

Case C-394/96

Mary Brown

v

Rentokil Initial UK Ltd (formerly Rentokil Ltd)

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

(Equal treatment for men and women — Dismissal of a pregnant woman —
Absences due to illness arising from pregnancy)

Opinion of Advocate General Ruiz-Jarabo Colomer delivered on 5 February
1998 I - 4187
Judgment of the Court, 30 June 1998 I - 4224

Summary of the Judgment

Social policy — Men and women — Access to employment and working conditions — Equal treatment — Dismissal of an employee during pregnancy owing to absences through pregnancy-related illness — Not permissible — Inclusion of absences through pregnancy-related illness and maternity leave in the computation of cumulative absences which, under a contractual provision, allow dismissal — Not permissible

(Council Directive 76/207, Arts 2(1) and 5(1))

Articles 2(1) and 5(1) of Directive 76/207 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 preclude dismissal of a female worker at any time during her pregnancy for absences due to incapacity for work caused by an illness resulting from that pregnancy.

In that regard, the fact that a female worker has been dismissed during her pregnancy on the basis of a contractual term providing that the employer may dismiss employees of either sex after a stipulated number of weeks of continuous absence is irrelevant.

Dismissal of a female worker during pregnancy for absences due to incapacity for

work resulting from her pregnancy is linked to the occurrence of risks inherent in pregnancy and must therefore be regarded as essentially based on the fact of pregnancy. Such a dismissal can affect only women and therefore constitutes direct discrimination on grounds of sex. However, where pathological conditions caused by pregnancy or childbirth arise after the end of maternity leave, they are covered by the general rules applicable in the event of illness. It follows that, where an illness of that kind arose during pregnancy and persisted during and after maternity leave, a worker's absence not only during maternity leave but also during the period extending from the start of her pregnancy to the start of her maternity leave cannot be taken into account for computation of the period justifying her dismissal under national law. As to her absence after maternity leave, this may be taken into account under the same conditions as a man's absence, of the same duration, through incapacity for work.