turn up for the tribunal hearing so his ex-employers had their case heard without Amin giving his side of the story, as is normal practice.

Brittainia Airways dismissed Amin for bringing cigarettes into the country (presumably over some amount and above an allowance specified by his employer). The tribunal accepted that the dismissal for gross misconduct was fair and have ordered Amin to pay his ex-employers £529.00 in costs.



The information in this n/l is for guidance only it cannot be taken as a full statement of the law

The next case is more interesting from an equalities point of view. The case **Williams v South Central Limited** (case number **2306989/2003**) was heard at the London South tribunal on 16<sup>th</sup> June 2004. Williams was an American Catholic who had previously served in the US Army. Williams worked as a train dispatcher for about nine months. His dispute arose from on his insistence on wearing a small (about 6 x 4 cm) representation of the American flag that he stitched to his reflective waistcoat. His employer's working practices prevented anything from being stitched to the waistcoats as these jackets fulfilled a health and safety purpose. They told Williams he could wear a lapel button on his uniform but Williams was not happy with this alternative as it could be obscured by the reflective waistcoat. Williams ignored an instruction to remove the flag and consequently found himself dismissed.

"It was Mr William's submission ... that his loyalty to his native country amounts to a religious belief and that in refusing to allow him to wear a representation of the stars and stripes in a place where the public and colleagues might see it he is being

treated less favourably on the grounds of his religious belief."

"His claim for discrimination under the Race Relations Act 1976 is based upon his nationality. He says, that, were he not American he would not have been treated in the same way. He cannot name any comparator. In the face of repeated questions from the Chairman as to why he says his nationality was the cause of his dismissal he said because he was the only American employed by the Respondent. He made reference to his being introduced as somebody's American friend and once to him being called a yank although there was no indication as to when that occurred."

"Mr Short on behalf of the Respondents put his case in this way. This cannot be a case of religious discrimination. Religion is shortly and



## WILLIAMS V SOUTH CENTRAL LTD (CONTINUED)

be a case of religious discrimination. Religion is shortly and inadequately defined in regulation 2(1) as meaning any religion, religious belief or similar philosophical belief. One can go on and look at the dictionary and find a fuller definition which we shall come in our judgement. But he says this is loyalty to the flag or to his nation and in no way is that a matter of religion; it is a matter of nationality and therefore if this claim is anything it is a claim of race dis-

crimination.”

Mr Short then goes on to say that no direct discrimination on the grounds of race had occurred because it was not suggested by Williams that he had been ill-treated because of his nationality. Nor, Mr Short claimed, had there been an instance of indirect discrimination on the grounds of race because “simply put, Americans are as a rule able to attend work without wearing a flag”.

The tribunal accepted the

employer’s arguments and Williams lost his case. The tribunal also pointed out that without 12 months service, any his claim for unfair dismissal wasn’t invalid and

“simply put, Americans are as a rule able to attend work without wearing a flag”

that, as Williams had refused to specify his claim for unlawful deduction of wages, therefore that part of his claim was struck out.

## THE NEXT CASE ALSO CONCERNS THE WEARING OF SYMBOLS

This next case also concerns the wearing of symbols. **A v A Language School** was heard at the London South tribunal on 12<sup>th</sup> July 2004 (**2302172/04**). Ms A was an Argentinean /Italian, Catholic woman who had lived in the UK since 2001. She applied for a job at a language school, and wore in her interview 3 religious necklaces: a small representation of the Virgin Mary on a gold chain, a small gold crucifix and a gold cross with ruby coloured stones mounted on a gold chain. A wore this combination of jewellery at four meetings at the school before her employment started. The Managing Di-

rector of the school and A’s manager, Ms R, found this combination of jewellery “rather loud” and overtly religious. R was worried that it might upset students and prospective clients who came from diverse religious and cultural backgrounds. R rang A on the Sunday before she started work to tell her not to wear all three pieces of jewellery. Consequently A did not wear the ruby cross to work.

After a very short period of time R complained about A’s work, alleging a poor telephone manner and poor standard of English “spelling, grammar and fluency of expression”. A also had difficulties accepting criticism and

by mid April (after about one month’s employment) an exchange took place between the two women that resulted in A’s dismissal.

There were spelling mistakes in the originating application and when cross-examined by her ex-employer’s counsel A “became agitated and defensive to the point of aggression”. The tribunal took “into account the pressures of appearing in the witness box without legal representation...but nevertheless the similarities of the description by the Respondent of the Applicant’s behaviour at work and her response to questions in the witness box

## A V A LANGUAGE SCHOOL (CONTINUED)

were remarkable". A's claim was dismissed.



The next case, **Green v Threadneedle Asset Management Ltd**, was heard at the London Central tribunal on 13<sup>th</sup> July 2004 (**2200227/04**). Here the decision contained no details of the alleged discrimination but Green lost his case because the (i) the discriminatory acts occurred before 2<sup>nd</sup> December 2003, (ii) Green was not a contract worker of Threadneedle Asset Management and (iii) the complaints of discrimination are out of time.

*There have been 188 cases filed at the tribunal under religion or belief( up until end of August )*

The fifth case to cite discrimination on the grounds of religion or belief and to be decided before the end of August 04 concerns recruitment. **Devine v Home Office (Immigration and Nationality Directorate) 2302061/2004** was heard at the London South tribunal on 9<sup>th</sup> August 04. Mr Devine applied for a job and was called for an interview. However, the Home Office decided not to appoint him because of concerns that his involvement with the Citizens Advice Bureaux (CAB) presented a potential conflict of interests.

Devine had previously worked in the Liverpool CAB and at the time he was interviewed he was working for

Conwy Bay CAB. Devine also identified himself as a disabled person. In a nutshell Devine's case was that his sympathy for under privileged asylum seekers and disadvantaged people was a demonstration of the Christian virtue of charity . Devine did not in any



application forms or otherwise elsewhere present himself as a "Christian". The tribunal found this part of Devine's case to be far too vague and ill defined. The tribunal accepted that the Home Office chose not to appoint Devine because of the potential conflict of interests raised by of his previous in-

volvement with asylum seekers which extended to allowing some of them the use of his own home as a temporary residence. The Home Office were able to produce the documentation that related to another named job applicant that who had been rejected for an identical reason. The tribunal dismissed the case.

If you would like a copies of these decisions in full detail, please write to:

Employment Tribunal Service  
Field Support Unit  
100 Southgate Street  
Bury St. Edmunds  
IP33 2AQ.

You will need to enclose a cheque for £10.00 for the first case and then £5.00 for each additional case.





**Do you want to contribute  
to this newsletter?  
(please contact me directly)**

Anne Hayfield is a trainer/  
consultant who is currently offer-  
ing organisations workshops on

LGB issues & the SO regulations  
LGB issues & civil partnerships  
Meditation & Stress Management

## “WORK OUT” TRAINING PACK

This consists of a video plus a CD with written materials. The video was first shown at a conference that celebrated LAGER's 20<sup>th</sup> anniversary in October 2003. The response to the video was very encouraging and so a training pack was written around it.

The video shows five ex-LAGER clients talking about their cases. It makes powerful and compelling viewing. These cases were picked because they demonstrate typical problems that lesbians, gay men and bisexual people have in the workplace. The materials include three distinct sets of training notes geared towards participants who are (i) advisors (ii) trade union reps and (iii) HR managers. The training pack will enable organisations to develop policies and working practices to deal effectively with this form of discrimination.

The pack includes:

- PowerPoint presentation slides
- Participants' Handouts
- Full & comprehensive trainers notes
- Guide to Sexual Orientation Regulations, LGB & pensions, Gay men and Sexual Offences, LGB & Family Friendly Policies, Judicial review on the religious exemption.

The full cost of this unique resource is £400. However LGBT community groups are entitled to a generous discount. Please contact me directly to discuss.

I am also currently offering a 'good deal' to freelance trainers and consultants who are not part of established training consultancies. Again, please contact me directly.

**PACE (Project For Advice Counselling And Education)** is running a series of courses on the sexual orientation regulations. The courses are open to everyone and are held at the PACE offices in central London. The dates are as follows:

**Wednesday 3<sup>rd</sup> November 04**

**Tuesday 25<sup>th</sup> January 05**

**Thursday 25<sup>th</sup> March 05**

**Tuesday 24<sup>th</sup> May 05**

**More information can be obtained by ringing PACE on 020 7700 1323**



**ANNE HAYFIELD**  
**[www.annehayfield.com](http://www.annehayfield.com)**  
**[anne.hayfield@lineone.net](mailto:anne.hayfield@lineone.net)**  
**t**  
**020 8555 3709**