

## **Lisa Jacqueline Grant v South-West Trains Ltd, Case C-249/96 [1998] ECR I-621**

### **1) Reference Details**

Jurisdiction: European Court of Justice (ECJ), reference for a preliminary ruling from the Southampton Employment Tribunal of the United Kingdom

Date of Decision: 17 February 1998

Link to full case:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61996J0249:EN:HTML>

### **2) Facts**

Ms Grant was employed by South West Trains. In her contract of employment it was stated that her “spouse and dependant[s]” would be granted travel concessions. At the time of Ms Grant’s employment the concessions included privileged tickets for one common law spouse of the opposite sex “[s]ubject to a statutory declaration being made that that a meaningful relationship has existed for a period of two years or more”. Ms Grant applied for the concessions on 9 January 1995 and made the declaration as required for her female partner. South West Trains refused to grant the concessions on the grounds that unmarried persons were only entitled to concessions if their partner was of the opposite sex.

Ms Grant complained to the Southampton Industrial Tribunal that she had been discriminated against on the grounds of sex in contravention of the Equal Pay Act 1970 and the Equal Treatment Directive. Ms Grant submitted that her predecessor, a man, had been granted the concessions on behalf of his partner after making the required declaration.

The Tribunal was unsure as to whether the treatment complained of was discrimination on the basis of sex (as opposed to sexual orientation) and consequently asked for a preliminary reference from the ECJ.

### **3) Law**

#### *National Law*

- Equal Pay Act 1970

#### *European Community Law*

- Council Directive 76/207/EEC (Equal Treatment Directive)

#### *Case Law*

- Case C-13/94 *P v S and Cornwall County Council*

#### *International Law*

- International Covenant on Civil and Political Rights

### **4) Legal questions referred to the ECJ**

The Tribunal asked the ECJ the following questions:

1. Is it (subject to (6) below) contrary to the principle of equal pay for men and women established by Article 119 of the Treaty establishing the European Community and by Article 1 of Council Directive 75/117 for an employee to be refused travel concessions for an unmarried cohabiting same-sex partner where such concessions are available for spouses or unmarried opposite-sex cohabiting partners of such an employee?
2. For the purposes of Article 119 does "discrimination based on sex" include discrimination based on the employee's sexual orientation?
3. For the purposes of Article 119, does "discrimination based on sex" include discrimination based on the sex of that employee's partner?
4. If the answer to Question (1) is yes, does an employee, to whom such concessions are refused, enjoy a directly enforceable Community right against his employer?
5. Is such a refusal contrary to the provisions of Council Directive 76/207?
6. Is it open to an employer to justify such refusal if he can show (a) that the purpose of the concessions in question is to confer benefits on married partners or partners in an equivalent position to married partners and (b) that relationships between same-sex cohabiting partners have not traditionally been, and are not generally, regarded by society as equivalent to marriage; rather than on the basis of an economic or organisational reason relating to the employment in question?

## **5) Decision**

The ECJ held that the questions asked by the Tribunal were all related and therefore did not answer the questions set individually. The ECJ answered that the refusal of the travel concessions to Ms Grant's partner did not amount to discrimination on the grounds of sex, as the rules concerning its grant applied equally to men and women.

The ECJ explained that the refusal by an employer to allow travel concessions to the person of the same sex with whom a worker has a stable relationship, where such concessions are allowed to a worker's spouse or to the person of the opposite sex with whom a worker has a stable relationship outside marriage, did not constitute discrimination prohibited by Article 119 of the EC Treaty or Council Directive 75/117/EEC.

This was despite the fact that the UN Human Rights Committee, established under Article 28 of the International Convention on Civil and Political Rights, has read the word 'sex' to include sexual orientation.