

THE INDUSTRIAL TRIBUNALS

CASE REF: 17429/19IT

CLAIMANT: Lorraine Lucas
RESPONDENT: Department of Finance

JUDGMENT

The Tribunal unanimously finds that the respondent did not treat the claimant less favourably on the grounds of age.

Her complaint is therefore dismissed in its entirety.

CONSTITUTION OF TRIBUNAL

Employment Judge: Employment Judge Browne
Members: Mrs D Adams
Mrs V J Foster

APPEARANCES:

The claimant was represented by Mr S Doherty, Barrister-at-Law, instructed by Miller McCall Wylie, Solicitors.

The respondent was represented by Mr A Sands, Barrister-at-Law, instructed by the Departmental Solicitors Office.

ISSUES AND EVIDENCE

1. The claimant's case was that she was subjected to discrimination on the grounds of age, and that such discrimination was indirect.
2. The claimant, at the time of her application in May 2019 for promotion to the grade of deputy principal in the respondent Civil Service department, was aged over 50.
3. Upon applying for the externally advertised recruitment campaign, she, along with all other eligible candidates, was required to complete an online test.
4. The results of such test were used by the respondent to identify the higher-scoring candidates as being most suitable to progress to the next stage, primarily involving interviews, to be held at an assessment centre.

5. The claimant's case was that, interpreting the range of results in relation to the ages of those sitting them, such online tests favoured younger candidates. It therefore was part of the claimant's case that use of online tests was a provision, criterion or practice by which she and others in her age group were identifiable as being at a disadvantage, compared to those in a younger age grouping.
6. It also was the claimant's case that advertising the post externally, as opposed to internal promotion, operated against her and others in her age group, thereby placing the claimant at a substantial disadvantage in comparison to younger candidates.
7. The need for this recruitment was stated by the respondent to be in preparation for the additional burdens across its range of service, generated by Brexit, with 2,800 applicants.
8. The claimant's stance regarding the perceived discrimination arising from online testing was based upon interpretation of evidence from statistics showing the relative success rates of applicants across five bands of age group. Those were divided in to: 16-24; 25-34; 35-40; 41-49; and 50+ (the last being the claimant's age group).
9. It was the claimant's case that there were other valid and effective means of screening applicants, citing specifically an initial paper sift. The respondent countered by stating that such a large-scale recruitment, requiring the timely appointment of a large number of staff, would be logistically and financially unduly drawn-out and expensive, although the claimant pointed out that cost should not displace fairness.
10. Evidence for the tribunal case of analysis of the online test success rate, conducted by Nigel Wilson, a Principal Statistician within the Civil Service, led him to conclude that there was a success rate of 89.8% in the 2,235 applicants under 50; and a success rate of 83.1% in the 609 applicants over 50. Whilst in numerical terms Mr Wilson described those figures as "statistically significant", it was his conclusion that applicants over 50 were not adversely impacted by the online test.
11. It is of note that, whilst the claimant was initially informed in June 2019 by the respondent that she had not scored highly enough to progress at that time to the next, assessment centre stage, she later was invited, but declined to attend, thereby terminating her application.
12. The claimant on 12 August 2019 was promoted via an internal promotion procedure to the same grade as that applied for in the impugned recruitment process. She took up her post of Deputy Principal in November 2019, and therefore accepts for the purposes of her Tribunal case that she was not financially disadvantaged, and her complaint to the Tribunal does not include a claim for lost income. Rather, she seeks compensation only for injury to feelings arising from her complaint of indirect age discrimination. That injury to feelings appeared from the evidence to be based upon the claimant's embarrassment at being asked by colleagues how she had fared in her online application, and her feelings of disappointment in not initially attaining a promotion which she felt was "well-deserved".

13. By the time of taking up her post in November 2019, she had lodged her complaint with the Tribunal. The claimant then successfully applied for a further internal promotion to temporary Grade 7, which she commenced in January 2020.
14. Mr Wilson also analysed the test results of Northern Ireland Civil Service (NICS) applicants in the competition, and those of external applicants, based upon ages of applicants. His conclusions were that, whilst there was a statistically significant difference in the pass rate between the NICS lower age groups and those over 50, the over-50s were not adversely impacted. His analysis of the external candidates further led him to conclude that, in fact, the over-50s fared better than those under 50.
15. The claimant did not call any expert evidence on her behalf, opting instead to seek to undermine the conclusions of Mr Wilson, and those of Dr Neil Scott, an occupational psychologist, whose independent consultancy business was employed by the respondent to develop the process for the impugned recruitment exercise.
16. His preparatory work before deciding upon his proposals for the contents of that exercise included “reviewing existing documentation, and interviewing post-holders and their managers, in order to identify the skills required for all officers” in the relevant grade, which he found included a need for verbal, numerical and management decision-making skills.
17. To that end, Dr Scott, in response to the respondent’s request for guidance, recommended the use of (online) psychometric testing in the initial sift, which he described as being widely regarded in professional circles as a consistently reliable tool for predicting workplace performance.
18. His examination of the job analysis also led him to conclude that the essential skills required for the post further included verbal and numerical tests, complemented by a situational judgment test, thereby giving a comprehensive means in the initial sift of identifying the most suitable candidates across the range of necessary skills.
19. Dr Scott further considered in his recommendations to the respondent that the suite of proposed tests enabled the measurement of requisite competencies from well-rounded potential appointees. They further complied with the respondent’s need to predict performance, simultaneously having a desirably strong diversity profile.
20. Dr Scott outlined in his recommendations to the respondent any benefits and pitfalls of the proposed tests. This included his own research and knowledge, as well as current psychological thinking. It is known that older candidates sitting psychometric tests tend to perform slightly less well than younger people. This is known in psychological circles as “the Flynn effect”, which is considered as not being due to lack of experience or with time since left school. Rather it is thought to be due to younger people having enjoyed a richer intellectual environment than older people.
21. Dr Scott’s professional view that any slight shortfall in scoring was redressed by the other testing tools, notably that of the crucial area on Management Decisions, which consequently was the most heavily weighted component of the online sift. Such criterion might reasonably be expected to favour older candidates, with experience gained over years in such a role.

22. Dr Scott and his team devised online familiarisation tests, specific to the particular post, which were made available by the respondent to all potential candidates. The claimant sat at least two of those tests in advance, although her evidence was that she scored less in the second than the first. There was no suggestion that the claimant had been confined in her access to the number of familiarisation tests she decided to sit.
23. The claimant did not fail the online test; it was simply that she did not perform as well as other candidates. Dr Scott's conclusions from the results of that test did not demonstrate an adverse impact upon those over 50, based upon the "four fifths rule" used by him, in which a pass rate of less than 80% in a particular group would tend to indicate the presence of an adverse impact. The over-50 group in this case never dropped below 92%, from which he concluded that, whilst there were statistically significant differences in most elements of the results, they from his analysis (and that of Mr Wilson) by some margin did not constitute an adverse impact.
24. It was asserted on behalf of the claimant that the simple fact of holding an online test was by itself indirectly discriminatory in this case. The Tribunal therefore concluded that it required to be satisfied that the contents or format of such a test created the issue whereby older candidates might reasonably be expected to fare less well than younger candidates.
25. It was therefore of note that the claimant did not specify in which area or areas of the online practice tests she had fallen short compared to other aspects. Nor did she make any complaint as to, for example, managing her time because of the contents of the test, or because of any deterioration in her ability to concentrate, due to her age. There similarly was no attempt by the claimant to establish a likelihood that she would have scored more highly had she sat such a test when younger.
26. The lower (but still a pass) online score of the claimant and others in her age group meant that she progressed later than those who had scored more highly. Whilst some in the 50+ group who progressed to the test centre overall scored less well than younger groups, the statistics in that regard do not apply in this case, as the claimant declined her invitation, so it is not possible to know with any degree of certainty how she might have fared. That uncertainty is tempered by the fact that the claimant later came top of the internal recruitment process by which she was appointed, for which no evidence was produced by her analysing the age profile of candidates.
27. The statistics from the impugned recruitment analysed by Dr Scott suggested to him that the differences in success in the assessment tools might be due to cohort, rather than age. He explained this as being because candidates from the older cohorts might gradually diminish in quality over an extended period, due to their more able members being promoted. This possibility is somewhat clinically referred to in some quarters in terms that "the pool has been over-fished".

LAW AND CONCLUSIONS

28. In light of some elements of the claimant's case which appeared to suggest bad faith on the part of the respondent from the outset, notwithstanding the indication

only of indirect discrimination, the Tribunal closely examined all of the evidence, to satisfy itself as to the true motives of the respondent.

29. The Tribunal remained alert to the possibility that beneath even the calmest surface, from conduct or other evidence, might lurk a glimpse of a less benign motivation than that advanced by the respondent.
30. Age discrimination is prohibited by the Employment Equality (Age) Regulations (Northern Ireland) 2006 (“the Regulations”).

Regulation 3(1) provides:-

“ ... a person (‘A’) discriminates against another person (‘B’) if —

- (a) on the grounds of B’s age, A treats B less favourably than he treats or would treat other persons, or
- (b) A applies to B a provision, criterion or practice which he applies or would apply equally to persons not of the same age group as B, but—
 - (i) which puts or would put persons of the same age group as B at a particular disadvantage when compared with other persons, and
 - (ii) which puts B at that disadvantage, and A cannot show the treatment or, as the case may be, provision, criterion or practice to be a proportionate means of achieving a legitimate aim.”

31. The notable feature of Regulation 3(1) arises in relation to what is conveniently termed the defence of ‘justification’ (that word is not now used in the legislation). Such a defence has always been available to indirect discrimination on the proscribed grounds, but in respect of age discrimination only, it also applies to direct discrimination.
32. A heavy burden is placed on a respondent in respect of making out this defence in a case of direct discrimination. In Great Britain, the ACAS publication ‘*Guidance on Age in the Workplace*’ suggests it will only apply in ‘very limited circumstances’.
33. The origins of the 2006 and 2011 Age Discrimination Regulations outlawing age discrimination are to be found in the European Union’s Council Directive 2000/78/EC of 27 November 2000, which established a general framework for equal treatment in employment and occupation, and also laid down such a framework for combatting discrimination on various grounds, including age.
34. Article 6 of the Directive (‘*Justification of differences of treatment on grounds of age*’) provides:-

“1. Notwithstanding Article 2(2), [the concept of discrimination] member states may provide that differences of treatment on the ground of age shall not constitute discrimination, if, within the context of national law,

they are objectively and reasonably justified by a legitimate aim, including legitimate employment policy, labour market and vocational training objectives, and if the means of achieving that aim are appropriate and necessary.”

A national court hearing an age discrimination claim will be required to ensure that its domestic legislation is interpreted in such a way to comply with EU law, setting aside any provision of the former which conflicts with the latter (see generally: **Mangold v Helm C144/04 [2006] IRLR 143**; and **Kücükdeveci v Swedex GmbH & Co KG C55/07 [2010] IRLR 346**).

35. It is clear from the provisions of the Directive that the aims which can be justified in cases of direct age discrimination are narrower than those which can be justified in cases of indirect discrimination.
36. This was recognised in **Seldon v Clarkson Wright and Jakes (a partnership) [2012] UKSC 16**, a decision of the Supreme Court.
37. The claimant, Mr Seldon, had been a partner in a firm of solicitors for a number of years. At the end of the year following his 65th birthday, the other partners forced him to retire. In doing so, they acted in accordance with the deed of partnership (which the claimant had signed). The respondent firm relied on six aims as justifying age discrimination, three of which the employment tribunal found to be legitimate. These were:-
 - (i) providing the opportunity for associates to become partners, and thus encouraging them to stay with the firm;
 - (ii) facilitating workplace planning; and
 - (iii) maintaining a congenial atmosphere.
38. The tribunal in **Seldon** found that the retirement age was justified as a proportionate means of achieving the legitimate aims referred to above. When the case reached the Supreme Court, it was remitted to the employment tribunal to consider the proportionality of the employer’s justification arguments.
39. In its decision the Court held that the approach to justifying direct age discrimination was not identical to the approach to justifying indirect discrimination and that Regulation 3 of the corresponding Age Regulations then in force in Great Britain (see now the equivalent in Section 13(2) of the Equality Act 2010) should be read down accordingly, so that United Kingdom municipal law was interpreted according to the Directive.
40. Lady Hale, at *Paragraph 50* of her judgment, discussed legitimate aims in the context of direct age discrimination. She stated:-
 - (2) *If it is sought to justify direct age discrimination under article 6(1), the aims of the measure must be social policy objectives, such as those related to employment policy, the labour market or vocational training. These are of a public interest nature, which is ‘distinguishable from*

purely individual reasons particular to the employer's situation, such as cost reduction or improving competitiveness'

...

- (3) ... *Flexibility for employers is not in itself a legitimate aim; but a certain degree of flexibility may be permitted to employers in the pursuit of legitimate social policy objectives.*"

At *Sub-paragraph (4)* she set out a number of legitimate aims, some overlapping, which had been recognised in direct age discrimination claims. These aims, which reflect ideas of 'intergenerational fairness' and 'dignity' were:-

- (i) promoting access to employment for younger people;
- (ii) the efficient planning of the departure and recruitment of staff;
- (iii) sharing out employment opportunities fairly between the generations;
- (iv) ensuring a mix of generations of staff so as to promote the exchange of experience and new ideas;
- (v) rewarding experience;
- (vi) cushioning the blow for long-serving employees who may find it hard to get new employment if dismissed;
- (vii) facilitating the employment of older workers in the workplace;
- (viii) avoiding the need to dismiss employees on the ground that they are no longer able to do the job, which may be humiliating for the employee concerned; and
- (ix) avoiding disputes about an employee's fitness for work over a certain age.

At *Paragraph 67*, she continued:-

*" ... [The firm] identified three aims for the compulsory retirement age, ... [Counsel for the claimant], has argued that these were individual aims of the business rather than the sort of social policy aims contemplated by the Directive. I do not think that that is fair. The first two identified aims were staff retention and workforce planning, both of which are directly related to the legitimate social policy aim of sharing out professional employment opportunities fairly between the generations (and were recognised as legitimate in **Fuchs**). The third was limiting the need to expel partners by way of performance management, which is directly related to the 'dignity' aims accepted in **Rosenbladt** and **Fuchs**. It is also clear that the aims can be related to the particular circumstances of the type of business concerned ... **Georgiev**). I would therefore accept that the identified aims were legitimate."*

At Paragraph 73, Lord Hope stated:-

“As Lady Hale has demonstrated, the evolving case law of the ECJ and the CJEU has shown that a distinction must be drawn between legitimate employment policy, labour market and vocational training objectives and purely individual reasons which are particular to the situation of the employer. There is a public interest in facilitating and promoting employment for young people, planning the recruitment and departure of staff and the sharing out of opportunities for advancement in a balanced manner according to age. These social policy objectives have private aspects to them, as they will tend to work to the employer’s advantage. But the point is that there is a public interest in the achievement of these aims too. They are likely to be intimately connected with what employers do to advance the interests of their own businesses, because that is how the real world operates. It is the fact that their aims can be seen to reflect the balance between the differing but legitimate interests of the various interest groups within society that makes them legitimate.”

41. The aims of a business therefore do not need to be the precise aims set out in Article 6 of the Directive (i.e. employment policy, labour market and vocational training objectives), but need only to be consistent with such objectives.
42. In relation to indirect age discrimination, there is no limitation on the aims which may be regarded as legitimate. This is clear from **Homer v Chief Constable of West Yorkshire Police [2012] UKSC 15**, decided at the same time as **Seldon**. In that case, Lady Hale stated, at Paragraph 19:-

“The approach to the justification of what would otherwise be indirect discrimination is well settled. A provision, criterion or practice is justified if the employer can show that it is a proportionate means of achieving a legitimate aim. The range of aims which can justify indirect discrimination on any ground is wider than the aims which can, in the case of age discrimination, justify direct discrimination. It is not limited to the social policy or other objectives derived from article 6(1), 4(1) and 2(5) of the Directive, but can encompass a real need on the part of the employer’s business:”

43. What constitutes a legitimate aim in the case of indirect discrimination is a question of fact. In the case of age discrimination, legitimate aims can include facilitating the recruitment and retention of staff of appropriate calibre, preventing a ‘windfall’ or the receipt of excessive compensation, and securing efficiencies or other desirable management aims such as managing job losses.
44. Insofar as justification is concerned, the legal principles were summarised in **McCulloch v ICI Plc [2006] IRLR 848** by the then President of the Employment Appeal Tribunal, Mr Justice Elias, at Paragraph 10 of his judgment:-

*“(1) The burden of proof is on the respondent to establish justification: see **Starmer v British Airways [2005] IRLR 862** at [31].*

- (2) *The classic test was set out in **Bilka Kaufhaus GmbH v Weber Von Harte [Case 170/84] [1984] IRLR 317** in the context of indirect sex discrimination. The ECJ said that the court or tribunal must be satisfied that the measures ‘must correspond to a real need ... are appropriate with a view to achieving the objectives pursued and are necessary to that end’ (Paragraph 36). This involves the application of the proportionality principle, which is the language used in Regulation 3 [of the Age Discrimination Regulations in Great Britain] itself. It has subsequently been emphasised that the reference to ‘necessary’ means ‘reasonably necessary’: see **Rainey v Greater Glasgow Health Board (HL) [1987] IRLR 26** per Lord Keith of Kinkel at pp 30 – 31.*
- (3) *The principle of proportionality requires an objective balance to be struck between the discriminatory effect of the measure, and the needs of the undertaking. The more serious the disparate adverse impact, the more cogent must be the justification for it. **Hardy & Hansons PLC v Lax [2005] IRLR 726** per Pill LJ at Paragraphs [19] – [34], Thomas LJ at [54] – [55] and Gage LJ at [60].*
- (4) *It is for the employment tribunal to weigh the reasonable needs of the undertaking against the discriminatory effect of the employer’s measure and to make its own assessment of whether the former outweigh the latter. There is no ‘range of reasonable response’ test in this context. **Hardys and Hansons PLC v Lax [2005] IRLR 726 CA.**”*

In **R (Elias) v Secretary of State for Defence [2006] EWCA Civ 1293**, at Paragraph 165, Mummery LJ set out a three stage test when discussing proportionality:-

“First, is the objective sufficiently important to justify limiting a fundamental right? Secondly, is the measure rationally connected to the objective? Thirdly, are the means chosen no more than is necessary to accomplish the objective?”

45. In relation to the defence of justification, the respondent employer must therefore demonstrate that the treatment or, as the case may be, provision, criterion or practice, meets the legitimate aim relied upon. Whether the aim is legitimate is a matter of fact for the tribunal. It must also show that it is proportionate and necessary, i.e. that the need outweighs the discriminatory effect of the behaviour in question, and that the aim cannot be met by a different method which would not have any, or less, discriminatory effect.
46. To be proportionate, a measure has to be both an appropriate means of achieving the legitimate aim and a (reasonably) necessary means of doing so. The terms ‘appropriate’, ‘necessary’ and ‘proportionate’ are not interchangeable and care must be taken in properly distinguishing the aims of measure from the means used to achieve it.

It is clear from the above that an aim that is itself clearly discriminatory cannot constitute a legitimate aim.

(See generally: **Kutz-Bauer v Freie und Hansestadt Hamburg [2003] IRLR 368, ECJ**, expanding on the test in **Bilka-Kaufhaus, and Magoulas v Queen Mary University of London UKEAT/0244/15 [29 January 2016].**)

47. In **Seldon, ante**, it was held that a general policy, as opposed to one justifying each retirement on its own merits, could be permissible, but that the use of a general policy must be a proportionate means of achieving the legitimate aim.
48. In determining whether the defence of justification has been made out, the tribunal must establish the relevant facts, and then carry out a balancing exercise taking into account all the surrounding facts and circumstances and giving due emphasis to the degree of discrimination caused against the object or aim to be achieved. This exercise must be carried out in the context of the particular business concerned.
49. In **Allonby v Accrington and Rossendale College [2001] IRLR 364**, a decision of the Court of Appeal in a sex discrimination case in England and Wales, Sedley LJ explained the full and rigorous analysis which was required in carrying out such a balancing exercise. He said, at Page 370:-

“Once a finding of a condition having a disparate and adverse impact ... had been made, what was required was at the minimum a critical evaluation of whether the ... reasons [for imposing a condition] demonstrated a real need [to take the action in question]; if there was such a need, consideration of the seriousness of the disparate impact ... on women including the applicant; and as evaluation of whether the former were sufficient to outweigh the latter.”

50. In carrying out such a balancing exercise or critical evaluation a tribunal will ask itself whether alternative measures were considered, and if alternative measures could have met the legitimate aims without such a discriminatory effect.
51. It should also consider both the qualitative and quantum aspects of the discrimination, i.e. how many people with a particular characteristic will suffer and how seriously they will suffer. If only a small number of people are affected, it may be easier to accommodate them (**MBA v Mayor and Burgesses of the London Borough of Merton [2014] IRLR 145**)
52. Two more general points can also be made. In **Woodcock v Cumbria Primary Care Trust [2012] ICR 1126** it was held that cost alone cannot justify discrimination. There must be some other element in addition to cost. In **BAE Systems (Operations) Ltd v Mr C McDowell**, the Employment Appeal Tribunal emphasised that a tribunal must demonstrate a holistic approach in its assessment of the means adopted to achieve the various legitimate aims relied on by a respondent. Having carried out the balancing exercise, the tribunal must make its own judgment as to whether the PCP was proportionate, considering its discriminatory effect against the reasonable needs of the employer’s business.
53. The Tribunal received comprehensive evidence from the respondent as to why an online test and external recruitment were chosen.

54. The Tribunal found that the case of **Essop** was readily distinguishable from the present case. Whilst both involved an online test, it was the contents of the test in **Essop** which gave rise to the indirect discrimination, in that it in effect precluded around 1/3 of those whose first language was not English from being able fully to participate, whilst such ability was not in any event a reasonable essential criterion of the job advertised. The disparity in results between such people and those whose first language was English was so marked that it could not be viewed as anything other than a disadvantage.
55. No such practical impediment was identified as applying in this case. In the absence of any such glaring discrepancy, the Tribunal concluded that it was increasingly important to have a professional analysis. The only such evidence was provided by the respondent. The Tribunal concluded that the professional evidence of Mr Wilson and Dr Scott was clear in concluding that the claimant's age group, whilst not performing as well as younger groups, was not disadvantaged in the legal sense by the online test.
56. The Tribunal concluded that the claimant failed to offset their concluded, closely reasoned arguments in that regard. She provided no professional evidence on the topic, which, in the absence of disparity in test outcomes as marked as that in **Essop**, was of heightened evidential importance.
57. Similarly, the respondent provided cogent evidence as to why an online test was chosen. It was an objective, transparent exercise, devised and fine-tuned by Dr Scott and his experienced colleagues. The pool of potential candidates was in clear need of being widened, not only to include applicants from a diverse range, but to ensure that the respondent was not potentially simply emptying an already "over-fished" pool within the Civil Service.
58. The issue of cost is not capable of justifying a procedure which otherwise might cause disadvantage to a protected group. The Tribunal concluded, in the absence of satisfactory evidence of such a disadvantage for the purposes of the legislation, that the reasons advanced by the respondent were logical, of practical benefit, and cost-effective.
59. This was, by any measure, a large-scale recruitment, which attracted thousands of applicants. A procedure which involved a paper sift would involve a significant burden in time and complexity. It was considered by the respondent, but was rejected as being impractical, and would have involved many different panels to select potential candidates, and then to interview them.
60. Such an approach would have caused disparity in subjective opinions as to the contents of application forms, and similarly at interview.
61. Whilst the respondent through Dr Scott's evidence conceded that elements of the selected procedure were not perfect, it at least meant that candidates' tests could be established in accordance with a uniform mark scheme. The test was devised by experts, compiled with objective standards.
62. Any potential detriment to candidates was also ameliorated by the enhanced marks available for management decisions, which inevitably would favour candidates such as the claimant with experience at a more senior level.

63. The claimant appeared to favour a process which placed existing Civil Servants as automatically the only permitted candidates, thereby increasing her expectations of advancement. The Tribunal concluded that the respondent correctly and reasonably viewed that approach as practically unsustainable for the exigencies of this recruitment exercise.
64. The Tribunal concluded that the claimant had failed to establish that she or other older candidates were disadvantaged by the inclusion of external candidates, which further included no restriction upon the age of those entitled to apply. She further failed to establish sufficient evidence, directly or by inference, that an online test indirectly created a disadvantage on the grounds of age.
65. There was no evidence that those who asked the claimant how she had fared had heard about her application from anyone other than herself. There are no guarantees in any truly competitive recruitment exercise; if otherwise, the outcome would be pre-determined, and consequently wholly unfair.
66. The claimant's complaint is therefore dismissed in its entirety.

Employment Judge:

Date and place of hearing: 9-12 August, 10 September 2021 & 14 January 2022, Belfast.

This judgment was entered in the register and issued to the parties on: