

UK Retail Workers Win Landmark Equal Pay Case

Article By:

Daniella McGuigan

More than 3,500 workers have won a legal fight for equal pay against major UK retailer Next Retail Ltd. Following a six-year legal battle, the Employment Tribunal ruled that Next had failed to demonstrate that the lower basic wage paid to sales consultants was not the result of gender discrimination.

Quick Hits

- In 2018, in-store sales consultants, who are predominantly female, argued that their work was of equal value to Next's predominantly male warehouse-based workers.
- Next argued that the difference in pay rates was in response to market forces driven by the wider labour market. The Employment Tribunal ruled that a number of the differences in pay could not be justified.
- The total amount payable to the claimants by Next as a result of the ruling is estimated to be in excess of £30 million.

The Case

In *Thandi and Others v. Next Retail Ltd and Next Distribution Ltd* (ET/1302019/2018), the Employment Tribunal found that Next had failed to justify paying its predominantly female sales consultants lower hourly wages than their predominantly male warehouse counterparts. Next, using the "material factor defence," argued that market factors, such as the differing supply-and-demand interface of the job roles, could account for a difference in pay irrespective of gender.

The Employment Tribunal rejected this defence, finding that "[t]he business need was not sufficiently great as to overcome the discriminatory effect of lower basic pay." It found that allowing market forces to dictate pay in this manner would undermine the Equality Act 2010, which aims to eliminate discriminatory pay practices. The Employment Tribunal, however, did accept that the difference in pay rates between the jobs was not related to any direct discrimination or conscious or unconscious bias based on gender on Next's duty as an employer.

Although the claimants were successful regarding their basic rate of pay, rates of bonus pay and other premium payment that directly related to warehouse demands were found to be based on legitimate business needs and proportionate in the circumstances.

The large number of claimants in the case will likely now be entitled to compensation in the form of back pay and an equalisation of pay terms moving forward. Next indicated that it might appeal the Employment Tribunal's decision.

Key Takeaways

There are several instructive points to appreciate from this case:

First, the Equality Act 2010 provides that men and women should receive equal pay for equal or equivalent work. An individual bringing an equal pay claim must be able to compare his or her working terms to a current worker or previous worker of another gender. An employer may defend the claim by demonstrating a material factor defence for the pay difference. If this factor has a discriminatory effect, the employer must demonstrate that the pay difference can be objectively justified.

Second, costs alone may not justify unequal pay—. In this case, a focus on overall profits and market factors was found not to be a legitimate aim and proved insufficient to overcome the discriminatory effect produced. As a result, Next failed to demonstrate that lower pay was not the result of gender-based discrimination. The Employment Tribunal found that Next could have afforded to pay a higher rate of basic pay to its retail workers but chose not to do so to maximise profits.

Finally, the ruling underscores the concept of equal value in the United Kingdom. This concept is also central to the requirements contained within the [EU Pay Transparency Directive](#) across the member states of the European Union. Employers may want to consider implementing regular pay audits and examining compensation and grading structures across job roles to ensure transparency and consistency in roles that are not only the same but also of equal value.

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National Law Review, Volume XIV, Number 262

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