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Court of Appeal confirms wide scope of protection under blacklisting regulations

07 February 2025 Will Carter

The Court of Appeal has made clear in its recent judgment in the case of Morais and others v Ryanair DAC [2025] EWCA Civ 19 that protection from 'blacklisting' applies to employees participating in action organised by a trade union, with there being no need for the action to fall under the narrow definition of 'lawful industrial action'.

Morais and others v Ryanair DAC

The original claim was brought by Ryanair pilots who, in September 2019, had been warned by their employer, Ryanair, that anyone participating in the strikes that were being threatened at the time, would lose their staff travel benefits for 12 months. Many of the pilots subsequently took part in strike action. Shortly afterwards, each pilot who had participated in the strikes received confirmation that the benefits had been withdrawn.

The Employment Tribunal found that Ryanair held records identifying employees involved in industrial action, and that this had been used in determining the withdrawal of benefits and so the pilots had been 'blacklisted'.

Ryanair's appeal which came before the Court of Appeal was that the protection from blacklisting would not apply unless each of the requirements of lawful industrial action under the Trade Union and Labour Relations (Consolidation) Act 1992 were met. The appeal failed with the court finding that as long the action is organised by a trade union, participating employees will be protected from blacklisting.

Protection from 'blacklisting' considerations for employers

The Court of Appeal's judgment serves as a useful reminder that employers should be mindful of the wide discretion of what activities of trade unions includes and that penalising an employee for taking part can lead to successful claims by those employees.

In addition, the forthcoming and much talked about Employment Rights Bill is also expected to modernise the rules on blacklisting.

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