

ECJ 21 December 2016, case C-539/15 (Bowman), Age discrimination

Daniel Bowman – v – Pensionsversicherungsanstalt,
Austrian case

Summary

Requiring staff to complete five service years before progressing from the first to the second step on the salary scale, but requiring only two service years for each next step, is not age-discriminatory.

Facts

Mr Bowman was hired in 1988, aged 26, by a public sector organisation. His contract was governed by a collective agreement. This agreement provided salary scales with steps based on length of service. The facts, which are rather complex, were described in detail in EELC 2016/2 nr. 20. The most relevant point is that the service time required to progress from step 1 to step 2 on the scale (for which purpose, a certain level of education could count as service time) was five years and the service time required to move up each further step was two years.

National proceedings

In 2012, Mr Bowman filed a request to his employer to move him further up the salary scale and to award him back pay. By this time, he was over 50. He argued that the salary scale system put employees who are recruited at a young age at a particular disadvantage as compared with employees who are recruited later on in life, and that the system was therefore indirectly discriminatory based on age.

Question referred to the ECJ

The following question was referred to the ECJ: Is Article 21 of the Charter, in conjunction with Article 2(1) and (2) and Article 6(1) of Council Directive 2000/78 (and also having regard to Article 28 of the Charter), to be interpreted as meaning that:

- a. a provision in a collective agreement which provides for a longer period for incremental advancement for employment at the start of a career, thereby making it more difficult to advance to the next salary step,

- constitutes an indirect difference in treatment based on age,
- b. and, if that is the case, is such a rule is appropriate and necessary in light of employees' limited professional experience at the start of their careers?

ECJ's findings

Workers with low salaries tend to be young. This fact in itself, however, does not place young workers at any particular disadvantage. The inclusion of periods of school education and the extension of the period for advancement within the first step of the salary scheme applied in the same way to all workers regardless of age.

Ruling

Article 2(1) and (2) of Council Directive 2000/78 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.

ECJ 1 February 2017, case C-430/15 (Tolley), Free movement, social insurance

Secretary of State for Work and Pensions – v –
Tolley, British case

Summary

Mrs Tolley, a disabled UK national, emigrated from the UK to Spain in 2002, at age 50. Before she left the UK, because she was unable to prepare a meal for herself, she was in receipt of DLA (disability living allowance) benefits. These benefits were stopped when she left the UK, because under UK law, only residents are eligible. Mrs Tolley appealed successfully to the First-tier Tribunal. Its decision was upheld by the Upper Tribunal and the Court of Appeal. The Secretary of State appealed to the Supreme Court, which referred questions to the ECJ, all relating to Regulation 1408/71 on the coordination of