



Key Issues: Social Policy – equal treatment - age discrimination

Case: Georg Stollwitzer v ÖBB Personenverkehr AG

Reference: Case C-482/16, CJEU (First Chamber), 14 March 2018

Legislation: Directive 2000/78/EC

Mr Stollwitzer began working on 17 January 1983 for one of the predecessors in law of ÖBB. In view of the periods of service completed by Mr Stollwitzer before he took up his post, the reference date for the purpose of his advancement was established as being 2 July 1980. That reference date determines the pay grade in the pay scales within which a worker obtains, at regular intervals, advancement to a higher step. At that time, it was determined by calculating the periods completed before entry into service, though it did not include periods completed before reaching the age of 18. The period required for advancement was two years for all steps.

As regards ÖBB, in 2015 the Austrian legislature opted for a complete retroactive reform of the rules under which earlier periods of activity are taken into account, in order to eliminate discrimination on grounds of age. Mr Stollwitzer brought proceedings against ÖBB for an order that it pay him an amount corresponding to the difference between the salary he received between 2008 and 2015 and the sum which, in his view, would have been payable if the periods required for advancement had been calculated on the basis of the legal situation that existed before the retroactive reform of the rules.

The Landesgericht Innsbruck (Regional Court, Innsbruck) dismissed the claim, taking the view that the retroactive reform had put an end to all discrimination on grounds of age. As Mr Stollwitzer was unable to furnish proof of the periods of service, the calculation of the reference date for the purposes of remuneration did not in any way change in his case.

Mr Stollwitzer lodged an appeal against that decision before the referring court, the Oberlandesgericht Innsbruck (Higher Regional Court, Innsbruck, Austria). At the same time, he brought proceedings before the Verfassungsgerichtshof (Constitutional Court, Austria), at the conclusion of which that court declared the 2015 Federal Law on Railways compatible with the Austrian constitutional system. The Verfassungsgerichtshof (Constitutional Court) indicated the reference dates for the purpose of the advancement of all the undertaking's workers had been recalculated scrupulously. If a change to the reference dates for the purpose of advancement were to have the effect of placing some of those workers at a disadvantage, existing salaries would be maintained, in accordance with that law in order to ensure compliance with the principle of legitimate expectations.

In those circumstances, the Oberlandesgericht Innsbruck (Higher Regional Court, Innsbruck) decided to stay the proceedings and to refer a number of questions to the Court of Justice EU (CJEU) for a preliminary ruling.

Consideration by CJEU

According to the CJEU's settled case-law, it is clear from the title of, and preamble to, Directive 2000/78, as well as from its content and purpose, that that directive is intended to establish a general framework for ensuring that everyone benefits from equal treatment in matters of employment and occupation by providing effective protection against discrimination based on any of the grounds referred to in Article 1 thereof, which include age.

In view of Member States' obligations under EU law with regard to the eradication of discrimination on grounds of age when taking account of previous periods of activity and of the freedom enjoyed by the national legislature to restructure the salary scheme for ÖBB employees, the CJEU concludes that the change that had to be made to the law in force does not cease to be non-discriminatory by virtue of the fact that it does not have the effect of conferring a benefit on all workers. It is therefore clear, in that context, that the Austrian legislature did not exceed the limits of its powers in this field

The CJEU held that:

Article 45 TFEU and Articles 2, 6 and 16 of Council Directive 2000/78/EC are to be interpreted as not precluding national legislation which, in order to end discrimination on grounds of age arising as a result of the application of national law that took into account, for the purpose of the categorisation of the employees of an undertaking within pay scales, only periods of activity completed after the age of 18, retroactively abolishes that age limit in respect of all such workers and allows only experience acquired with other undertakings operating in the same economic sector to be taken into account.

Why is this decision important?

Age discrimination is a growing area of employment law and one in which employers can easily experience a claim as a result of decisions which were intended to benefit the workforce. This decision upholds the right of members states to introduce laws which seek to eliminate age discrimination even if this results inadvertently in a disadvantage to certain workers.

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