



## NEWS REPORT

<b>Date:</b>	21 December 2010
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<b>Title:</b>	Labour Court decides on age discrimination and multiple discrimination
<b>Country:</b>	Sweden
<b>Context</b>	
<b>Issue at stake:</b>	Age discrimination, sex discrimination, general level of damages, level damages when two grounds are concerned.
<b>Ground of discrimination:</b>	Age and sex, multiple discrimination
<b>Source:</b>	Labour Court case 2010/91 of 15 December 2010
<b>Field:</b>	Employment

### Content

On 15 December 2010 the Labour Court decided on a discrimination case regarding a 62 year old woman A.H. who applied for a position as a job coach<sup>1</sup> with the Public Employment Service. She was not called to the interviews and two women, aged 27 and 36 were hired instead.

A.H. was equally qualified to one of the persons eventually hired and better qualified than the other one. She was also better qualified compared to at least two men who also passed the interviews for the vacancy; hence a presumption of discrimination arose.<sup>2</sup>

The employer claimed that A.H. was not suitable for the job because she had a supercilious attitude and lacked empathy. He based its decision on the words of two case officers accompanying her in her job search as she was a job seeker. If the Labour Court believed what the case officers said about A.H., it also held that ordinary procedures required that A.H. was called to the interviews and to obtain references from former employers. Taking a decision not to hire A.H. only from the words of her case officers constituted

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<sup>1</sup> A job coach is a kind of a career guide who helps job seekers by looking at their CVs, suggesting improvements, analyzing their competences, doing personality tests, providing trainings in preparation of job interviews, etc.

<sup>2</sup> The Public Employment Agency is a public employer. According to Act (2009:400) on Open Access and Secrecy, any citizen can consult copies of documents.

such a big deviation from the procedures ordinarily followed that the employer was convicted of discrimination.<sup>3</sup>

As regards the damages there were two violations according to the Court, firstly for not hiring A.H. and, secondly, for not having called her to an interview. To decide on damages, the Labour Court decided to examine the facts as one violation only. The fact that it was a multiple discrimination case based on both sex and age was not regarded as a reason to raise the amount awarded as damages.

With regard to the level of damages the Labour Court looked into labour law and said that a refusal to hire a person in a discrimination case was roughly equivalent to an employer not giving priority, in case of vacant positions, to job seekers whose employment contract had been terminated within 9 months. The compensation was set at SEK 75.000 (app. EUR 8.300) while the Equality Ombudsman asked for SEK 300.000 (app. EUR 33.300).

**Internet link source and additional information:**

<http://www.do.se/Documents/pdf/forlikningarochdomstolsarenden/91-10.pdf>

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<sup>3</sup> In Sweden it is very hard to convict an employer of discrimination. The Labour Court always accepts situations where a proper procedure is followed and the interviewers find that one applicant is better on the basis of an informal criterion which outweighs the formal qualifications. An employer following normal procedures is deemed to correctly assess the merits in almost every case. The employment decision is regarded as taken on the merits only breaking the causal link to discrimination. But the fact of not calling an obviously well-qualified person to an interview and not asking her previous employers for references regarding her human skills was a very big deviation from the procedures normally followed. The employer was not allowed to assess her human skills only on the two case officers' words. Therefore the employer failed to break the presumed causal link by showing that the decision was based on merit.

In this case two things were decisive against the employer. The first thing was the deviations from normal procedures. The second thing was that the comment from the case officers was the third explanation given by the employer to the Equality Ombudsman. It was given only after the Ombudsman had proven the first two explanations to be false.