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### NEWS REPORT

**Country:** Denmark  
**Title:** Softer obligation to establish reasonable accommodation for a small firm  
**Date:** 27 October 2015  
**Expert:** Pia Justesen

#### Context

**Issue at stake:** A small firm's "softened" obligation to establish reasonable accommodation

**Ground of discrimination:** Disability

**Source:** National equality body: Board of Equal Treatment Decision No. 125/2015 of 26 August 2015

**Field:** Employment

**Applicable law:** Section 1, 2, 2a and 7a of the Act on the Prohibition of Discrimination in the Labour Market etc.

#### Content

**Case:** "A" was a fulltime electrician in a small firm with 8 employees. All electricians had their own company vehicle. On March 2012 during work hours, "A" was run into and the car accident caused a whiplash in his neck. He worked fulltime after the accident. During an appraisal in May 2012, "A" explained that his injuries were under control and that he did not wish to work part-time. During an appraisal in November 2013, "A" explained that his work-day was a bit stressful but he declined an offer from the employer to work part-time. On December 5, 2013 the employer established a new electronic mileage log-book in "A"'s company vehicle.

From December 5, 2013 "A" was absent because of sickness. In January 2014, "A"'s doctor and the municipal job centre evaluated that A could not return to his previous fulltime position because of his chronic and lasting injury. "A" had difficulty concentrating, had constant headache and a low stress threshold. The employer offered another position in the stockroom, which would be, however, without any customer contact and it would also be a part-time position. "A" wanted to stay in a job where he would keep his contact with customers. "A" was dismissed on April 23, 2014 and complained to the Board that he had been discriminated against on account of his disability.

**Decision of the Court:** The Board referred to the definition of disability in CJEU C-335/2011 (*Ring*) and C-377/2011 (*Skouboe Werge*) and stated that "A"'s whiplash in combination with a previous neck injury had caused a significant and lasting impairment, which hindered his full and effective participation in the working life on an equal basis with other employees.

The Board then affirmed that the employer was obligated to provide reasonable

accommodation, unless such measures would impose a disproportionate burden on the employer. The Board referred to Section 21 of the Preamble of Directive 2000/78 and stated that to determine whether the measures in question would give rise to a disproportionate burden, particular account should be taken in to the financial and other costs entailed, the scale and financial resources of the organization or undertaking and the possibility of obtaining public funding or any other assistance.

On that basis the Board concluded that the employer had offered reasonable accommodation for "A" to be able to continue his work as an electrician. The Board emphasized that the employer had offered "A" reduced work hours as well as work in the stockroom without customer relations. It was part of the Board's assessment that the employer was a small one-man business that often received jobs from customers to be solved from day to day. Thus the redeployment of an electrician with many years of experience and specialisation to fixed and scheduled work-days with low stress levels and minimal interference would be unreasonable.

In conclusion, the Board did not decide in favour of "A".

**Key points of analysis:** The decision illustrates that the Board when assessing the reasonableness of accommodations takes into consideration if the employer is a small one-man business.

**Internet link source:**

<http://www.ligebehandlingsnaevnet.dk/naevnsdatabase/afgoerelse.aspx?aid=1700&type=Afgoerelse> Last accessed 21/10/2015.