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Press and Information

Advocate General's Opinion in Case C-485/20
HR Rail

Employment of people with disabilities: according to Advocate General Rantos, an employer is obliged, as a matter of reasonable accommodation, to reassign a worker who has become unfit for his or her job to another job where he or she has the necessary skill, ability and availability, and where such a measure does not impose a disproportionate burden on the employer

Those accommodations are a preventive measure to maintain the employment of people with disabilities and apply to workers on probation as part of their recruitment

The purpose of the public limited company HR Rail is to select and recruit the statutory and non-statutory staff needed to carry out the tasks of Infrabel SA and the Société nationale des chemins de fer belges (SNCB). It recruited a maintenance technician specialising in track maintenance, who began his traineeship with Infrabel in November 2016. In December 2017, that trainee technician (the technician) was diagnosed with a heart problem requiring the fitting of a pacemaker, a device sensitive to the electromagnetic fields emitted, in particular, by the railways, so that he was recognised as disabled by the Federal Public Service Social Security (Belgium).

Following a medical examination, HR Rail declared him definitively unfit to perform the duties for which he had been recruited and assigned him to the post of storekeeper within Infrabel. On 26 September 2018, the relevant HR Rail Head of Department Advisor informed the technician of his dismissal on 30 September 2018, with a five-year ban on recruitment to the grade in which he had been recruited.

On 26 October 2018, the Director General of HR Rail informed the technician that the probationary period of a staff member who is declared totally and definitively unfit is terminated when he is no longer in a position to carry out the duties associated with his grade. The technician applied to the Conseil d'État (Belgium) to have the decision to dismiss him annulled.

That national court asks the Court whether, in such a situation, rather than dismissing that technician, the employer was obliged, under the Employment Equality Directive[1] and in order to avoid discrimination on the grounds of disability, to assign him to another job for which he was competent, capable and available.

In his Opinion delivered today, Advocate General Athanasios Rantos proposes that the Court reply to the Conseil d'État that where a worker, **including one completing a probationary period in the context of his or her recruitment**, becomes permanently unfit, by reason of the onset of a disability, to occupy the post to which he has been assigned within the undertaking, his employer is obliged, as a matter of reasonable accommodation under Union law, **to reassign him to another post** where he has the necessary skill, ability and availability, and where such reassignment does not impose a disproportionate burden on the employer.

The Advocate General points out, firstly, that the purpose of Directive 2000/78 is to establish a general framework for ensuring equal treatment in employment and occupation by affording

[1] Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16).

effective protection against discrimination on any of the grounds referred to in Article 1, including disability.

The Advocate General considers that the technician concerned has suffered a lasting limitation of his capacity, resulting from physical impairment, which in interaction with various barriers may hinder his full and effective participation in working life on an equal basis with other workers, and that he must be classified as a person with a disability within the meaning of Directive 2000/78. He adds that a person completing a traineeship as part of his recruitment is in a **more vulnerable situation** than a person who has a stable job, and that it is more difficult for him to find another job in the event of a disability rendering him unfit for the job for which he was recruited, especially if he is at the beginning of his professional career. It therefore seems **justified to ensure the protection of such a trainee against discrimination** and the Advocate General stresses in that regard that, in the context of his traineeship, the technician was carrying out a real and effective paid activity, for and under the direction of an employer, and that he should therefore be classified as a worker within the meaning of Union law.

As regards, next, the concept of «reasonable accommodation», the Advocate General recalls that the purpose of such accommodation is to achieve **a fair balance** between the needs of people with disabilities and those of the employer. He points out that the provision of the directive in question **does not limit the measures adopted to the position occupied by the disabled worker alone**. On the contrary, access to a job and the provision of training leave open the possibility of **assignment to another job**. The Advocate General states that, in accordance with the Court's case-law, the concept of «reasonable accommodation» must be defined broadly and must be understood as aiming at **the elimination of the various barriers which hinder the full and effective participation of people with disabilities in working life on an equal basis with other workers**.

According to the Advocate General, as far as possible, people with disabilities should be kept in employment rather than being dismissed for unfitness, which should only be a last resort.

The Advocate General adds that the reassignment of a disabled worker to another job within the undertaking presupposes that he is competent, capable and available to perform the essential functions of that new job. Furthermore, reasonable accommodation measures **must not impose a disproportionate burden on the employer**, taking into account, inter alia, the financial and other costs involved, the size and financial resources of the organisation or undertaking, and the possibility of obtaining public funding or other assistance. In that regard, the Advocate General states that the possibility of assigning a disabled worker to another job refers to the situation in which there is at least one vacant post which that worker is capable of occupying, so as not to impose a disproportionate burden on the employer.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

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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