

[Sunday working: a reasonable compromise?](#) [1]

Written by [Dr. Eamonn Butler](#) [2] | Friday 25 October 2013

I never heard back from the BBC. They called me to ask if I might go on the radio to talk on Sunday trading. But there was a twist: Celestina Mba, a devout Christian, lost her job at Merton Council because she refused to work on a Sunday. So she is arguing before the Appeal Court that employers have a legal duty to "reasonably accommodate" such religious views. If successful, people of other faiths could win the same rights. And not just councils but all employers could find themselves obliged to make special provision for devout workers.

So what did the BBC want me to say? "We thought you would be on the side of business," they asserted confidently. That is, employers could set whatever working conditions they wanted.

Well, I am on the side of business, a much-oppressed minority these days. And I do want this case thrown out ? but not for the reasons the BBC imputes to me as a "business supporter". My view is that working conditions are a matter for negotiation between employers and employees. If they cannot reach agreement, then it's no deal: the employer has to look elsewhere for staff and the employee has to look elsewhere for a job. If the labour market is properly competitive, there are lots of other employers and employees out there.

This argument is consonant with my libertarian prejudices. Yet the world is not as tidy as this. Employers and employees are not necessarily equal when it comes to negotiations. The loss of an employee is of minor consequence to a large employer; but the loss of a job can be devastating for a worker, particularly in times like these when other jobs may be hard to find. In this, as in other parts of life, the common law has always sought to ascertain and uphold what is "reasonable": we have discovered that if we all act "reasonably", we have fewer disputes and less violence.

Is it "reasonable" that businesses should respect the rights of religious workers? Plainly. But what exactly is "reasonable" depends upon the specific circumstances. In the case of religious days, a large firm may be able to accommodate everyone's preferences; a small firm may not; and the common-law courts are fully aware of that and would not expect anything different. Sadly, there is a growing tendency for politicians to intervene at this stage, taking one court ruling and applying it as general policy for everyone and across everything ? a single rule, law or regulation that takes no account of the particular circumstances of each case. Which means that in many cases, the law is not at all "reasonable" but is repressive.

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