

Food for Thought as Rotterdam Court Rules against Overweight Cook

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A recent decision of a Rotterdam court to dissolve the employment contract of a ship's cook for being overweight was correct, but the cook should have been awarded some compensation for his length of service.

The cook, aged 56, had worked for the same Dutch-flag owner since August 1993. He had always performed his duties adequately and his assessments had always been good. However, a medical examination in 2006 determined that he no longer met the physical requirements for the job. He was declared unfit for duty on account of being overweight, dismissed on full pay and given two months to lose the necessary weight. In June 2006 the cook was declared fit for duty again for six months. However, after re-examination in January 2007 he was once again declared unfit as a result of being overweight.

The owner requested the Rotterdam court to dissolve the cook's employment contract, principally on the grounds that he was repeatedly unable to perform his duties, but also because of the disturbed working relationship which this had created. The owner accused the cook of lacking discipline and felt that since he had only himself to blame for the disturbed working relationship, he was unentitled to compensation.

The cook admitted that he was twice declared unfit because he was overweight. However, he maintained that he had sought help from his family doctor and a dietician, as a result of which he had lost several kilos, rendering him fit to perform his duties, at least until the re-examination found him once again unfit for work.

The cook asked the court to dismiss the owner's request as he was not to blame for being overweight and had done everything he could to lose weight. The cook demanded equitable remuneration as he had been working for the owner for a long time and had always received positive assessments.

While noting that there was no urgent reason to dissolve the employment contract, the Rotterdam court did acknowledge that there had been a disturbed working relationship on account of the cook having been declared unfit and for that reason no longer able to work for the owner. The court further held that the cook had not controlled his weight, for which only he could be blamed. As the cook presented no further special circumstances, the court awarded no remuneration.

Pursuant to Article 104 of the Regulations for Seagoing Crew Members, seafarers on vessels flying the Netherlands flag must be in possession of a medical certificate. In order to obtain these certificates, crew members must undergo a medical examination by a government-approved medical examiner. The Medical Examination Regulations for

Shipping require seafarers to meet a number of physical requirements, including the ability to pass through a 60 centimetre (cm) x 60cm manhole without assistance.

The cook was unable to pass the manhole test without assistance, which led to the medical examiner declaring him unfit to work.

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