



Key Issues: Equal treatment – age discrimination

Case: Daniel Bowman v Pensionsversicherungsanstalt

Reference: Case C-539/15, CJEU (Sixth Chamber), 21 December 2016

Legislation: Directive 2000/78/EC

Mr Bowman, who was born on 28 July 1961, has been employed by the Administration under a private law contract of employment since 1 April 1988. The contract is governed by the DO.A, a collective agreement. His remuneration is calculated on the basis of a classification undertaken at the time of his recruitment without account having been taken, at that point in time, of his completed periods of school education. Mr Bowman has, since then, progressed every two years to the next step, in accordance with the provisions of the DO.A, and received an increase in remuneration corresponding to his advancement.

Before his recruitment by the Administration, Mr Bowman attended an Austrian federal high school for a period of 2 years and 10 months. After an amendment to the DO.A made it possible for periods of school education to be taken into account, Mr Bowman submitted, on 17 May 2012, a request seeking the recalculation of the periods preceding his entry into service of the Administration for the purpose of setting his advancement date. Mr Bowman requested from the Administration the payment of a lump sum of EUR 3 655.20, with interest and costs, and the payment, in future, of a salary corresponding to a classification in a higher salary group.

On 27 May 2012, the Administration decided that Mr Bowman's length of service could be increased by a maximum of three years but no improvement to his salary classification and no modification to his advancement date would follow. The Labour and Social Security Court, Vienna, Austria upheld the action brought by Mr Bowman against that decision of the Administration. That court considered that the extension of the period for advancement from the first to the second step amounted to indirect discrimination on grounds of age. The Higher Regional Court, Vienna, Austria upheld the appeal brought by the Administration.

Mr Bowman brought an appeal on a point of law against that judgment before the Supreme Court, Austria which referred a number of questions to the Court of Justice of the EU (CJEU) for a preliminary ruling on the interpretation of Directive 2000/78/EC.

Consideration by CJEU

The CJEU decided it was necessary to consider whether a collective agreement introduces a difference in treatment on grounds of age, for the purposes of Article 2(1) of Directive 2000/78. In this regard, it should be borne in mind that, under that provision, the principle of equal treatment means that

there must be no direct or indirect discrimination whatsoever on any of the grounds referred to in Article 1 of that directive. Article 2(2)(a) of that directive states that, for the purposes of Article 2(1), direct discrimination is taken to occur where one person is treated less favourably than another person in a comparable situation, on any of the grounds referred to in Article 1 of that directive. It is clear moreover from Article 2(2)(b) of Directive 2000/78 that, for its purposes, indirect discrimination on grounds of age occurs where an apparently neutral provision, criterion or practice would put persons having a particular age at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

The CJEU held that:

Article 2(1) and (2) of Council Directive 2000/78/EC must be interpreted as not precluding a national collective labour agreement, such as that at issue in the main proceedings, by which an employee who benefits from account being taken of periods of school education for the purpose of his classification in the salary steps is subject to a longer period of advancement between the first and second salary step, as long as that extension applies to every employee benefiting from the inclusion of those periods, including retroactively to those having already reached the next steps.

Why is this decision important?

Changes to a collective agreement may have implications for existing employees. Without proper planning and careful drafting, the introduction of changes can have unforeseen consequences for an employer. A new rule which recognises periods in education could be indirect discrimination unless the resultant benefits apply to all employees.

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