



Press and Information

Court of Justice of the European Union
PRESS RELEASE No 26/22
Luxembourg, 10 February 2022

Judgment in Case C-485/20
HR Rail

A worker with a disability, including a worker doing a traineeship as part of his or her recruitment, who is declared incapable of performing the essential duties of the post that he or she occupies, may benefit from reassignment to another post for which he or she is competent, capable and available

That reassignment must not, however, impose a disproportionate burden on the employer

HR Rail is the sole employer of railway staff of the Belgian railway. In November 2016 HR Rail recruited a member of staff as a railway track maintenance technician who commenced his traineeship with Infrabel, the legal entity providing the management infrastructure for the Belgian railways. In December 2017, that trainee was diagnosed with a heart condition that required the fitting of a pacemaker, a device which is sensitive to the electromagnetic fields present, inter alia, on railway tracks. He was, on that basis, recognised as having a disability by the Service public fédéral « Sécurité sociale » (Federal Public Service for Social Security, Belgium).

In June 2018 the centre régional de la médecine de l'administration (the company's regional medical centre, Belgium), responsible for assessing the medical capacity of Belgian Railway staff members, declared the trainee to be permanently unfit to perform the duties for which he had been recruited. He was then assigned to a warehouseman's position within the same undertaking.

On 26 September 2018, the Senior Adviser of HR Rail, informed him of his dismissal on 30 September 2018 with a ban on his recruitment for a period of five years to the grade at which he had been recruited. One month later, the Managing Director of HR Rail informed him that his traineeship was terminated owing to his total and permanent incapacity to perform the duties for which he had been recruited. According to the articles of association and general rules applicable to staff of the Belgian railway, unlike statutory staff members, trainees who were recognised as having a disability and therefore no longer capable of performing their duties do not benefit from a reassignment within the undertaking.

The trainee brought, before the Conseil d'État (Council of State, Belgium) an action to annul the decision terminating his employment. That court asks the Court of Justice for an interpretation of Directive 2000/78 establishing a general framework for equal treatment in employment and occupation,¹ and more specifically the concept of 'reasonable accommodation' for persons with disabilities.

In its judgment handed down today, the Court finds that **that concept requires that a worker, including someone undertaking a traineeship following his or her recruitment, who, owing to his or her disability, has been declared incapable of performing the essential functions of the post that he or she occupies, be assigned to another position for which he or she has the necessary competence, capability and availability, unless that measure imposes a disproportionate burden on the employer.**

¹ Article 5 of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16)

As a preliminary point, the Court recalls that Directive 2000/78 is intended to establish a general framework for ensuring that everyone benefits from equal treatment ‘in matters of employment and occupation’ by providing effective protection against discrimination, including on grounds of disability.

The Court states that that directive applies to conditions for access to employment, to self-employment or to occupation, and also to access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining. According to the Court, the wording used is sufficiently wide to cover the situation of a worker undertaking a traineeship following recruitment by his or her employer. Consequently, **the fact that the staff member employed by HR Rail was not, at the time of his dismissal, recruited on a permanent basis, does not preclude his professional situation from falling within the scope of Directive 2000/78.**

Next, the Court recalls that, according to the directive, in order to guarantee compliance with the principle of equal treatment in relation to persons with disabilities, ‘reasonable accommodation’ must be provided. Therefore, the employer must take appropriate measures, where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer.

Appropriate measures include, the directive states, ‘**effective and practical** measures to adapt the workplace to the disability, for example adapting premises and equipment, patterns of working time, the distribution of tasks or the provision of training or integration resources’. The Court states that that is a **non-exhaustive** list of appropriate measures, which may be physical, organisational and/or educational. The directive **prescribes a broad definition** of the concept of ‘reasonable accommodation’.

The Court finds, in that respect, that **where a worker becomes permanently incapable of remaining in his or her job because of the onset of a disability, reassignment to another job may constitute an appropriate measure in the context of ‘reasonable accommodation’.** That interpretation is consistent with that concept which must be understood as referring to the elimination of the various barriers that hinder the full and effective participation of persons with disabilities in professional life on an equal basis with other workers.

However, the Court observes that **Directive 2000/78 does not oblige an employer to take measures which would impose a ‘disproportionate burden’ on it.** In that regard, in order to determine whether the measures in question give rise to a disproportionate burden, account should be taken in particular of the **financial costs** entailed, the **scale** and **financial resources** of the organisation or undertaking and the **possibility of obtaining public funding or any other assistance.**

In addition, the Court states that, in any event, **the possibility of assigning a disabled person to another job is only available where there is at least one vacancy that the worker in question is capable of holding.**

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court’s decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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