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FLASH REPORT

Country:	Italy
Title:	A case of gender discrimination in redundancy procedures
Date:	2 June 2019
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<u>Context</u>	
Issue at stake:	Limits to the dismissal of female employees in collective redundancy procedures and the respective remedies
Grounds of discrimination:	Sex
Field of application:	Employment
Source:	National court decision
Applicable law:	Article 5 para 2 of Act N. 223 of 23 July 1991, Article 18 of Act n. 300 of 20 May 1970, on the Worker's Statute

Content

Case law: A female employee was dismissed by a company as part of a redundancy procedure during which a large number of women were dismissed. She brought a case of indirect discrimination to the court, and complained that her dismissal was unfair as the percentage of dismissed women was higher than what is allowed by law regarding her job classification. In fact, the other two male employees performing the same job, had not been dismissed.

Decision of the court: The Tribunal of Palermo ruled on 10 May 2018¹ that the dismissal was unfair as it infringed Article 5 Paragraph 2 of the Act on Collective Redundancy Procedures.² This Article provides that, in case of collective redundancy procedures, there is a cap to the amount of female employees that may be dismissed by a company employing a certain percentage of female workers to perform the same job. In this case the judge ruled that the percentage of female dismissals was too high, regarding the specific job classification. In fact, if the company had respected Article 5 Paragraph 2, the plaintiff would not have been dismissed. The judge deemed the dismissal to be null and void, and applied the special remedy of reinstatement.

Key points of analysis: Following the reasoning of the Tribunal, Article 5 Paragraph 2 of the workers' statute regarding redundancy procedures is not a criterion on the basis of which workers can be chosen to be dismissed (these criteria are fixed by Article 5 Paragraph 1 or by collective agreements), instead it is a real ban on dismissal aimed at tackling gender discrimination. It states an absolute presumption of the discriminatory nature of dismissal and the plaintiff does not need to prove it. This interpretation has to be appreciated as it clearly points out the *ratio* of the ban on dismissal, allowing the enforcement of the stronger remedy of reinstatement. Article 18 of the Worker's Statute provides for this remedy of reinstatement for individual discriminatory dismissals. This

¹ Commented by Cataudella M.C., in *Orientamenti di giurisprudenza del lavoro* nn. 2018, p. 572.

² Act No. 223, 23 July 1991, Workers' statute. published OJ n. 175, 27 July 1991, o.s. n. 43.

includes the payment of a minimum of five month salary, plus the reimbursement of possible further damages and welfare contributions from the dismissal until the reinstatement. Alternatively, with regard to the latter, the worker can choose to ask for an allowance of 15 month salary to be reckoned on the last total remuneration, which is not subject to social contributions, in addition to the reimbursement of damages mentioned above.

Internet link source: Art. 5 of Act N. 223 of 23 July 1991 on collective redundancy procedures, published on OJ n. 175 of 27 July 1991, o.s. n. 43,
https://www.normattiva.it/atto/caricaDettaglioAtto?atto.dataPubblicazioneGazzetta=1991-07-27&atto.codiceRedazionale=091G0141&queryString=%3FmeseProvvedimento%3D%26formType%3Dricerca_semplice%26numeroArticolo%3D%26numeroProvvedimento%3D223%26testo%3D%26annoProvvedimento%3D1991%26giornoProvvedimento%3D¤tPage=1,

Art. 18 of Act. N. 300 of 20 May 1970, on the Workers' Statute, published on OJ n. 131 of 27 May 1970,
https://www.normattiva.it/atto/caricaDettaglioAtto?atto.dataPubblicazioneGazzetta=1970-05-27&atto.codiceRedazionale=070U0300&queryString=%3FmeseProvvedimento%3D%26formType%3Dricerca_semplice%26numeroArticolo%3D%26numeroProvvedimento%3D300%26testo%3D%26annoProvvedimento%3D1970%26giornoProvvedimento%3D¤tPage=1.