

SUMMARY

Case C-482/16. Age discrimination

Is EU law as it currently stands, in particular the general principle in EU law of equal treatment, the general principle of the prohibition of discrimination on grounds of age within the meaning of Article 6(3) TEU and Article 21 of the Charter of Fundamental Rights, the prohibition of discrimination in connection with freedom of movement for workers under Article 45 TFEU and Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, to be interpreted as precluding a national rule, such as that at issue in the main proceedings, which for the removal of discrimination on grounds of age identified by the Court of Justice of the European Union in the judgment in *Gotthard Starjakob* (namely the failure to take into account previous periods of service completed before the age of 18 for ÖBB (Austrian Federal Railways) employees) takes into account a small number of ÖBB employees discriminated against under the old rules with a period of service completed before the age of 18 (but only those employees who actually worked for the ÖBB or for similar public railway infrastructure undertakings or railway undertakings in the EU, in the EEA and in those countries connected with the EU by association or free movement arrangements), but does not take into account, for the vast majority of ÖBB employees originally discriminated against, all other periods of service occurring before the age of 18, in particular including those not taken into account which enabled the ÖBB employees concerned better to perform their duties, such as, for example, previous periods of service with private and other public transport companies or infrastructure companies by which the infrastructure used by the employer (rolling stock, rail construction, line construction, electrical and electronic equipment, signal boxes, station construction and the like) is produced, distributed or maintained, or similar undertakings, and therefore in reality ultimately maintains a difference in treatment based on age for the vast majority of the ÖBB employees discriminated against under the old rules?

Does the conduct of a Member State, which is the sole shareholder of a rail transport undertaking and the de facto employer of persons employed by that undertaking, where the rights of those employees founded on EU law to additional pay on account of discrimination,

inter alia, on the basis of age, which has been recognised by several judgments of the Court of Justice of the European Union (David Hütter, Siegfried Pohl, Gotthard Starjakob), as well as by a number of national court rulings, including the (Austrian) Supreme Court (Case 8 ObA 11/15y) and which the Member State sought to remove for purely fiscal reasons through retroactive changes to the law in the years 2011 and 2015, meet the conditions recognised in the case-law of the Court of Justice governing the liability of that Member State under EU law, in particular the condition that there be a sufficiently serious breach of EU law, in particular of Article 2(1), read in conjunction with Article 1, of Directive 2000/78/EC as interpreted in a number of judgments of the Court of Justice (David Hütter, Siegfried Pohl, Gotthard Starjakob)?

Creator: European Court of Justice (ECJ)

Verdict at: 2016-09-07

Case number: C-482/16