ECJ 21 September 2017, case C-429/16 (Ciupa c.s. – v- Lodz Hospital), Collective redundancies

Małgorzata Ciupa c.s. – v – Szpital Ginekologiczno-Położniczy im. dr L. Rydygiera sp. z o.o. w Łodzi

Summary

A unilateral amendment of employment conditions qualifies as 'redundancy' within Directive 98/59 on collective redundancies, if the employee's refusal entails the termination of the employment contract.

Facts

Ms Ciupa and Others were employed by the Łódź Hospital under full-time indefinite employment contracts. In 2013 the Hospital decided to convert into a commercial company in order to prevent liquidation, which would have involved the loss of 100 jobs. On conversion, the Hospital noted that it did not intend to reduce jobs so it would be able to retain its contract with the national health fund for the provision of medical services. After making all the savings it could without affecting wages, the Hospital found it needed to reduce the pay of its entire workforce and therefore proposed a temporary 15% pay cut to all employees. The proposal was accepted by only 20% of the employees. Ms Ciupa and Others refused to accept the proposal. The Hospital then notified them that refusal would lead to the termination of their employment relationship and that there would be no redundancy procedure.

National proceedings

Ms Ciupa and others brought an action before the District Court for Łódź-Śródmieście, in which they demanded that the amendment be declared inapplicable. The District Court dismissed the action on the grounds that the Hospital had not contemplated carrying out a collective redundancy and therefore had not initiated the redundancy procedure. Ms Ciupa and others appealed to the Supreme Court and the Supreme Court referred a question to the ECJ.

Questions put to the ECJ

The ECJ noted that the Polish Supreme Court had essentially asked whether Article 1(1) of Directive 98/59 must be interpreted as meaning that a unilateral amendment of conditions of pay by the employer, to the detriment of the employees, which could lead to termination if refused, must be regarded as a 'redundancy' within the meaning of that provision, and whether Article 2 of that directive must be interpreted as meaning that an employer is required to carry out the consultations provided for in Article 2 if it contemplates making a unilateral amendment to employees' pay.

ECJ's findings

In answering this question, the Court noted that Directive 98/59 makes a distinction between 'redundancies' and 'terminations of an employment contract which occur on the employer's initiative for one or more reasons not related to the individual workers concerned' As regards the concept of 'redundancy', the Court held that Article 1(1) of Directive 98/59 should be interpreted as meaning that the fact that an employer, unilaterally and to the detriment of the employee, makes significant changes to essential elements of his employment contract for reasons not related to the individual employee, falls within that concept (*Pujante Rivera*, 11 November 2015, C-422/14). In light of *Pujante Rivera* then, it follows that if the employer makes non-significant changes to an essential element of employment contracts, this may not be regarded as a 'redundancy' within the meaning of Directive 98/59.

In the case at hand, the Court considered that the amendment leading to the termination of the employment contract only provided for a temporary pay cut of 15% and that return to the initial wage level was possible after a few months. Despite the fact that remuneration is as essential element of an employment contract and that a 15% pay cut could, in principle, be regarded as a 'significant change', the temporary nature of the reduction nevertheless reduced the extent of the proposed amendment. The Court also noted that the national court should determine whether a temporary

doi: 10.5553/EELC/187791072017002004018

reduction of this nature should be regarded as a 'significant change' in the light of all the circumstances of the case.

However, the Court judged that even if the Polish Supreme Court decided that the notice of amendment was not effectively a dismissal, termination of the contract followed by the employee's refusal to accept the amendment must be regarded as 'a termination of an employment contract which occurs on the employer's initiative for one or more reasons not related to the individual workers concerned', and therefore falls within the meaning of the second subparagraph of Article 1(1) of Directive 98/59.

Second question

As regards whether an employer is required to carry out the consultations provided for in Article of Directive 98/59, the Court decided that the Hospital had made some economic decisions that were not directly aimed at terminating the employment relationship, but nevertheless had an effect on the employment relationship with Ciupa and her colleagues. Given the nature of the proposed changes and the possible termination of employees' contracts, the Hospital should have taken into account that some employees might not accept the amended terms of employment. This meant that, the Hospital needed to carry out the consultations provided for in Article 2 of Directive 98/59. The Court felt that this conclusion was all the more necessary because the purpose of consultation is to try to avoid or to reduce the number of terminations and to mitigate their consequences – and the aim of the amendment to the contracts was also to try to avoid individual redundancies. Thus, the two aims coincided to a large extent.

Ruling

In light of the above, Article 1(1) of Directive 98/59 must be interpreted as meaning that a unilateral amendment of conditions of pay by the employer, to the detriment of the employees, which, in the event of an employee's refusal, entails the termination of the contract of employment is capable of being regarded as a 'redundancy' within the meaning of that provision, and that Article 2 of that directive must be interpreted as meaning that an employer is required to carry out the consultations provided for in Article 2 where it contemplates effecting such a unilateral amendment of the conditions of pay, insofar as the conditions laid down in Article 1 of the directive are satisfied, which is for the referring court to ascertain.

ECJ 21 September 2017, case C-149/16 (Halina Socha v. Szpital Specjalistyczny), Collective redundancies

Halina Socha, Dorota Olejnik and Anna Skomra – v – Szpital Specjalistyczny im. A. Falkiewicza we Wrocławiu

Summary

A unilateral amendment of employment conditions qualifies as 'redundancy' within Directive 98/59 on collective redundancies, if the employee's refusal entails the termination of the employment contract.

Facts

Halina Socha, Dorota Olejnik and Anna Skomra were employed by A. Falkiewicz Specialist Hospital under indefinite contracts. In August 2015, the hospital notified the employees of some amendments to their pay and conditions, in particular to the period for obtaining a length of service award. The hospital made it clear that failure to accept the amendment could result in the termination of their employment. The underlying reason for the amendments was that the hospital had been operating at a loss for several years. The amendments were intended to save the hospital from liquidation. The three employees refused to accept the changes and so their employment contracts were terminated. In doing this, the hospital failed to apply the procedure set out in the Law of 2003 (the '2003 Law').

Questions put to the ECJ

The District Court for Wrocław City Centre was unclear whether the hospital had genuinely intended to amend the employment contracts or to terminate them while avoiding being subject to the provisions of Directive 98/59. The court was also uncertain whether the unilateral amendment of the contractual terms constituted a 'redundancy' within the meaning of Article 1 of Directive 98/59. In these circumstances, the court decided to refer the following question to the Court of Justice:

> "Must Articles 1(1) and 2 of Directive 98/59, read in conjunction with the principle of the effectiveness of law, be interpreted as meaning that an employer who

doi: 10.5553/EELC/187791072017002004018