

## **Mme Y. E.F. v. SA Club, R.G.No 48.695,**

### **1) Reference Details**

Jurisdiction: Labour Court, Brussels, Belgium

Date of Decision: 15 January 2008

Case Status: Concluded

### **2) Facts**

Mme Y.E.F. appealed the decision of the Labour Tribunal dismissing her claim to damages for being sacked without notice by her employer for wearing a religious veil.

Mme Y.E.F. was employed by an indefinite contract from 1 September 1990 for SA Club as a part-time salesperson. From 3 March 1998 she took parental leave which was prolonged for a career break until 31 March 2004. From this date she was unable to work due to sickness for several months. A medical examination on 8 November 2004 considered her fit to work and upon her return she wore a religious veil, although she had been informed by her employers ahead of her return to work that they were unable to accommodate this wish. On the 15 November 2004 she was dismissed for cause, without notice or indemnity.

### **3) Law**

- Article 19 of the Belgian Constitution
- Article 9 of the ECHR 1950

### **4) Legal Arguments**

The employer contended that internal rules of the society prohibited any employee from wearing an ostentatious religious sign, or any clothing or accessory which hid part of their face. The justification provided was in relation to contact with clients, where employees should wear clothing specific to the brand, and present an image which is open, available, sober, familial and neutral.

Mme Y.E.F. argued that if the problem with the veil was in relation to client contact, they should have offered her a different position, and that furthermore the actions of her employer were contrary to freedom of religion guaranteed by Article 19 of the Belgian Constitution and Article 9 of the ECHR.

### **5) Decision**

The court considered that Mme Y.E.F. had admitted that the wearing of the veil did not convene to the work with clients which she had been doing for 7 and half years before her 6 year and 8 month long absence. The society had no obligation to provide her with alternative work. Nor had they prevented Mme Y.E.F. from exercising her freedom of religion by prohibiting her from wearing an ostentatious religious sign whilst at work, a rule which applies to all employees. The Court reiterated that the freedom to manifest one's religion is not absolute and that such a rule applying to all employees was not discriminatory. Mme Y.E.F. could not claim for compensation for lack of conciliation as she was informed twice before her return to work that the wearing of

the veil was in violation of the rules which she had adhered to during her 7 and half years of work.

The employer was therefore justified in firing Mme Y.E.F. for cause which made it immediately and definitively impossible to continue the contract.

The appeal was rejected.