

Case 27/2008 – Municipality acted contrary to the prohibition against retaliation in Section 3, subsection five, of the Gender Equality Act by making the the decision that the Claimant should no longer be employed.

The Claimant was a nurse. He had a framework agreement for extra shifts and shifts as required, and worked as an on-call substitute in the home health care services in a district of a borough from 16 February 2005 until 16 February 2006.

On 15 January 2006 he sent a complaint to the Borough Council about the acting unit leader, a complaint which, *inter alia*, dealt with the lack of arrangements in relation to his children. On 23 January 2006 he made a complaint about the Borough to the Equality and Anti-discrimination Ombud for a violation of the Gender Equality Act. The Borough was informed of the complaint to the Ombud on 9 February 2006.

On 16 February 2006 he entered into a new framework agreement which would run until 30 June 2006, and worked as an on-call substitute in another district of the Borough. On 3 March the unit leader of the psychiatric services called the Claimant in to a meeting in connection with a possible engagement in a two-month deputy position. When the unit leader informed the section leader about the meeting, she was informed that the Claimant should no longer be engaged in any parts of the home health care services in the Borough. The Claimant was informed of this in the middle of March 2006.

The Municipality was of the opinion that it had undertaken a general evaluation of the Claimant in connection with his application for a permanent position in the first district he worked in. Another person than the Claimant was recommended for this position on 7 February 2006, i.e. before the Borough was informed of the complaint to the Ombud. As a result of this evaluation the Claimant was no longer desired in the Borough's home health care services. The Tribunal was not in agreement with this, and was of the opinion therefore that there were circumstances present which gave reason to believe that the Borough had attached weight to the complaints of violation of the Gender Equality Act by the decision that the Claimant was no longer desired in the Borough's home health care service.

The Tribunal referred to Case 6/2007, and emphasised that the norm of what is required for the employer to fulfil his burden of proof also applies to retaliation cases.

The recommendation for the permanent position contained no written evaluation of the Claimant's suitability, but only an evaluation of the person who was employed. There was no written documentation connected to the permanent employment that showed the employer regarded the Claimant as unsuitable for work in the Borough's home health care service. The districts of the Borough were not informed of this, either.

On this basis, the Tribunal found, with some doubt, that the Borough had not rendered probable that no weight was attached to the complaints of violation of the Gender Equality Act when it was decided not to engage the Claimant for any more shifts.

The Borough had therefore acted contrary to the prohibition against retaliation contained in Section 3, subsection five, of the Gender Equality Act by making the decision that the Claimant should not be engaged in the home health service in the Borough.

The decision was unanimous.