



NEWS REPORT

Date:	24 March 2011
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Title:	Age discrimination in KLM Collective Agreement
Country:	The Netherlands
Context	
Issue at stake:	Decisions of District Court and ETC that KLM Collective Agreement contains a provision that discriminates on the ground of age
Ground of discrimination:	Age
Source:	District Court of Amsterdam (Summary proceedings) 21 February 2011 and ETC 22 March 2011.
Field:	Employment (dismissal)
Legislative provisions:	Age Discrimination Act, Articles 1, 2 and 7.

Content

An air stewardess, born in 1950, worked for KLM on a permanent employment contract since 1993. According to the applicable Collective Agreement, KLM may terminate a permanent employment contract with air stewards/stewardesses on the date that they reach the age of 60. The employee may then ask for continuation of the contract until the age of 65. KLM may only refuse this prolongation in case of 'special circumstances', including disability to do the work and shortcomings in the functioning of the employee. It was established that no regular evaluations of the functioning of this air stewardess had taken place over the last years. However, some incidents had led to formal warnings and to instigating coaching trajectories with this employee in order to improve her communication skills. After the woman had objected to the termination of the contract at the age of 60 and asked for continuation until the age of 65, she was offered a temporary contract for one year. This contract would expire in March 2011, and KLM had announced that it would not again offer her a temporary contract (for 4 more years).

Two legal procedures were held on this issue. The first took place before the District Court of Amsterdam. The Court was asked to give a provisional judgment about the legality of the termination of the permanent employment contract (summary proceedings). The District Court examined the relevant provisions in the Collective Agreement and concluded that they are a prima facie case of direct discrimination on the ground of age for which no objective justification appears to exist. In that regard, the Court held that KLM had not succeeded in showing that it had a *reasonable interest* in terminating employment contracts with its air stewardesses at this early age. KLM had not shown statistics about the increase of sickness leave, nor had demonstrated that specific physical requirements must be met (and that elderly people could not meet them). On this ground, the measure was already considered not to be justifiable.

Therefore, the appropriate and necessary test did not need to be applied. The Court concluded that it is foreseeable that in a future regular court procedure it will be held that the relevant provisions in the Collective Agreement will be declared null and void on the basis of the general principle of equality and the Age Discrimination Act (ADA) in particular, and that therefore the contract has not ended in 2010 nor can be ended on this basis in 2011. The Court finally states that KLM needs to pay the salary of the air stewardess until the moment that her contract will be ended in a legal manner.

The second procedure took place before the Equal Treatment Commission (ETC).¹ The ETC first notes that the ADA in article 7(1) sub a contains an exception to the prohibition to discriminate in respect to termination in case of the employee reaching the age of 65 (pensionable age). For any termination on an earlier age that amounts to (direct) age discrimination (as is the case in the relevant provisions in the Collective Agreement) there must be an objective justification (Article 7(1) sub c ADA). First there must be a legitimate aim for such policy. According to the ETC, the reason given by KLM, namely that it wants to avoid that it has to continue to employ badly functioning employees until the age of 65, may count as a legitimate aim. As far as the temporary contract for only one year is concerned, the aim was to give the stewardess an opportunity to improve her functioning, which is also legitimate in the eyes of the ETC. The means chosen are also considered to be appropriate to reach these aims. However, the ETC states that the means are not necessary. Under the Dutch labour laws, KLM has other means to terminate an employment contract with permanent employees who do not function properly (anymore). It can inter alia ask the Court for permission to terminate the contract on the ground of malfunctioning of the employee. A general clause concerning the termination at the age of 60 therefore is not necessary. The ETC concluded that indeed there is a breach of the equal treatment norm in the ADA.

Internet link source and additional information:

District Court of Amsterdam: www.rechtspraak.nl (last accessed 24 March 2011); use as search term: LJN: BP6875

ETC: <http://www.cgb.nl/oordelen/oordeel/221751> (last accessed 24 March 2011)

¹ A second issue during this procedures was whether KLM had intimidated the stewardess on ground of age. The ETC held there was not sufficient proof that KLM had discriminated her in that way.