



Press and Information

Court of Justice of the European Union

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Judgment in Case C-132/11

Tyrolean Airways Tiroler Luftfahrt Gesellschaft mbH v Betriebsrat Bord der
Tyrolean Airways Tiroler Luftfahrt Gesellschaft mbH

Failure to take into account professional experience acquired with another company in the same group does not constitute discrimination on grounds of age

An employer is not obliged to take into account, for the remuneration of his employees, professional experience acquired by them with such a company

Directive 2000/78/EC¹ prohibits any discrimination, direct or indirect, against workers on grounds of age. Indirect discrimination on grounds of age occurs where an apparently neutral criterion would put persons having a particular age at a particular disadvantage compared with other persons².

The airline Tyrolean Airways and its works council (Betriebsrat) disagree as to whether account should be taken, for the grading of that airline's cabin crew in employment categories and, consequently, for the determination of salaries, of periods of service completed by those staff members with two other subsidiaries in the Austrian Airlines group, namely Austrian Airlines and Lauda Air. The Tyrolean Airways collective agreement provides that advancement from category A to the higher category B is to occur on the completion of three years of service, that is, three years after the recruitment of the employee as a member of the cabin crew. The employment contracts normally stipulate that the date of commencement of employment, whenever relevant to the application of any rule or entitlement, is to mean the date of commencement of employment with Tyrolean Airways.

In this context, the Oberlandesgericht Innsbruck (Higher Regional Court, Innsbruck, Austria) wanted to know whether Directive 2000/78 precludes a clause of a collective agreement which takes into account, for the purposes of grading in employment categories and, therefore, determination of the level of pay, only the professional experience acquired as a cabin crew member of a specific airline belonging to a group of companies, while excluding identical experience acquired in the service of another airline belonging to the same group.

In its judgment delivered today, the Court of Justice answered this question in the negative. A clause such as that contained in the Tyrolean Airways collective agreement does not establish a difference of treatment on grounds of age.

While such a clause is likely to entail a difference in treatment according to the date of recruitment by the employer concerned, such a difference is not, directly or indirectly, based on age or on an event linked to age. It is the experience which may have been acquired by a cabin crew member with another airline in the same group of companies which is not taken into account for grading, irrespective of the age of that staff member at the time of his or her recruitment. That clause is therefore based on a criterion which is neither inextricably nor indirectly linked to the age of employees, even if it is conceivable that, in some individual cases, a consequence of the application of the criterion at issue may be that the time of advancement of the cabin crew members concerned from employment category A to employment category B is at a later age than the time of advancement of staff members who have acquired equivalent experience with Tyrolean Airways.

¹ Council Directive of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16).

² Unless that criterion is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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