



Key Issues: Social Policy – Parental Leave – Preliminary Ruling

Case: RE v Praxair MRC SAS

Reference: Case C-486/18, CJEU (First Chamber), 8 May 2019

Legislation: Directive 96/34/EC

Background

On 22 November 1999, RE commenced employment as a sales assistant with Materials Research Corporation, now Praxair MRC, under a fixed-term and full-time contract. By addendum of 21 July 2000, her employment contract became a contract of indefinite duration and full-time with effect from 1 August 2000.

RE took a first period of maternity leave from 4 February 2001 to 19 August 2001, followed by a period of childcare leave from 6 September 2001 to 6 September 2003. She then took a second period of maternity leave from 6 November 2007 to 6 June 2008, followed by a period of childcare leave from 1 August 2008, in the form of her working hours being reduced by one fifth. That last period of childcare leave was supposed to end on 29 January 2011.

On 6 December 2010, RE was made redundant as part of a collective redundancy on economic grounds. She accepted redeployment leave for a period of 9 months. After having relinquished the right to a reduction in her working hours with effect from 1 January 2011, RE left Praxair MRC on 7 September 2011. On 30 September 2011, RE brought proceedings before Labour Tribunal, Toulouse, France to contest her dismissal and made several claims, in particular, for the payment of EUR 941.15 in respect of outstanding redundancy pay and of EUR 1 423.79 in respect of outstanding redeployment leave allowance.

By judgment of 12 September 2013, that court dismissed RE's two claims. By judgment of 14 October 2016, the Court of Appeal, Toulouse upheld the dismissal of those claims. On 14 December 2016, RE appealed against that judgment on a point of law, claiming that the Court of Appeal had infringed clause 2.6 of the framework agreement on parental leave. In those circumstances, the Court of Cassation, France decided to stay the proceedings and to refer a number of questions to the Court of Justice of the EU (CJEU) for a preliminary ruling.

Consideration by CJEU

Directive 96/34 was repealed with effect from 8 March 2012 under Article 4 of Council Directive 2010/18/EU implementing the revised Framework Agreement on parental leave. However, in view of the date of the facts of the dispute in the main proceedings, the case is still governed by Directive 96/34 and the framework agreement on parental leave.

The first paragraph in the preamble to the framework agreement on parental leave states: 'The framework agreement [on parental leave] represents an undertaking ... to set out minimum requirements on parental leave and time off from work on grounds of force majeure, as an important means of reconciling work and family life and promoting equal opportunities and treatment between men and women.'

According to clause 2.6 of the framework agreement, rights acquired or in the process of being acquired by the worker on the date on which parental leave starts are to be maintained as they stand until the end of parental leave and, at the end of parental leave, these rights, including any changes arising from national law, collective agreements or practice, are to apply. In that regard, it is clear to the CJEU, both from the wording of clause 2.6 and its context, that that provision is intended to avoid loss or reduction of rights derived from an employment relationship, acquired or being acquired, to which the worker is entitled when he starts parental leave, and to ensure that, at the end of that leave, with regard to those rights, he will find himself in the same situation as he was before the leave.

The CJEU held that:

Clause 2.6 of the framework agreement on parental leave must be interpreted as precluding, where a worker employed full-time and for an indefinite duration is dismissed at the time he is on part-time parental leave, the compensation payment for dismissal and the redeployment leave allowance to be paid to that worker being determined at least in part on the basis of the reduced salary which he receives when the dismissal takes place.

Article 157 TFEU (i.e. the principle of Equal Pay) must be interpreted as precluding legislation such as that in the main proceedings which provides that, where a worker employed full-time and for an indefinite duration is dismissed at the time he is on part-time parental leave, that worker receives a compensation payment for dismissal and a redeployment leave allowance determined at least in part on the basis of the reduced salary being received when the dismissal takes place, in circumstances when a far greater number of women than men choose to take part-time parental leave and when that difference in treatment which results therefrom cannot be explained by objective factors unrelated to any sex discrimination.

Why is this decision important?

If an employee is dismissed when in receipt of a reduced salary because of a change in circumstances (e.g. parental leave), it is important that the employer calculates any compensation due to the employee correctly. The basis for the calculation may, as in this case, need to include the salary of the employee before the reduction.

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