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Are we having fun yet? Age discrimination in recruitment

By Juliet Bourke

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The Virgin Blue Airlines decision (Queensland Anti-Discrimination Tribunal, 10 October 2005) has sent a shock wave through the recruitment industry in terms of its treatment of older workers, writes Juliet Bourke, Partner, Aequus Partners. This case provides a “face” to statistical research that demonstrates older workers find it especially difficult to re-enter employment and recruiters can act as gatekeepers rather than advocates for older workers.

The decision should be a wake-up call to employers and recruiters to ensure that they are accessing and recruiting a diverse age range of candidates, and not unconsciously applying age-based stereotypes. Whilst recruitment bias is not the only barrier facing older workers, it is a critical part of the employment cycle and the major source of age discrimination complaints received by discrimination agencies. This article explores current research on the recruitment experiences of older workers, the findings of the Virgin Blue decision and the implications for employers and recruitment consultants.

Research on older workers and recruitment experiences

Data from the Australian Bureau of Statistics (ABS) shows that older job seekers find it extremely difficult to re-enter the workforce (eg after being made redundant) and are therefore at risk of being unemployed for a long period of time. In particular, whilst 23% of unemployed people are long-term unemployed (ie have been unemployed for 12 months or more), amongst 45 to 64-year-olds the proportion is nearly twice as high (40%). As a consequence, 53% of all discouraged job seekers — ie job seekers who become discouraged and drop out of the labour force altogether — are aged 45 to 64. The ABS also reports that two-thirds of job seekers over 55 say that the most significant problem they have in finding work is being considered “too old” by employers. In relation to older workers who had applied for work via recruitment consultants, a New Zealand study found that 55% of older job seekers described their experiences of recruitment consultants as being negative or very negative.

Ron Ray, aged 58 (now happily employed with the Office of the Employment Advocate), rationalises his first-hand experience of being rejected by recruiters on the grounds of age in this way: “Recruitment agencies are predominantly ‘sales driven’ organisations and their objective is to satisfy client briefs, whatever they may contain, in order to obtain repeat business. Their objective is not to find the candidate work or to source the best candidate for the role. Their objective is to put a short-list up to the client that meets their stated or unstated specifications. This will impress the client and allow them to choose the best candidate for the role from the provided short-list. The flow-on is a level of satisfaction with the agency which will ensure them repeat business from that client.”

In essence Ray’s perspective is that recruiters are merely responding to pressure from their clients (ie employers) to deliver young candidates. The Recruitment and Consulting Services Association (RCSA) agrees that employers are reluctant to employ older workers and this makes it “difficult for consultants to effectively place mature-aged workers, most of whom have the

right talent and industry skills". Of course employer expectations play a key role in the recruitment story, but they are not the whole story.

The Virgin Blue decision shows that some of the bias against older workers is due to pure ignorance and the acceptance of stereotypes by recruiters themselves. Alison Monroe, Director of Sage Co, suggests that there's a connection between the demographics of recruiters and age bias. "I think there's limited knowledge amongst recruiters of the ageing workforce and its implications because there's very little diversity within the recruitment industry", she says. "Recruiters are generally women aged 25 to 34 years old and there's a high turnover (so not a lot of knowledge continuity). This is not about overt discrimination, but about how people have been conditioned. Recruiters are a fairly homogenous group and don't understand older workers."

Monroe is keen to point out the importance of educating recruiters has been recognised by RCSA and the association is currently conducting an awareness campaign with recruiters about older job seekers.

Nevertheless, Monroe wonders whether the cards are stacked against older workers because of the recruitment business model. She argues there's a positive business case for recruiting older workers because of their lower turnover rate and thus questions whether "recruiting older workers (is) at odds with the whole end goal for volume recruiters? Turnover every 18 months creates jobs, and the more placements the more money a recruiter makes. So it's at odds with the recruiting game for a recruiter to place an older worker with a lower level of turnover." If Monroe is right, the impetus for change will need to be a joint effort by recruiters and employers — and the stakes have been raised by the Virgin Blue decision.

The Virgin Blue decision

Eight complainants (aged 36 to 56) brought a case against Virgin Blue Airlines of direct and indirect age discrimination under the Queensland Anti-Discrimination Act 1991. Each of the complainants (who were flight attendants) submitted an online application to Virgin Blue for a cabin crew role and was then invited to attend a group assessment process. The process was designed to assess "behavioural competencies", including assertiveness, team work, communication and "Virgin Flair". It was the "Virgin Flair" competency (defined as "a desire to create a memorable experience for customers. The ability to have fun, making it fun for the customer"), and the way it was interpreted by the assessors, which landed Virgin Blue in hot water. The tribunal found that although the Virgin Flair competency was ostensibly age neutral, it produced an age-biased result because the young assessors unconsciously selected people of their own age as having the ability to have "fun". In summary, the assessors' view of the complainants was filtered by their own stereotypical assumption that equated youth with fun, and the "similar-to-me effect" (as described by an expert witness).

When the tribunal looked at Virgin Blue's statistics it found that only one person of 36 years of age was employed from over 750 people at or above that age who applied. Further, the tribunal placed significant weight on the fact that Virgin Blue did not monitor the impact of their behavioural competencies to test the results and consequently the "defects in the assessment were not the subject of safeguard". The tribunal upheld the complaints of direct age discrimination and has indicated that it will award costs and damages against Virgin Blue. At this stage only one complainant has been awarded damages of \$5,000 for her hurt and humiliation.

Implications

The Virgin Blue decision has clear and practical implications for employers and recruitment consultants, namely: (i) auditing; (ii) monitoring and (iii) training. Firstly, assessment criteria (including behavioural competencies) and interview questions should be audited for age bias. An audit should identify overt age-based questions (eg “When did you complete school?”) as well as questions which will unfairly disadvantage older workers. Monroe suggests that recruiters can exhibit bias when they ask about recent “work” skills rather than “life” skills (because this can unfairly exclude an older worker’s wanting to re-enter the workforce and will thus limit the pool of applicants); or when they ask questions such as “Where do you want to be in five years?”, which assumes that candidates will want to move up a career ladder when in fact “the older worker may just want to be employed in the same role or organisation”.

Secondly, selection outcomes should be monitored to ensure that the age profile of the successful candidates matches the age profile of applicants. A prudent recruiter/employer would go even further to monitor whether the age profile of applicants reflects the broader community.

Thirdly, training should be provided to recruiters to help overcome latent bias (eg that a “creative and dynamic” person is a “young” person) and where possible recruitment panels appointed that reflect a diverse age profile.

Based on the experience in the US, if these messages are not taken on board quickly, Australia and New Zealand can expect to see a spate of high profile representative complaints by older workers, not only in relation to recruitment, but also in relation to termination/redundancy, training and promotion decisions. And as Virgin Blue has learned to its detriment, these cases will receive front-page press.

Juliet Bourke is a co-author with Penny Thew and Kate Eastman of “Age discrimination: Mitigating risk in the workplace” (2005, CCH).