JUDGMENT OF THE COURT

17 September 2002 *

In Case C-320/00,

REFERENCE to the Court under Article 234 EC by the Court of Appeal of England and Wales (Civil Division) for a preliminary ruling in the proceedings pending before that court between

A.G. Lawrence and Others

and

Regent Office Care Ltd,

Commercial Catering Group,

Mitie Secure Services Ltd,

on the interpretation of Article 141(1) EC,

* Language of the case: English.

THE COURT,

composed of: G.C. Rodríguez Iglesias, President, P. Jann, F. Macken, N. Colneric (Rapporteur) and S. von Bahr (Presidents of Chambers), D.A.O. Edward, A. La Pergola, J.-P. Puissochet, M. Wathelet, R. Schintgen and V. Skouris, Judges,

Advocate General: L.A. Geelhoed,
Registrar: H.A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

— Mr Lawrence and Others, by B. Langstaff QC and D. Rose, Barrister,

— Mitie Secure Services Ltd, by B. Napier, Barrister,

— the United Kingdom Government, by G. Amodeo, acting as Agent, and N. Paines QC,

— the Commission of the European Communities, by N. Yerrell and A. Aresu, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Mr Lawrence and Others, represented by B. Langstaff and D. Rose; of Mitie Secure Services Ltd, represented by B. Napier; of the United Kingdom Government, represented by G. Amodeo and N. Paines; and of the Commission, represented by M. Shotter, acting as Agent, and N. Yerrell, at the hearing on 8 January 2002,

after hearing the Opinion of the Advocate General at the sitting on 14 March 2002,

gives the following

Judgment

1 By order of 20 July 2000, received at the Court on 22 August 2000, the Court of Appeal of England and Wales (Civil Division) referred to the Court for a preliminary ruling under Article 234 EC two questions on the interpretation of Article 141(1) EC.

2 Those questions have arisen in disputes between, on the one hand, Mr Lawrence and 446 other workers, almost all of whom are women ('the appellants'), and, on the other, Regent Office Care Ltd, Commercial Catering Group and Mitie Secure Services Ltd ('the respondent undertakings'), who are or were their employers, in regard to a claim for equal pay for men and women.

The dispute in the main proceedings and the questions submitted for preliminary ruling

3 Until approximately 1990 the North Yorkshire County Council ('the Council') itself assumed responsibility for the cleaning and catering services in schools and educational establishments under its control. Responsibility for providing those services was subsequently transferred to the respondent undertakings as a result of the process of compulsory competitive tendering imposed by the Local Government Act 1988.

4 During the tendering period, female employees brought an action against the Council for equal pay without discrimination based on sex, pursuant to the Equal Pay Act 1970 ('the 1970 Act'). The applicants in those proceedings were ultimately successful after the House of Lords found in their favour in a decision of 6 July 1995 ([1995] ICR 833). The Council had accepted the results of a national job evaluation study dating from 1987, which rated the work of the female applicants in those proceedings as being of equal value to that of men performing jobs such as gardening, refuse collection and sewage treatment. The House of Lords rejected the argument that the Council was entitled to pay female workers less to enable it to compete with a commercial company in the competitive tendering process on the open market. It also rejected the argument that the difference in pay in question was genuinely due to a material factor other than the difference in sex. In short, the House of Lords ruled that the applicants in those proceedings were entitled, for the purposes of securing equal pay without discrimination based on sex, to compare themselves with men who were employed by the Council in other service areas and who, as the job evaluation study had recognised, performed work of equal value.

5 Following that decision of the House of Lords, the female members of the catering and cleaning staff who were still employed by the Council and whose pay was below the level to which they were entitled according to the job evaluation study were compensated by the Council and their pay rates were raised to the level of those men whose work had been adjudged to be of equal value.

6 When the Council contracted out catering and cleaning services to the respondent undertakings, the latter re-employed a number of female staff originally employed by the Council at rates of pay lower than those paid by the Council prior to the transfer of activities. They also recruited new female employees, who had never been employed by the Council, at rates of pay lower than those paid by the Council to its female employees prior to the transfer.

7 The appellants are workers who are or have been employed by the three respondent undertakings in the provision of cleaning and catering services in schools under the Council's control. Most of them were originally employed by the Council in the provision of the same services in the same schools.

8 In December 1995 the appellants instituted proceedings under the 1970 Act against the respondent undertakings before an industrial tribunal for England and Wales. The appellants appealed against the decision of that tribunal to the Employment Appeal Tribunal (United Kingdom), which dismissed their appeal

on the substance. The appellants thereupon brought an appeal before the Court of Appeal, arguing that, in the special circumstances of the case, Article 141 EC entitled them to claim equal pay with male comparators employed by the Council, regardless of whether the appellants had been originally employed by the Council or were so employed at present.

9 For the purposes of the preliminary hearing in the main proceedings, the parties agreed to assume that there was a difference, operating to the appellants' disadvantage, between their terms and conditions of employment and those of their comparators. The order for reference indicates that, for those purposes, the parties proceeded on the following assumptions:

'a. That there was a transfer of an undertaking when the relevant catering and cleaning contracts were contracted out to the respondent;

b. The jobs of the [appellants] were of equal value to the jobs of their chosen comparators at the dates of the respective transfer;

c. The jobs of the [appellants] were still of equal value to the jobs of their chosen comparators at the respective dates when their originating applications were submitted;

d. The comparators were, at all material times, employed by North Yorkshire County Council.'

10 In order to give a ruling in the main proceedings, the Court of Appeal must determine whether the appellants are entitled, for the purposes of establishing their claims to equal pay without discrimination based on sex against the respondent undertakings, to use, for purposes of comparison, the terms and conditions of employment of men employed by the Council. In those circumstances the Court of Appeal of England and Wales (Civil Division) decided to stay proceedings and to refer the following questions to the Court:

'1. Is Article 141 [EC] directly applicable in the circumstances of this case (as set out in this judgment) so that it can be relied upon by the applicants in national proceedings to enable them to compare their pay with that of men in the employment of the North Yorkshire County Council who are performing work of equal value to that done by the applicants?

2. Can an applicant who seeks to place reliance on the direct effect of Article 141 [EC] do so only if the respondent employer is in a position where he is able to explain why the employer of the chosen comparator pays his employees as he does?'

The questions submitted for preliminary ruling

11 In order to reply to the first question, it should be noted at the outset that Article 141(1) EC lays down the principle that equal work or work of equal value must be remunerated in the same way, whether it is performed by a man or a woman.

12 As the Court held in Case 43/75 *Defrenne II* [1976] ECR 455, paragraph 12, that principle, which is a particular expression of the general principle of equality which prohibits comparable situations from being treated differently unless the difference is objectively justified, forms part of the foundations of the Community (see Case C-381/99 *Brunnhofer* [2001] ECR I-4961, paragraph 28).

13 The Court has recognised the direct effect of the principle of equal pay for men and women laid down in the EC Treaty. It has ruled that that principle not only applies to the action of public authorities but also extends to all agreements which are intended to regulate paid labour collectively as well as to contracts between private individuals (see, *inter alia*, *Defrenne II*, cited above, paragraphs 39 and 40).

14 In the light of those considerations, it is necessary to examine whether Article 141(1) EC can apply in circumstances such as those of the main proceedings.

15 Three features distinguish the present case. First, the persons whose pay is being compared work for different employers, that is to say, on the one hand, the Council and, on the other, the respondent undertakings. Second, the work which the appellants perform for those undertakings is identical to that which some of them performed for the Council before the transfer of undertakings. Finally, that work has been recognised as being of equal value to that performed by the chosen comparators employed by the Council and continues to be so recognised.

16 The Court of Appeal has not referred any question on the protection resulting, in the case before it, from Council Directive 77/187/EEC of 14 February 1977 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses (OJ 1977 L 61, p. 26). Its questions relate only to Article 141(1) EC.

17 There is, in this connection, nothing in the wording of Article 141(1) EC to suggest that the applicability of that provision is limited to situations in which men and women work for the same employer. The Court has held that the principle established by that article may be invoked before national courts, in particular in cases of discrimination arising directly from legislative provisions or collective labour agreements, as well as in cases in which work is carried out in the same establishment or service, whether private or public (see, *inter alia*, *Defrenne II*, paragraph 40; Case 129/79 *Macarthys* [1980] ECR 1275, paragraph 10; and Case 96/80 *Jenkins* [1981] ECR 911, paragraph 17).

18 However, where, as in the main proceedings here, the differences identified in the pay conditions of workers performing equal work or work of equal value cannot be attributed to a single source, there is no body which is responsible for the inequality and which could restore equal treatment. Such a situation does not

come within the scope of Article 141(1) EC. The work and the pay of those workers cannot therefore be compared on the basis of that provision.

19 In view of all of the foregoing, the answer to the first question must be that a situation such as that in the main proceedings, in which the differences identified in the pay conditions of workers of different sex performing equal work or work of equal value cannot be attributed to a single source, does not come within the scope of Article 141(1) EC.

20 Regard being had to the answer to the first question, it is unnecessary to reply to the second question.

Costs

21 The costs incurred by the United Kingdom Government and by the Commission, which have submitted observations to the Court, are not recoverable. As these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the questions referred to it by the Court of Appeal of England and Wales (Civil Division) by order of 20 July 2000, hereby rules:

A situation such as that in the main proceedings, in which the differences identified in the pay conditions of workers of different sex performing equal work or work of equal value cannot be attributed to a single source, does not come within the scope of Article 141(1) EC.

Rodríguez Iglesias	Jann	Macken
Colneric	von Bahr	Edward
La Pergola	Puissochet	Wathelet
Schintgen		Skouris

Delivered in open court in Luxembourg on 17 September 2002.

R. Grass — Registrar

G.C. Rodríguez Iglesias — President