Carole Louise Webb v EMO Air Cargo (UK) Ltd., Case C-32/93 [1994] QB 718

1) Reference Details

Jurisdiction: European Court of Justice (ECJ), reference for a preliminary ruling from the House of Lords (UK)
Date of Decision: 14 July 1994
Link to full case:

2) Facts

Mrs Webb was employed by EMO Cargo (UK) Ltd (EMO) as cover for an employee, Mrs Stewart, who was soon to be on maternity leave. However, it was envisaged that if Mrs Webb successfully completed a probationary period she would be offered employment when the fixed period she was initially employed for came to an end.

Mrs Webb began working for EMO on 1 July 1987, two weeks later she discovered she was pregnant and immediately informed her employer. Mrs Webb received a dismissal letter on 30 July 1987 from EMO. The letter stated:

“You will recall that at your interview some four weeks ago you were told that the job for which you applied and were given had become available because of one of our employees becoming pregnant. Since you have only now told me that you are also pregnant I have no alternative other than to terminate your employment with our company.”

Mrs Webb complained to an industrial tribunal alleging direct discrimination on the grounds of sex, and in the alternative, indirect discrimination. Mrs Webb was unsuccessful in her claim both at the tribunal and in the Court of Appeal. The case was given leave to appeal to the House of Lords, who referred the case to the ECJ.

3. Law (non exhaustive)

National Law

- Employment Protection (Consolidation) Act 1975
- Sex Discrimination Act 1975

European Community Law


4) Legal questions referred to the ECJ

The case was referred to the ECJ as the House of Lords was uncertain as to the question of how much, if any, weight should be given to the reasons why Mrs Webb was recruited (i.e. to provide cover whilst a permanent employee was on maternity leave).
5) **Decision**

The ECJ held that dismissal in the circumstances experienced by Mrs Webb is contrary to Article 2(1) read with Article 5(1) of Council Directive 76/207/EEC of 9 February 1976 (Equal Treatment Directive). Furthermore it opined that there can be no question of comparing the situation of a woman who finds herself incapable, by reason of pregnancy discovered very shortly after the conclusion of the employment contract, of performing the task for which she was recruited with that of a man similarly incapable for medical or other reasons.

Moreover, the Court went on to say that by reserving to Member States the right to retain or introduce provisions which are intended to protect women in connection with "pregnancy and maternity", Article 2(3) of Directive 76/207/EEC recognises the legitimacy, in terms of the principle of equal treatment, first of protecting a woman's biological condition during and after pregnancy and, second of protecting the special relationship between a woman and her child over the period which follows pregnancy and childbirth.

The Court then set out that in view of the harmful effects which the risk of dismissal may have on the physical and mental state of women who are pregnant, have recently given birth or are breastfeeding, including the particularly serious risk that pregnant women may be prompted voluntarily to terminate their pregnancy, the Community legislature subsequently provided, pursuant to Article 10 of Council Directive 92/85/EEC of 19 October 1992 for special protection to be given to women, by prohibiting dismissal during the period from the beginning of their pregnancy to the end of their maternity leave.

Finally the Court observed that Article 10 of Directive 92/85 provides that there is to be no exception to, or derogation from, the prohibition on the dismissal of pregnant women during that period, save in exceptional cases not connected with their condition.