

Rubin Sportsware -case

[19] It seems to me that the word normal as used in sec 187 (2) (b) really means what it says. It means that which accords with the norm. However, it is important to bear in mind that that word is used in relation to persons employed in the same capacity as the person whose dismissal on the basis of having reached normal retirement age is in issue. Sec 187 (2) (b) must, therefore, not be read as if it says despite subsection 1 (f), a dismissal based on age is fair if the employee has reached the normal or agreed retirement age. It includes the words at the end for persons employed in that capacity. What the section does not make clear is whether the words persons employed in that capacity refer to such persons who are in the same employer's employ or whether it also refers to persons who are employed in the same capacity by other employers in the same industry or in general.

[20] It seems to me conceivable that one employer could have different normal retirement ages for different categories of employees within its workforce. There may, for example, be different normal retirement ages for professionals and artisans. In such a case the employer cannot retire an employee on the basis of a normal retirement age applicable to employees employed in a capacity different from that of his own. In other words, where an employer seeks refuge in the provisions of sec 187 (1) (b) against a claim of unfair dismissal and his defence is that the employee had reached normal retirement age, he must show not only that the employee had reached normal retirement age but that the retirement age is normal to employees employed in the same capacity as the employee concerned.