

Supreme Court Recognizes a Right to Expect Reemployment Based on an Established Reemployment Practice

(Supreme Court Decision 2025Du32673 dated August 12, 2026)

1. Background and Issue

The plaintiff was a company engaged in the operation of municipal bus services, and the bus drivers employed by the plaintiff (the intervening parties in support of the defendant) reached the mandatory retirement age in February 2022.

Before the drivers reached retirement age, the labor union representing them requested that the plaintiff extend the mandatory retirement age. Alternatively, if such an extension was not possible, the union requested that the drivers be reemployed as fixed-term employees and further asked the company to provide reasons in writing if it decided not to renew their employment.

The plaintiff did not respond to the union's request and instead terminated the employment relationship upon the drivers reaching the mandatory retirement age.

The principal issue before the Supreme Court was whether the drivers had acquired a legitimate expectation of reemployment following mandatory retirement.

2. Supreme Court's Decision

Appellate Court

The appellate court held that the rules of employment merely granted the plaintiff discretion to rehire employees who

had retired at the mandatory retirement age as contract workers, and denied the existence of a right to expect reemployment, citing reasons such as the fact that the reemployment rate among all employees retiring at the mandatory retirement age was only approximately 47 percent and that there was a certain time lag between retirement and reemployment. It further held that even if an expectation of reemployment had been recognized, there were reasonable grounds for refusing reemployment because the drivers had not participated in the recruitment process and the existing collective bargaining agreement had expired.

Supreme Court

The Supreme Court vacated the appellate court's judgment and remanded the case for further proceedings, holding that the drivers had a right to expect reemployment and that the company lacked reasonable grounds for refusing to reemploy them.

The Supreme Court reaffirmed that, although the decision whether to continue an employment relationship after mandatory retirement generally falls within the employer's discretion, employees may acquire a right to expect reemployment where the relevant rules, the circumstances and duration of previous reemployment practices, the rate of reemployment, and prior instances of refusal have given rise to a relationship of trust under which employees satisfying certain conditions may reasonably expect to be reemployed. The Court also reiterated that, where such a legitimate expectation exists, an employer's refusal to reemploy an employee without reasonable grounds is ineffective in the same manner as an unfair dismissal (Supreme Court Decision 2018Du62492 dated June 29, 2023).

In reaching that conclusion, the Supreme Court relied on several factors. The plaintiff's rules of employment expressly provided a basis for reemploying retired employees on a fixed-term basis. In practice, every driver who had applied for reemployment had been rehired except for one individual, who was subsequently reinstated following a Labor Relations Commission decision finding that the driver's dismissal was unfair. In addition, the company's recruitment procedures for retired drivers had been conducted largely as a formality. Taken together, these circumstances supported recognizing a right to expect reemployment. The Court further held that the mere fact that reemployment occurred, on average, approximately 70 days after retirement following a separate application process was insufficient to negate such an expectation.

The Supreme Court also found that the plaintiff lacked reasonable grounds for refusing to reemploy the drivers. In reaching that conclusion, the Court noted that the labor union had formally requested that the drivers be reemployed on a fixed-term basis, yet the company neither informed them of the applicable recruitment procedures and the required application documents nor assessed whether they satisfied the applicable reemployment criteria. The Court further found no special circumstances that would justify refusing to reemploy these drivers while reemploying other retired employees. Finally, the Court held that, because a right to expect reemployment is founded on the relationship of trust established between the parties, the mere expiration of the previous collective bargaining agreement could not justify the company's complete failure to respond to the request for reemployment.

3. Significance

This decision reaffirms that, in determining whether employees have acquired a right to expect reemployment—or other legally protected employment-related expectations—courts must consider not only the relevant provisions of the rules of employment but also the employer’s actual reemployment practices and the manner in which the reemployment process has been conducted.

In particular, the Supreme Court made clear that where reemployment procedures had, in practice, been conducted largely as a formality, the mere fact that reemployment occurred, on average, approximately 70 days after mandatory retirement following a separate application process was insufficient, by itself, to negate a right to expect reemployment. The Court further held that where an employer fails to provide the necessary guidance regarding reemployment procedures despite receiving a request for reemployment, it cannot rely on an employee’s failure to participate in a separate recruitment process as a reasonable ground for refusing reemployment.

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