

Defrenne v Sabena (No.3), C-149/77

1) Reference details

Jurisdiction: Court of Justice of the European Communities (Grand Chamber)

Date of Decision: 15 June 1978

Link to Case:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61977J0149:EN:HTML>

2) Facts

Gabrielle Defrenne was employed as an air hostess by the airline company, *Société Anonyme Belge de Navigation Aérienne Sabena* (hereafter Sabena), which is registered in Brussels.

Ms Defrenne's contract of employment stated that she would have to retire at the age of 40 and it was terminated accordingly when she reached that age. Ms Defrenne brought an action before the Belgian Tribunal du Travail on the basis of Article 119 EEC (prohibiting discrimination between men and women workers) seeking:

1. Compensation for the discrimination that she had suffered as a woman since she had been paid less than her male colleagues doing the same job as air stewards.
2. Supplementary allowance on termination of service representing the difference between the allowance she received when at the time of her retirement and that received by his male colleagues terminating their contract at the same age and with the same seniority.
3. Compensation for the damages suffered by the appellant as regards her pension.

The action was dismissed as unfounded on 17 December 1970 and the decision was upheld on the second and third heads of claim by the *Cour du Travail* on 23 April 1975. In order to decide on the first head, the court referred two preliminary questions to the European Court of Justice (ECJ) which formed the subject of case 43/75 on 8 April 1976. Following that ruling, the *Cour du Travail* awarded the applicant the sum of bfrs 12716 by way of the arrears of the remuneration claimed.

Ms Defrenne lodged an appeal to the *Cour de Cassation* against the *Cour du Travail* in relation to the parts of the claim it had dismissed. The *Cour de Cassation* in turn referred a preliminary question to the ECJ regarding firstly, the field of application of Article 119 of the Treaty and secondly, the existence of a principle in Community law against discrimination of women workers with regards to issues other than remuneration.

3) Law

- Art 119 EEC Treaty (pay discrimination between men and women worker)
- Art 117 EEC (social provisions)
- Council Resolution of 21 January 1974 (programme for social and legislative policies)
- Council Directive no 76/207/EEC (implementation of principle of equal treatment of men and women within the working environment)

4) Legal Arguments

The applicant

Ms Defrenne argued that Article 119 EEC should be interpreted broadly as stating a principle of equal treatment of men and women worker beyond the expressed provision of equal pay for equal work. Accordingly, setting an age limit for women but not men who are employed in the same job would be discriminatory and subsequently prohibited by Article 119 EEC, particularly as such an imposition has pecuniary consequences with regards to both the allowance available on termination of service and pension.

5) Decision

The Court held that Article 119 EEC is not a programme (as opposed to Article 117 and Article 118 EEC) but a special rule, prescribing that there is a strict connection between the nature of the service provided and the amount of remuneration. This is not a principle that can be applied to other circumstances, such as the imposition of an age limit even if those can have pecuniary consequences. It follows that Article 119 EEC cannot be interpreted as *“prescribing, in addition to equal pay, equality in respect of the other working conditions applicable to men and women”*.¹

In reply to the second part of the question referred, the Court recognised that the elimination of discrimination between men and women forms part of the fundamental human rights protected and promoted by Community law. However, the Community had not, at the time of the events involving Ms Defrenne, assumed any explicit “responsibility for supervising and guaranteeing the observance of the principle of equality between men and women in working conditions other than remuneration.”² Consequently, the Court could not recognise the existence of a general principle of Community law against discrimination between men and women’s working conditions other than with regards to pay as referred to in Art 119 EEC.

¹ Par 24

² Par 30