

State of affairs 1

Alina Kowalska was employed at Polski Bank Kredytowy SA in Gdańsk (one of the largest banks in Central and Eastern Europe running several million bank accounts) from 15 November 2011 to 30 November 2012 under a replacement employment contract, and then, from 1 December to 31 May 2013, under a permanent employment contract on a full time basis. Alina Kowalska was employed as a junior customer service specialist in the Contact Center in the Telephone Banking Department, and she operated the bank's helpline, working on a two-shift basis. Some employees at the helpline also took night shifts, however, those with young children were exempt from that obligation. At that time, 24 to 30 consultants worked in the Contact Center, of who 10-11 worked the first shift (from 6:00a.m. to 2:00p.m.) and one person the night shift (from 10:00p.m. to 6:00a.m.). The number of people working particular shifts depended on the number of calls received from customers. Due to an increase in workload at the helpline, Alina Kowalska's superiors decided to add one more person to the night shift, starting from February 2013, and extend the obligation to work the night shift to include all employees. Because of this new working arrangement, on 3 March 2013 Alina Kowalska submitted to the Bank's management a copy of a disability certificate issued by Gdańsk's Municipal Disability Evaluation Board (Miejski Zespół do Orzekania o Niepełnosprawności), assessing her degree of disability as moderate. At the same time, Alina Kowalska requested permission to work a single shift, from 8:00a.m. to 3:00p.m., due to her poor health. In a letter dated 8 March 2013, the Director of the Telephone Banking Department informed her that there were no posts available in the Contact Center that met the requirements presented by Alina Kowalska. Due to the 24/7 system of customer service and the shift work system used at the Bank, as well as limited human resources, it was not possible to make any exemptions, as these would have a direct impact on the effectiveness of customer service. As the Director emphasised in the letter, the Center was a specific unit handling telephone calls from customers; employees worked under time pressure and had to maintain a certain standard with respect to the flow of customer service. He also noted that if Alina Kowalska was not be able to work at night, there would be no employees working night shift and shortening of the working time to seven hours would result in one hour without customer service, meaning that 20-22 customers would not be able to reach the bank by phone, which, in consequence, would possibly result in complaints and their leaving the Bank. Simultaneously, after the receipt of the disability certificate, the Bank referred Alina Kowalska to an occupational physician to check whether the employee was able to work in a shift system. The certificate issued by the physician stated that, as a result of the harmful health impact of the work performed by Alina Kowalska, she had become unable to perform her work and she needed to be transferred to another position. The physician also emphasised that working at night was highly advised against and the employer should provide Alina Kowalska with the possibility for working in a position adjusted to her disability degree.

In a letter dated 7 April 2013, the Director of the Telephone Banking Department informed her that there were no posts available in the Contact Center he was the head of that met

Alina Kowalska's requirements. However, in view of the employee's difficult situation, he suggested that Alina Kowalska should participate via internal recruitment for another, currently available post. As it turned out, however, the post offered was as a senior manager, and Alina Kowalska did not meet the formal requirements to apply for it. Consequently, her application was dismissed. On 15 May she received a termination notice, effective as of 15 June. Among the reasons for terminating her employment contract the employer mentioned the necessity of ensuring 8 hours of customer service in the Contact Center, the shift system used at the Bank (including the night shift), the possibility of working overtime in such cases and the fact that Alina Kowalska could not meet the employer's requirements since she could not work in excess of 7 hours a day and could not work overtime or at night without breaching the regulations in force.

Speaking with Alina Kowalska, the employer emphasised that before taking the decision to terminate her employment he had tried to provide her with the possibility of transferring her to another position, but was unsuccessful due to the lack of available posts corresponding to her qualifications.

After the termination of her employment at the Bank, Alina Kowalska still remains unemployed.

Questions:

- 1) Is the above case an example of disability discrimination?
- 2) If yes, on which EU laws and which provisions of the United Nations Convention on the Rights of Persons with Disabilities can we base such a claim?
- 3) Can the decisions of Alina Kowalska's employer be justified in the light of laws in force? If yes, what arguments can be used?
- 4) In the light of EU laws and the provisions of the United Nations Convention on the Rights of Persons with Disabilities, can we claim that Alina Kowalska's employer was obliged to provide her with the so-called reasonable facilities when she was unable to perform her basic duties, that is, working the night shift?
- 5) What is the role of the principle of proportionality in this case and to whose benefit should it be applied?
- 6) How should the employer's decision to refer Alina Kowalska to take part in internal recruitment be assessed? Was it a good solution? If yes/no, why?
- 7) Assuming that the employer was obliged to provide Alina Kowalska with reasonable facilities at her post, what would these consist of?
- 8) If we assume that Alina Kowalska was discriminated against, what remedies/rights under EU law are available to her as a victim of unequal treatment.

State of affairs 2

Jarosław has a slight cerebral palsy and suffers from chronic arthritis as a result of which he is not able to stand for a long time and has difficulty with walking. Despite this, he does not use a wheelchair permanently, only when he needs one for longer distances. He therefore doesn't own a wheelchair, instead hiring one from a special rental shop.

Jarosław owns a property (a holiday cottage) in Spain, where he travels as often as he can. Going to Spain, he always uses the services of a local airport in X, owned by a consortium composed of the management of two voivodships – Lubelskie and Podlaskie. The airport is designed so that after check-in the passengers must walk a long distance to reach the security gate, and then go through the boarding gates to get on board. Jarosław claims that he is not able to cover such a distance on his own without a wheelchair, especially because of the crowds and the space being developed with stores and restaurants. The airport authorities allow passengers to use wheelchairs and also have a limited number of wheelchairs available for rent for PLN 50. They also note that between the check-in point and boarding gates there is a number of benches where one can sit and rest.

Travelling frequently to Spain and using the services of X airport, Jarosław has noticed that often there are no available wheelchairs to rent. In such situations he approached the airport managers requesting an explanation why disabled passengers had to pay extra fees.

ABC, a private airline operating flights between Poland and Spain, claims that it is not responsible for providing Jarosław with a wheelchair, since it is a matter only between Jarosław as an airport customer and the airport. ABC airlines allow only four disabled people on board during a single flight. Once, when Jarosław was on his way to Spain, despite his pleas, he was not allowed to sit next to his wife, who usually helps him in moving when on board, e.g. when going to the toilet.

Jarosław decided to claim damages both from the X airport authorities and ABC airlines on account of having been discriminated against by them.

Questions:

- 1) In the light of EU laws and the provisions of the United Nations Convention on the Rights of Persons with Disabilities, is the above case an example of disability discrimination?
- 2) If so, based on which provisions can we claim that it is?
- 3) How to assess a situation where people needing support in the form of a wheelchair are forced to pay to get through the boarding gates and get on board?
- 4) If you are of the opinion that it is the operator's responsibility to provide wheelchairs, which operation should do it – the airport, the airlines, or both?
- 5) How to determine the number of wheelchairs that should be provided for customer use?
- 6) Do you think it is sufficient that there are benches located in the space between the check-in point and the boarding gates where Jarosław can rest?

- 7) Is it ABC airline's responsibility to provide Jarosław's wife with a seat on board next to her husband's?

State of affairs 3

On 19 May 2011 Mr Z bought a trip to Greece for four people through the well-known travel agency "Sunny Holidays". The trip included a flight from Łódź to Athens, transfer from the airport to a hotel in Athens, a one-week stay in the hotel, transfer from the hotel to the airport in Athens and a flight back to Łódź. Z decided to use the services of the "Sunny Holidays" travel agency because a few months earlier he and his family took a trip to Egypt organised by the agency and had no complaints.

Z informed the travel agency several times that a person with a disability (his 12-year-old daughter), using a wheelchair, would be on the trip.

On 24 June Z and his family checked in at the airport. There were no problems during the flight. All safety principles and standards applicable to the transport of persons with disabilities were observed. Problems started during the transfer from the airport in Athens to the hotel. It turned out that the bus provided by the agency to transfer them to the hotel was not equipped to transport disabled persons. It was a high-floor bus, that needed climbing several steps to board, with a very narrow corridor.

The travel agency representative suggested that Z could use public transportation at their own cost, but Z protested. In the end the representative called a taxi. The car was not equipped for the transportation of disabled persons either (the wheelchair had to be fastened with a cord, otherwise it could have fallen out of the boot). But Z decided they would use the taxi to transport her daughter to the hotel. At the hotel, the travel agency representative scolded the family for being late, and told them to hurry, as the time for serving food was running out.

The next day Z was assured that on the way back there would be no such problems. Unfortunately, it turned out that transport to the airport was not organised properly, either. The representative argued that the wheelchair with the child could be carried onto the bus, and Z eventually agreed to this solution.

However, the wheelchair got stuck in the narrow corridor. The travel agency representative decided that the girl would be transported to the airport in that position, but Z protested.

Then the representative informed him that since he refused transport by bus, he had to organise transport to the airport at his own cost.

Questions:

- 1) In the light of EU laws and the provisions of the United Nations Convention on the Rights of Persons with Disabilities, is the above case an example of disability discrimination?
- 2) If so, based on which specific provisions can we claim it is?
- 3) How to assess a situation where a person needing a wheelchair was forced to use private transportation by taxi?
- 4) Is it the responsibility of a business providing travel services to provide wheelchairs?
- 5) If you are of the opinion that discrimination occurred in the situation described above, who is entitled to use legal instruments to pursue the rights breached as a result of unequal treatment?