

Case C-32/93

Carole Louise Webb v EMO Air Cargo (UK) Ltd

(Reference for a preliminary ruling
from the House of Lords)

(Equal treatment for men and women — Directive 76/207/EEC —
Replacement of an employee on maternity leave —
Replacement found to be pregnant — Dismissal)

Opinion of Advocate General Tesouro delivered on 1 June 1994	I - 3569
Judgment of the Court (Fifth Chamber), 14 July 1994	I - 3578

Summary of the Judgment

*Social policy — Male and female workers — Access to employment and working conditions —
Equal treatment — Dismissal of a female employee who is recruited for an unlimited period to
act as an immediate replacement for another employee during the latter's maternity leave but
who cannot so act because of her own pregnancy — Not permissible
(Council Directive 76/207, Arts 2(1) and 5(1))*

Article 2(1) read with Article 5(1) of Directive 76/207 of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions precludes dismissal of an employee who is recruited for an unlimited term with a view, initially, to replacing another employee during the latter's maternity leave and who cannot do so because, shortly after her recruitment, she is herself found to be pregnant.

First, dismissal of a female worker on account of her pregnancy constitutes direct discrimination on grounds of sex and the situation of a woman who finds herself incapable, by reason of pregnancy discovered very shortly after the conclusion of her employment contract, of performing the task for

which she was recruited cannot be compared with that of a man similarly incapable for medical or other reasons, since pregnancy is not in any way comparable with a pathological condition, and even less so with unavailability for work on non-medical grounds. Second, dismissal of a pregnant woman recruited for an indefinite period cannot be justified on grounds relating to her inability to fulfil a fundamental condition of her employment contract, even where the availability of the employee is necessarily, for the employer, a precondition for the proper performance of the employment contract, since the protection afforded by Community law to a pregnant woman cannot be dependent on whether her presence at work during maternity is essential to the proper functioning of the undertaking in which she is employed; any contrary interpretation would render ineffective the provisions of the directive.