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NEWS REPORT

Country:	France
Title:	Decisions relating to 832 Migrant workers VS SNCF, Paris Labor court, 21 /09/2015, RG N°F 05/12309 and following
Date:	15 February 2016
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<u>Context</u>	
Issue at stake:	Statutory discrimination on the ground of nationality, i.e. indirect discrimination on the ground of origin, throughout plaintiffs' career Race/ethnic origin
Ground of discrimination:	
Source:	National court decision
Field:	Employment
Applicable law:	Article 14 ECHR, ILO Convention n° 111, Articles L1132-1 of and following of the Labour Code

Content

Case development:

In the 70's, SNCF (French public Railway service) hired 2000 Moroccan employees through a twelve months recruiting process, to fill lower execution jobs. However they were not hired in the same conditions as the French employees, the regulatory status of the SNCF imposing a requirement of French Nationality to be hired under the Permanent Employee Status.

Therefore, Moroccan employees were hired as contractual agents under a specific status "PS25", which was used for temporary employees and for persons holding a list of jobs that were not covered by the statutory regime. Plaintiffs spent all of their careers at SNCF. Their specific employment conditions were less favourable than those applicable to French Permanent Employees: they did not have access to career evolution beyond a certain level of lower execution jobs (when only 2% of French employees holding the permanent status ended their career at these levels), these jobs were more strenuous physically (which had an impact on their physical condition at retirement), lower salary evolutions, less favourable overtime conditions and less favourable retirement conditions in term of period of service and age requirements for access to full pension, financial conditions of retirement and financial conditions of their widows pension rights (an average of 300€ per month). If half became French citizens, only 113 of the 2000 Moroccan employees obtained permanent status, all the others kept the PS25 status. Plaintiffs filed suit after retirement, claiming damages for their career and retirement conditions.

SNCF argued that the various legal instruments prohibiting discrimination on the ground of origin were not in force in France at the time of the formation of the contract and during the period covering part of its execution, that article 14 ECHR could not find

application and that Plaintiffs claims were time barred after a period of 30 years after the signature of the contracts. Furthermore it claimed that Plaintiffs could not be held to be in a comparable situation as employees hired under the Permanent Employee Status because they did not exercise the same jobs, and that the requirement of French nationality was authorised by rules applicable to requirements related to the exercise of national sovereignty, and that therefore it could not give rise to the liability of SNCF.

Decision of the Court:

The prescription applicable was 30 years at the time the claim was filed. Which only starts running once the plaintiff is aware of the damage. When damages claimed relate to a succession of situations over time, it starts running once the situations are terminated, i.e. at the time of interruption of the employment contract, and retirement.

As regards to the International Conventions, France ratified the ILO convention no. 111 in 1981, and the prohibition of discrimination in the labour Code was only adopted in 1982. The Franco Mediterranean Convention entered into force in 2000. Therefore they will only be applicable for the period after they entered into force. It is worth noting that the Court found that article 14 ECHR was applicable as well as the principle of anti-discrimination provided by EU law. In addition, the employment contract provided for a provision of equal remuneration (covering accessory advantages) with French employees holding similar employment.

The court holds that jobs covered by Employment Status PS25 were comparable to those held by French employees but were only designated otherwise in order to employ foreign employees under another employment status and meet the formal requirements of the two employment status. SNCF could not prove that the activities of the French employees holding comparable jobs related to exercise of sovereignty justifying a distinct status reserved to French nationals.

Plaintiffs' employment status constitutes indirect discrimination on the ground of origin. Claims were admitted, except in a few cases, and plaintiffs' damages range from EUR 150 000 to EUR 250 000. SNCF has appealed before the Paris Court of Appeal.

Key points of analysis:

The legal justifications of the labour court decisions are very elliptic and do not explicitly deal with all the legal arguments relating to the applicability of discrimination law of the period. However the partial ruling on damages, might be deemed to cover the period after 1981, when ILO Convention 111 was ratified by France. The Court of Appeal's discussion of the same legal arguments should hold some important precedents as regards the legal justification of employment requirements of French nationals and the prohibition of discrimination in the career before 1981.

Internet link source:

Not available at the moment of reporting.