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NEWS REPORT

Country:	Denmark
Title:	Harassment because of ethnic origin
Date:	12 April 2018
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<u>Context</u>	
Issue at stake:	The responsibility of the manager to guarantee a working environment without harassment because of ethnic origin
Ground of discrimination:	Ethnic origin
Source:	Board of Equal Treatment, Decision No. 9077 of 11 January 2018
Field:	Employment
Applicable law:	Section 1 and 2 of the of the Act on Prohibition of Discrimination in the Labour Market etc.

Content

Case: The complainant, in this case, is a pedagogue of Turkish origin who had been a pedagogue since 2005 and had worked in the same nursery school for nearly 5 years. A new child with a hearing impairment was assigned to the room where the pedagogue worked. Shortly after the child started in the nursery school, his parents complained to the nursery school manager about the fact that their child was assigned to a room where one of the pedagogues did not speak Danish in a correct manner and therefore could not fulfil their son's need for role models when it comes to language. The parents kept complaining about the complainant's lack of correct Danish language to the manager of the nursing school.

The pedagogue was not informed about the complaints and about the accommodations that the manager initiated to deal with the criticism from the parents. Among other things, the manager had told the parents about the pedagogue's working hours, with the result that the parents picked up their child right before the pedagogue was going to be the only pedagogue in the room. The pedagogue only heard about these things from other colleagues. Half a year after the child had started in the nursery school, the pedagogue went on sick leave. During the sickness period, the manager decided to move her to another room to limit her daily confrontations with the parents. The pedagogue did not agree with the move and ended up being dismissed because of sickness absence. She filed a complaint with the Board of Equal Treatment and argued that her manager had accommodated the wishes of the parents instead of protecting her as an employee. She argued that the constant criticism from the parents and lack of support from her manager had resulted in insecurity, stress, and depression. She claimed that she had been harassed because of her ethnic origin.

The decision of the Board: The Board explained that harassment within the labour market is deemed to be discrimination when conduct related to ethnic origin (like complaining about lack of correct Danish language) takes place with the purpose or effect

of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment for the person concerned. The Board also underlined that the employer or manager is obliged to protect employees against harassment, including harassment committed by other employees or customers.

The Board stated that the complainant's sickness leading to her dismissal was a result of the conflict with the parents as well as her experience of not being supported by her manager. During her sickness, she was moved to another room against her will, which she experienced as a clear accommodation of the parents only. Based on these circumstances of the case, including the fact that the manager in the process had not had any dialogue with the complainant about the parents and the various accommodations, the Board concluded that the manager had not done sufficiently to secure the pedagogue a working environment without harassment. Thus, the manager could not prove that the principle of equal treatment had not been violated and the complainant received a compensation of DKK 250.000 corresponding to 9 months of salary due to the discrimination because of ethnic origin.

Key points of analysis: There is limited case law on harassment within employment in Denmark. This decision by the Board of Equal Treatment clarifies the obligation of employers to secure a working environment without harassment because of issues related to ethnic origin, like capabilities within the Danish language.

Internet link source: <https://www.retsinformation.dk/Forms/R0710.aspx?id=198666>.