

Case 5 – Procedural Unfairness and Discrimination

Key words

Procedural Unfairness; Discrimination; Age; Maximum Age; Aviation; Sport Parachuting; Safety; Risk; Pilots; Licence; [Equal Opportunity – age](#)

Summary

Twelve parachute pilots (the Applicants) appealed the decision of the British Parachute Association Ltd (the BPA) to impose a maximum age limit rule for pilots of parachute aircraft permitted to carry sport parachutists. The parties signed an Arbitration Agreement to enable Sport Resolutions to appoint an Arbitrator to hear the matter under Sport Resolutions Arbitration Rules. The Arbitrator found that the BPA decision failed to have regard to the material consideration that this was a safety and risk-based exercise. The parties both accepted that the choice of 70 as the maximum age was “arbitrary” and that there was no evidence to demonstrate a reduction in risk or an improvement in safety by the imposition of this maximum age rule. The Arbitrator ordered that the decision of the BPA be quashed, and the matter remitted back to the BPA to introduce a proper safety and risk-based approach to pilot age.

Background Facts

The BPA’s new age limit rule, based upon the recommendations of the Pilots Age Working Group (the PAWG), restricted pilots from flying sport parachute sorties over the age of 65 without a Class II medical, and over the age of 70 without a Class I medical. The Applicants challenged the rule on the grounds that i) the process by which the decision was reached was procedurally unfair, and ii) the rule was discriminatory and illegal under discrimination legislation.

Reasoning and Decision of the Tribunal

Ground i) alleged that the PAWG lacked proper terms of reference, lacked specialist medical expertise in aviation medicine, did not properly examine whether the data showed lower accident rates amongst older pilots, did not properly consider whether there was any link between aircraft accidents and age, and that the appropriate representative body of pilots had an inadequate role in the implementation of the PAWG recommendations. Ground ii), citing section 13 of the Equality Act 2010, alleged that because of the failure to properly consider whether there was any link between aircraft accidents and older age there was no legitimate aim pursued by the PAWG and the BPA, and in addition an arbitrary maximum age of 70 was not a proportionate means of achieving such an aim.

The BPA argued that the PAWG was legitimately established to consider a safety issue that had to be monitored pursuant to the parachute permission exemption to fly parachute sorties given to the BPA by the Civil Aviation Authority (CAA). The BPA argued that the safety objective was a legitimate purpose, leading to a legitimate and reasonable maximum age rule.

Each party called one expert witness. Professor Bagshaw, an aviation medicine specialist, appeared as a witness for the Applicants and rejected comparisons of commercial flying with the aerial work of parachute pilots and stated that the imposition of a maximum age rule of 70 years was arbitrary. Dr Carter, the BPA Medical Advisor, appeared for the BPA, and explained the process taken by the PAWG regarding a maximum age limit. Dr Carter explained that the PAWG was unable to obtain data regarding the accident rate of the ages under consideration, but that the decision was based upon more general medical principles that the age of 70 heralds a progressive decline in psychomotor ability.

In cross-examination Dr Carter agreed that the age 70 maximum was arbitrary and that there was no particular paper or research relied upon to justify it, but that there was a safety case for imposing a maximum age, and the BPA had to protect their parachute permission exemption from the CAA.

The Arbitrator found that the BPA decision failed to have regard to the material consideration that this was a safety and risk based exercise, that no reliable information was available to the PAWG to demonstrate increased risk and lack of safety for older pilots of 70 years or more, and that, on the totality of the evidence before him, the maximum age of 70 years was unequivocally accepted as “arbitrary” without any ability to demonstrate a reduction in risk or an improvement in safety by the imposition of this maximum age rule.

The Arbitrator ordered that the decision of the BPA be quashed, and the matter remitted back to them to introduce a proper safety and risk-based approach to pilot age. The Arbitrator did not consider the second ground of challenge advanced before him, namely Ground ii) the age discrimination claim.

Learning points

An NGB imposing limitations and exclusions on its membership, even pursuant to safety obligations, must do so by applying a fact-based process. Arbitrary decisions based upon on firm evidence are at risk of being struck down.