



NEWS REPORT

Date: 16 May 2012
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Title: Labour Court appeal withdrawn against Equality Tribunal decision finding age discrimination in redundancy packages
Country: Ireland
Context
Issue at stake: The Equality Tribunal decision stands following withdrawal of employer's appeal.
Ground of discrimination: Age
Source: National court decision - Equality Tribunal DEC-E2011-177 Rose Kelly and Margaret Masterson (deceased) v Chivers Ireland Ltd
Field: Employment
Legislative provisions: Section 34 (3) (d) of the Employment Equality Acts 1998 – 2011

Content

Employer withdraws appeal against Equality Tribunal finding that redundancy packages caused age discrimination

Case/law: This original case (Equality Tribunal DEC-E2011-177 Rose Kelly and Margaret Masterson (deceased) v Chivers Ireland Ltd) concerned an age discrimination case taken by the applicants against jam makers Chivers Ireland. The applicants claimed they had been discriminated against contrary to Section 8 of the Employment Equality Acts 1998-2011, as they were both over 60 and the redundancy package being offered favoured those under 60 years of age. The case was taken to the Equality Tribunal where the Tribunal found that the applicants had been discriminated against. It was subsequently appealed to the Labour Court by the employer.

In the original case, finding in favour of the complainant, the Equality Officer noted that the Irish equality Acts provide an exemption for employers to specifically and directly discriminate on the basis of age. Section 34 (3) (d) of the Employment Equality Acts 1998 – 2011 allows employers to give a different rate of severance payment to employees to take account between the age of employees on leaving the employment and their compulsory retirement ages. However, she pointed out that the Acts, inter alia, implement the Framework Directive on equal treatment in employment and occupation, and said that domestic legislation must be interpreted in light of the wording and purpose of European legislation; where there is a conflict between both, European legislation take precedence. Article 6 of the Directive allows Member States to apply differences of treatment on grounds of age but within the



context of national law, these must be objectively and reasonably justified by a legitimate aim, including legitimate employment policy, labour market and vocational training objectives, and the means of achieving that aim must be appropriate and necessary. The question arose before the Equality Tribunal whether the distinction between redundancy packages for those over 60 and for those under 60 was capable of being objectively and reasonably justified. The Equality Officer found that the even if the company's objective in discriminating between the redundancy packages of (keeping costs down and avoiding windfall payments to employees close to retirement) are legitimate aims, where this justification clearly fails is that the means chosen to achieve these aims were not appropriate or necessary. She suggested that "if the employer had used a tapered scheme based on income forgone that their justification would be less questionable."

Decision of the Court: The decision was appealed by the employer to the Labour Court, but before judgment could be given there it was announced that the respondents had withdrawn their appeal. Therefore, the decision of the Equality Tribunal stands, together with the order of the Equality Officer which stated that there should be equal treatment with regard to pay and redundancy packages for those over the age of 60.

Internet link source and additional information:

<http://www.pila.ie/bulletin/may-2012/16-may-2012/equality-tribunal-says-redundancy-packages-caused-age-discrimination/>