Mary Brown v Rentokil Limited, C-394/96 [1998] IRLR 445

1) Reference Details

Jurisdiction: European Court of Justice (ECJ), reference for a preliminary ruling from the UK House of Lords
Date of Decision: 30 June 1998
Link to full case:
http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61996J0394:EN:HTML

2) Facts

In 1990 Mrs. Brown, who was employed by Rentokil as a driver (which she said involved heavy work) informed the company that she was pregnant and from 16 August 1990 submitted a series of four week certificates regarding various pregnancy-related disorders from which she was suffering. Mrs Brown stopped working from mid-August of that year.

On 9 November 1990 representatives from Rentokil informed Mrs Brown that, following an independent medical examination, if she did not return to work by 8 February 1991 her contract would be terminated pursuant to a term of her contract entitling the company to terminate her employment if she took more than 26 weeks continuous sick leave. Mrs Brown did not return to work by 8 February 1991 and was accordingly dismissed while pregnant.

Mrs Brown fell outside the protection afforded by the Employment Protection (Consolidation) Act 1978 which ensured pregnant women could return to work after giving birth because she had not been continuously employed for a period of not less than two years prior to taking maternity leave.

The Extra Division of the Court of Session held that there was no discrimination under the Sex Discrimination Act 1975 because she had been discriminated on the basis of illness attributable to pregnancy, not pregnancy. Mrs Brown appealed.

3) The Law

National Law

- Sex Discrimination Act 1975

European Community Law

- Articles 2(1) and 5(1) of Council Directive 76/207/EEC (implementing the principle of equal treatment between men and women in employment and related areas) of 9 February 1976

4) Legal questions referred to ECJ

1. (a) Is it contrary to Articles 2(1) and 5(1) of the Directive to dismiss a female employee during her pregnancy as a result of absence through illness related to that pregnancy?
   (b) If the employee was dismissed under a contractual provision entitling the employer to dismiss employees, irrespective of gender, after a stipulated number of weeks of continued absence would the answer to 1(a) remain the

same?

2. (a) Where a female employee does not qualify for the right to absent herself from work due to pregnancy or childbirth due to the period prescribed by national law on the basis that she has not been employed for the relevant period of time, is it contrary to Articles 2(1) and 5(1) of the Directive to dismiss her as a result of absence through illness resulting from that pregnancy where the dismissal takes place during that period?
   (b)If a female employee was dismissed under a contractual provision entitling the employer to dismiss employees, irrespective of gender, after a stipulated number of weeks of continued absence would the answer to 2(1) remain the same?

5) Decision

The Court held that where a female is dismissed from employment on the basis of absence due to incapacity for work resulting from her pregnancy, such dismissal constitutes direct discrimination on grounds of sex as it can affect only women. Articles 2(1) and 5(1) of the Directive prohibit the dismissal of a female employee at any time during her pregnancy on the basis of absence due to incapacity for work caused by pregnancy-relating illness.

Furthermore, a national law which allows an employer to dismiss a pregnant worker on the basis of absences caused by pregnancy-related incapacity constitutes direct discrimination on the grounds of sex as it equates a pregnant worker unfit for work as a result of pregnancy-related disorders with a male worker unfit for work as a result of general illness. The answer to the second part of the first question would therefore be unaffected by the fact that the dismissal was pursuant to a contractual term allowing an employer to dismiss employees of either sex after a stipulated number of weeks of continuous absence.

The Court determined that the second question was therefore irrelevant.