

Oumar Dabo Abdoulaye and others v Régie Nationale des Usines Renault SA C-218/98 [1999] ECR I-5723

1) Reference Details

Jurisdiction: European Court of Justice (ECJ), reference for a preliminary ruling from the Industrial Tribunal of France

Date of Decision: 24 April 1998

Link to full case:

http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&lg=en&numdoc=61998I0218

2) Facts

The Claimants were male employees working for Renault who claimed that an agreement within the company (agreement on social benefits for Renault employees) (hereinafter “the Agreement”), which provided for a payment of FRF 7,500 to pregnant women commencing maternity leave, was contrary to Article 119 of the EC Treaty and the corresponding provision of French national law (Article L 140-2 of the Code du Travail), prohibiting discrimination between men and women in the matter of pay.

The Claimants argued that payment on maternity leave, being provided exclusively to women, was discriminatory against men and that the social event of having a child affected the whole family, including the father, who should therefore not be excluded from receiving maternity pay.

The Defendants maintained that that provision of the agreement constituted “legitimate discrimination” under Community Law, because the discrimination it produced was intended to restore equality in the company; and that the provision was designed to offset the disadvantage suffered by women when they are obliged to leave work temporarily due to pregnancy. An absence which, the Defendants contended, adversely affected women’s career advancement.

The Industrial Tribunal referred preliminary questions to the European Court of Justice.

3) Law

National Law

- Article L 140-2 of the Code du Travail

European Community Law

- Article 119 of the EC Treaty
- Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women
- Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions

4) Legal Questions referred to ECJ

1. Does Article 119 of the EC Treaty and subsequent legislation, which imposes the principle of equal pay for men and women, sanction payment to a pregnant

women, and not to the father of that child, the sum of FRF 7,500 when she takes maternity leave?

5) Decision

The ECJ provided that Article 119 of the EC Treaty did not prohibit the making of a lump-sum to female workers (and not to men) who take maternity leave where that payment is intended to offset the disadvantage that faces female workers as a result of their being away from work.

The Court stated that a women taking maternity leave will not be proposed for promotion due to her absence and on return her period of service will be reduced by the length of time for which she was away. Furthermore, pregnant women may not be able to claim performance-related salary increases and cannot take part in some training during her pregnancy. Finally, due to technological advances, a woman returning from maternity leave may find that the nature of her job has been changed during her absence and any adaptation by her may become complicated. Therefore the Court held that the different treatment was justified.