

SUMMARY

ECJ 27 February 2014, case C-588/12 (Lyreco Belgium N.V. - v - Sophie Rogiers), Working time and leave, Maternity and parental leave

Facts

Ms Rogiers was a full-time employee. She took 50% parental leave starting 27 April 2009. On that same day her employer Lyreco dismissed her, the employment contract ending on 31 August 2009. The reasons for her dismissal were (i) lack of work and (ii) her refusal to accept another position.

Belgian law, as it stood at the time, provided that in the event of parental leave, the employer may not terminate the employment relationship save for a 'compelling reason' or for a reason that has been acknowledged by a court to constitute a 'sufficient reason' unconnected with the (request to be given) parental leave. This law transposes the Framework Agreement on parental leave annexed to Directive 96/39 (as amended). Belgian law also provides that an employer that terminates the employment contract of an employee in the event of the latter's (request for) parental leave, in the absence of a compelling or sufficient reason, shall pay the worker a "fixed-sum of protective compensation" equal to six months' salary.

National proceedings

Ms Rogiers brought an action. The court found that she had been dismissed without a compelling or sufficient reason. It ordered Lyreco to pay Ms Rogiers a protective award equalling six months' salary at 50%. Lyreco appealed and Ms Rogiers cross-appealed. The Court of Appeal agreed with the public prosecutor's opinion on the matter that the manner in which the first instance court applied the law was "absurd", as it would mean that an employee taking 100% parental leave would not be entitled to any protective award at all (six

months' salary at 0% being nil). However, the Court of Appeal found it necessary to ask the ECJ for clarification, because it was uncertain whether the ECJ's judgment of 22 October 2009 in the *Meerts* case (case C-116/08, reported in EELC 2010-1) could be applied to a protective award. In *Meerts*, the ECJ held that the salary owed during, or in lieu of, the notice period must be calculated on the basis of the salary the employee earned before his or her parental leave started.

ECJ's findings

Clause 2.4 of the Framework Agreement ("Member States shall take the necessary measures to protect workers against dismissal on the grounds of an application for, or the taking of, parental leave") may not be interpreted restrictively (§ 30-36).

The Belgian legislation entitling workers on parental leave who have been dismissed without a compelling or sufficient reason to a protective award equivalent to six months' salary may be classified as a 'measure' within the meaning of clause 2.4. However, that protective measure would lose a great part of its effectiveness if it meant that the award was to be calculated on the basis of the worker's salary during parental leave (§ 37-38).

Moreover, such an interpretation would not sit well with clause 2.6 of the Framework Agreement, which provides that "Rights acquired or in the process of being acquired by the worker on the date on which parental leave starts shall be maintained as they stand until the end of the parental leave" (§ 42-45).

Ruling

On a proper construction of clause 2.4 of the Framework Agreement on parental leave, which is set out in the annex to Council Directive 96/34/EC, read in the light both of the objectives of that Framework Agreement and of clause 2.6 thereof, it is contrary to that provision that the fixed-sum protective award payable to a worker on part-time parental leave (where the employer unilaterally and without compelling or sufficient reason terminates that worker's full-time contract of indefinite duration) should be determined on the basis of the reduced salary earned by that worker at the date of the dismissal.

Creator: European Court of Justice (ECJ)

Verdict at: 2014-02-27

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