



## European network of legal experts in gender equality and non-discrimination

### NEWS REPORT

<b>Country:</b>	Belgium
<b>Title:</b>	Employer's offensive emails on the religion of the employee: no discrimination
<b>Date:</b>	22 July 2015
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<b><u>Context</u></b>	
<b>Issue at stake:</b>	On 17 March 2015, the Labour Tribunal of Antwerp ruled that an employer who sent offensive emails on the religion of his employee did not discriminate against him. According to the Tribunal, the applicant failed to prove that he had been treated differently from the other employees because of the offensive emails.
<b>Ground of discrimination:</b>	Religion/belief
<b>Source:</b>	Labour Tribunal of Antwerp
<b>Field:</b>	Employment
<b>Applicable law:</b>	<ul style="list-style-type: none"><li>- articles 3, 4, 5, 7, 8, 10, 28 – 30 of the Federal Act of 10 May 2007 pertaining to fight certain forms of discrimination (General Anti-discrimination Federal Act)</li><li>- Directive Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation</li></ul>

### Content

**Case:** The case concerns a Muslim man M. S. (henceforth: the applicant) who worked in the company C. G. T. (henceforth: the defendant or the company) since 15 August 2008. On 23 July 2013, the company laid off the applicant with six months' notice. The applicant was required to continue to work during this period.

At the end of July, the applicant was absent due to illness. In August, the company did not pay his salary because the applicant allegedly had not brought a certificate medical within the two days of his absence. The company also refused to pay the salary of September. Furthermore, tensions arose between the two parties concerning the applicant's legal days off. The company did not want the applicant to take days off to look for a job. It claimed that the applicant's absences were unjustified.

In this context, the company wrote offensive emails to the applicant relating to his religion:

- On 9 August 2013, following one of the applicant's periods of absence, the company asked him the question: "vandaag zuikerfeest vermoedelijk?" (probably a sugar party today?) by reference to the applicant's religion

- On 12 August 2013, the company wrote another email to the applicant saying that “zuikerfeestjes of ander gezeik geld niet als wettige afwezigheid” (“sugar parties or other crap cannot be considered as justified absences”)
- On 6 September 2013, the company replied to an applicant’s email concerning his legal days off: “M. nogmaals sollicitatie dagen zijn om te solliciteren niet om vrijdag naar een of ander moskee op een tapijtje te gaan liggen of iets dergelijks he man” (“the purpose of legal days off is to look for a job and is not to go to the mosque to lie on a carpet or something like that”)

Following the last email, the applicant decided to terminate the contract immediately on serious grounds (“dringende reden”/ “Motifs graves”) and brought an action before the Labour Court of Antwerp. He asked for compensation for damages (corresponding to the rest of the notice period i.e. 4 months and 21 days). Moreover, he claimed that he had been discriminated against on the ground of his beliefs and asked the Court to convict the company to pay him 17.065,30 euro compensation for non-pecuniary damages.

**Decision of the Court:** In the ruling of 17 March 2015, the Labour Tribunal ruled that, given the circumstances and the offensive emails sent to the applicant, the latter had legally terminated the contract on serious grounds. The Tribunal convicted the defendant to pay damages (4 months and 21 days of salary) to the applicant.

The Tribunal also dealt with the question of discrimination. Firstly, it extensively recalled the Belgian anti-discrimination law, the concepts of direct and indirect discrimination as well as the shift of the burden of proof. As a reminder, the applicant seeking damages in compensation for alleged discrimination is required to produce some evidence which could lead the judge to presume that discrimination has occurred, thus obliging the defendant to demonstrate that, contrary to that presumption, there has been no discrimination.

*In casu*, the Tribunal ruled that the applicant had established such a presumption by providing the offensive emails. In this context, the jurisdiction considered that the days off of the applicant had eventually been taken into account by the company – even though tensions arose – and that his salaries of July, August and September had been paid – even though it occurred with some delay. The Tribunal acknowledged that the company did not bring any consistent explanations about this delay.

On this basis, the jurisdiction ruled that the applicant did not bring the evidence that he had been treated differently from the other employees of the company and that he had been discriminated against on the ground of his religion because of the emails.

**Key points of analysis:**

- Employer’s offensive and disrespectful emails on the religion of the employee do not constitute a discrimination
- The applicant did not prove that he has been treated differently from the other employees of the company

**Internet link source:** The judgment is available in Flemish on the Website of the Inter-federal Centre for equal opportunities on the following link:

<http://www.diversite.be/tribunal-du-travail-danvers-17-mars-2015>.