

CASE STUDY 1 - ANNETTE

Annette worked as a road sweeper for a public authority. In 2010, she developed a problem with her feet and following a complication that occurred during surgery, became virtually unable to walk. She was thus no longer able to carry out the main functions of her job. She was off work continuously for some 18 months but, in accordance with the authority's standard policy, only received 'sick pay' for six months of that period.

Annette was able to carry out general clerical work. The authority placed her on its list of 're-deployees' and interviewed her for a number of administrative roles, including some that would have amounted to a promotion in terms of pay and benefits, but in each case a better qualified candidate was appointed.

In 2012, taking the view that there was no realistic prospect of a return to work, the authority dismissed Annette. She brings a claim in the labour court.

1. Would the authority have been justified in terminating Annette's employment any earlier, given that she was incapable of performing the main functions of her job? If so, at what point would it have been so justified?
2. Was the Authority obliged to provide reasonable accommodation in circumstances where nothing could be done to enable Annette to perform the main functions of her job?
Consider, in particular:
 - (a) Whether it was appropriate to require Annette to go through a competitive interview process for the alternative administrative roles or should she have simply been put into one of those jobs, even though there were better qualified candidates?
 - (b) Whether it would have been appropriate to give her a role even if that would have amounted to a promotion?
 - (c) Whether the authority was obliged to train Annette so that she became better qualified to carry out an administrative role?

CASE STUDY 2 – MARY and NELLY

Mary and her older sister, Nelly, who are both inhabitants of Erania (an EU Member state) have been diagnosed with a psychosocial disability which means that periodically they experience unusually high and unusually low moods.

Nelly was diagnosed with this condition when she was 3 years old and was immediately sent to live in a large care home which housed 100 children under 18 years of age and 200 adults. She has continued to live in this institution ever since and has no educational qualifications. She has just found out that expensive renovations are planned and that these will be funded with money provided through EU structural funds. Recently, Nelly has become part of a small team of residents of the institution who carry out cleaning work in a neighbouring supermarket. While she enjoys getting out of the institution (albeit under the close supervision of institution staff) she is contemplating giving up this work because she is regularly mocked and insulted by several supermarket employees and because she has to give all her earnings to the institution supervisor who does not allow her to choose how to spend it. Nelly has been attempting (unsuccessfully) for some months to seek the advice of a lawyer about her employment situation and her desire to move out of the institution into a flat of her own.

Mary, who is a qualified accountant, was diagnosed with the psychosocial disability 2 years ago, on her 30th birthday, following a crisis in her life resulting from a stressful divorce. Having had several years out of employment, Mary is now keen to find work again. She has applied for a range of accountancy jobs but has always been rejected. She has been told by one potential employer that her application failed because they thought it likely that she would take medication reducing her concentration. She has been told by another that, because she was placed under guardianship following her diagnosis, Eranian law prevents her from entering into employment contracts.

1. Consider how the CRPD relates to Nelly's situation. How, if at all, might it suggest that the Eranian Government should seek to introduce reforms and changes to its policies and systems?
2. Consider how EU law relates to Nelly's situation. How, if at all, might it be used to help Nelly?
3. Consider how the CRPD relates to Mary's situation. How, if at all, might it suggest that the ERAnian Government should seek to introduce reforms and changes to its policies and systems?
4. Consider how EU law relates to Mary's situation. How, if at all, might it be used to help Nelly?

CASE STUDY 3 – JOHN

The claimant, John, suffers from cerebral palsy and arthritis. He is unable to walk for long distances and has difficulties in standing. He is not a permanent wheelchair user but does require use of a wheelchair to travel any significant distance. However, he does not own a wheelchair.

John owns a property abroad and is a regular visitor to it. To get there he uses a state owned and run airport near to his home and usually travels with the same commercial airline, obviously to the same destination.

At the airport, after check-in there is a very long walk, through the duty-free shops, via various bars and restaurants, to the departure gate. John says that he cannot travel this distance without the use of a wheelchair. The airport authority will allow wheelchair users to take their own wheelchairs from the point of check-in to the door of the plane they are travelling on. It also makes available a small number of wheelchairs for others to use, but charges a fee of €20 for doing so. It also points out that there are numerous benches along the route to the departure gates so that John is able to make frequent stops and does not have to make the journey in a single go.

When John has travelled in the past he has regularly found that there is no wheelchair available for him to use. Even when one is available, he resents having to pay the fee to use it, pointing out that non-disabled passengers are not charged to negotiate their way around the airport.

The airline provides no help or assistance at all, taking the view that how John negotiates his way around the airport is a matter solely for the airport authority. It allows up to four passengers per flight to be accompanied by a wheelchair. On one occasion when John flies he is not seated next to his wife who usually helps him when he has problems with mobility e.g. getting him out of his seat and to the toilet.

John sues the airport authority and the airline.

1. Should people who need a wheelchair to negotiate around the airport provide their own?
2. If a wheelchair ought to be provided, who should be responsible for doing so – the airport authority, the airline or both?
3. And how do you determine the number that ought to be provided?
4. Alternatively, is it enough that there are numerous benches along the route so that it could be argued that it is not strictly necessary for John to have use of a wheelchair?
5. Is it appropriate to charge for use of a wheelchair where one is provided? Is John's ability to pay relevant?
6. Once on board, does the airline have a duty to provide a seat for John's wife next to John?