

Case Reports

2017/49

Employer's obligation to offer work and provide training at the end of fixed-term employment contract (FI)

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Summary

The Supreme Court of Finland has ruled that an employer had legitimate grounds to make 16 consecutive fixed-term employment contracts with an employee who did not hold the degree required by law for permanent employment as a social worker. However, the employer had neglected its obligation to offer work and provide training for the employee and was obliged to pay compensation for unjustified termination of the employment relationship.

Facts

An employee had worked as a social worker in a joint municipal authority's service for eight years, without interruption, on 16 consecutive fixed-term employment contracts. The employee did not have the qualifications required by the Act on Qualification Requirements for Social Welfare Professionals (272/2005, as amended) to have a permanent employment contract. However, the Act permitted fixed-term employment contracts for employees that did not hold the required degree. The employer justified the fixed-term contracts because there were no qualified employees available.

The employee claimed compensation from the joint municipal authority for unjustified termination of employment, arguing there were no grounds for the fixed-term employment contracts and thus, the employ-

ment relationship should be considered permanent. In addition, the employee argued that the employer had neglected its obligation to offer work and provide training before it dismissed the employee.

Judgment

The Supreme Court first had to decide whether there were legitimate grounds for each fixed-term employment contract, given that the employee did not have the necessary qualifications. Second, the Court had to determine whether the employee's employment relationship should be considered permanent, as the need for social workers in the joint municipal authority was permanent.

According to the Employment Contracts Act (55/2001, as amended), an employment contract is valid indefinitely unless it has been made for a specific fixed term for a justified reason. Contracts made for a fixed term on the employer's initiative without a justified reason are considered valid for an indefinite period. In practice, the courts have always ruled that fixed-term contracts are unacceptable if the need for the workforce is permanent. Under the Act on Qualification Requirements for Social Welfare Professionals, social workers must have a higher university degree but if there are no qualified employees available, it is possible to hire someone who does not have the required qualifications for a fixed term.

The Supreme Court ruled that in these circumstances, the use of consecutive fixed-term employment contracts was not, in principle, permitted under the Employment Contracts Act because the consecutive fixed-term employment contracts combined with the employer's active, yet unsuccessful, search for several years for qualified permanent employees indicated that the need for the workforce was permanent. Despite this, the need for an unqualified employee was temporary and only arose because there were no qualified employees available. Considering the purpose of the Act on Qualification Requirements for Social Welfare Professionals, the Court ruled that the joint municipal authority had not violated the Employment Contracts Act. Consequently, the employee's employment relationship was not considered permanent.

Thirdly, and finally, the Supreme Court had to decide whether the employer had otherwise complied with the Employment Contracts Act at the end of the latest

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employment contract. According to the Act, employers may not terminate a permanent employment contract if the employee can be relocated or trained for other duties. This obligation applies to permanent employees, whereas fixed-term employment relationships expire at the end of the fixed period without any right to be redeployed in other work.

However, the Employment Contracts Act also prohibits applying less favourable employment terms to fixed-term employment relationships than those applicable to other employment relationships without proper and justified reason – merely because of the duration of the employment contract. Further, an employer must treat all employees equally, unless not doing so is justified because of the duties and positions of the employees. According to the framework agreement on fixed-term work by ETUC, UNICE and CEEP (Council Directive 1999/70/EC), fixed-term workers must not be treated in a less favourable manner than comparable permanent workers solely because they have a fixed-term contract unless the different treatment is justified on objective grounds. The European Court of Justice has also confirmed (*López*, C-16/15, EU:C:2016:679) that the principle of non-discrimination applies to fixed-term workers and permanent workers in comparable situations.

The Supreme Court ruled that in these circumstances, the fixed-term employee's position was comparable to that of a permanent employee. Due to the requirement that all employees be treated equally and the prohibition of discrimination against employees based on the duration of their employment, the joint municipal authority should have considered whether other suitable work could have been offered before the end of the fixed-term contract. Also, if needed, the employer should have arranged appropriate training for the new tasks. The Supreme Court further stated that the employer should have done this on its own initiative based on its duty of loyalty to the employee. Accordingly, the employer was liable to pay compensation to the employee of five months' salary for unlawful termination.

Commentary

Here the Finnish Supreme Court ruled that even though an employer had legitimate grounds for making several consecutive fixed-term employment contracts with the employee, the employer should have offered the employee other work and provide any necessary training at the end of the fixed-term employment. Because the employer neglected this obligation, it had breached the Employment Contracts Act. This obligation has previously existed only in relation to permanent employees. Thus, the judgment is a significant precedent because it establishes an entirely new obligation on employers that rely on fixed-term employment contracts.

The judgment has provoked some controversy in Finland, as the Supreme Court has been considered to be trespassing on the legislator's turf. The Supreme Court's judgment creates a new legal rule and improves the position of fixed-term employees. From now on, when a series of fixed-term contracts comes to an end, the employer will have to assess whether the need for the workforce is permanent. If so, the employer will have to offer other work and provide any necessary training to the employee. Working out whether the need for the workforce is permanent may not be entirely straightforward for employers.

However, the case does not change the basic legal position that if an employer makes a fixed-term employment contract without legitimate grounds, the employment contract is considered permanent and the employer will have to offer other work and provide training before being able to dismiss the employee. Therefore, the rule created by this judgment is limited to where an employer has made recurring fixed-term employment contracts and these are not considered to form a permanent employment relationship. Presumably a precondition for this is that, as with the case at hand, the arrangement has been going on for several years.

Subject: Fixed-term employment contract –
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