



NEWS REPORT

Date: 25 February 2010
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Title: L. v. A., Toulouse Court of Appeal, no R 08/06630, 19 February 2010
Country: France

Context

Issue at stake: Discrimination based on racial/ethnic origin in hiring practices for indefinite term employment contracts
Ground of discrimination: Racial/ethnic origin
Source: Court of appeal judgment
Field: Employment

Case

Mr L. was employed as specialised worker by A. for a short term contract from October 2000 to September 2001. He was contacted directly by A. in October 2004 for a second contract from January 2005 to July 2006 for an employment at level 190. In the fall of 2005 he applied for an indefinite term contract for an opening relating to an undetermined most.

Another short term employee of French descent was selected. He was as well a short term contract employee and held a position at the same level with the same company. Only, it was his first short term contract, in another work site of the same employer, and he was in activity since January 2005. The interviews were not very favourable for the hired candidate of French origin, but his application nevertheless received a better rating.

Mr L. has presented a claim before the Halde and before the Labour Court. He claimed racial discrimination alleging that persons of North African origin were hired for short terms contracts but practically never for undetermined term contracts.

The Halde's enquiries as regards the list of persons employed indicated that among recruited staff between 2000 and 2006, all were of French citizenship, and only two had a last name of North African origin. Moreover, for the period between January 2005 and July 2006, on the 43 employees hired under indefinite term contracts, none had a last name of North African origin.

Decision of the Court: The Court explicitly referred to the Halde's conclusions to conclude to a presumption of discrimination.

As regards justifications presented by the employer, the Court concludes that the sole fact that the hired employee has a higher degree is insufficient to provide a satisfactory justification given A.'s hiring practices.



In order for the judge to be in a position to evaluate the justifications proposed by the employer, it must be possible to determine to evaluate requirements for the job. Considering there was no prior definition of the job description of the hired employee, the process was not transparent and did not allow an analysis of the required competences for the job. Nothing indicates that the job required the degree held by the hired employee. The details provided to the Halde on the qualifications of hired employees in 2005 and 2006 indicated that a number of employees had both plaintiff's and the hired employee's qualifications.

On experience, no evidence indicates the superior experience of the hired employee. A. was condemned for racial discrimination to pay damages in the amount of 10 000€ and the costs of the Plaintiff trade Union.