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FLASH REPORT

Country:	Denmark
Title:	Half-time – half compensation
Date:	14 September 2020
Expert:	Pia Justesen
Context	
Issue at stake:	Dismissal and level of compensation
Grounds of discrimination:	Disability
Field of application:	Employment
Source:	National court decision
Applicable law:	Sections 1, 2(1), 2a, 7, and 7a of the Act on Prohibition of Discrimination in the Labour Market etc.

Content

Case: The case dealt with a full-time teacher who was violently pushed in her back by a student in December 2014. Following the work-related injury, the teacher was periodically on sick leave until she went on maternity leave in 2015. Coming back from her maternity leave, the teacher went on part-time sick leave again because of the physical and cognitive impairments she had sustained in 2014.

The local municipality tried to accommodate her needs and make things work for six months after she came back from her maternity leave. However, the teacher ended up being dismissed from her full-time position in January 2017. The municipality argued that it felt compelled to dismiss her because of a number of operational difficulties.

The teacher filed a complaint to the Board of Equal Treatment arguing that the municipality had failed to establish reasonable accommodations and that she had been discriminated against because of disability. The Board of Equal Treatment awarded a financial compensation equal to nine months' full salary.¹ The municipality denied to pay and the case therefore came before the city court of Roskilde.

Decision of the court: The city court stated that the work injury, according to a specialist doctor's statement, had resulted in the teacher experiencing difficulties in concentrating, memory problems, fatigue and difficulties in reading and writing. Following this, the court pronounced: 'The court does not understand that a person with such a disorder and impairments can be competent, suitable or available for a teaching job.'

On the basis of the specific circumstances of the case, the court nevertheless found that the municipality had not proved that the teacher could not be successful in a part-time position had she received the right accommodations. The court therefore concluded that the teacher was entitled to compensation according to Section 7 of the Act on Prohibition

¹ Board of Equal Treatment, Decision No. 9399 of 23 May 2018. See: <https://www.retsinformation.dk/eli/retsinfo/2018/9399>.

of Discrimination in the Labour Market etc. because of a violation of Section 2(1) of the Act. In other words, the court found that there had been discrimination on the ground of disability.

Finally, the court argued that the teacher would not have been able to hold more than a part-time position and the court therefore concluded that the compensation had to be set to nine months' half salary. The city court thus reduced by half the compensation awarded by the Equal Treatment Board.²

Key points of analysis: Generally, if a person is dismissed from a full-time position, the compensation for unlawful discrimination will be based on a full-time salary. This ruling illustrates that specific circumstances may justify a change in this approach. It also illustrates that when determining the level of compensation, the court may emphasise the number of hours that the employee is actually capable of working at the time of dismissal – and not the conditions and hours of employment in the contract.

² City Court of Roskilde, Case BS-33137/2018-ROS of 7 May 2020.