

Joined Cases C-350/06 and C-520/06

Gerhard Schultz-Hoff

v

Deutsche Rentenversicherung Bund

and

Stringer and Others

v

Her Majesty's Revenue and Customs

(References for a preliminary ruling
from the Landesarbeitsgericht Düsseldorf and the House of Lords)

(Working conditions — Organisation of working time — Directive 2003/88/EC —
Right to paid annual leave — Sick leave — Annual leave coinciding with sick leave —
Compensation for paid annual leave not taken before the end of the contract because of
sickness)

Opinion of Advocate General Trstenjak delivered on 24 January 2008	I - 182
Opinion of Advocate General Trstenjak delivered on 24 January 2008	I - 210
Judgment of the Court (Grand Chamber), 20 January 2009	I - 240

Summary of the Judgment

1. *Social policy — Protection of the safety and health of workers — Organisation of working time — Right to paid annual leave*
(European Parliament and Council Directive 2003/88, Art. 7(1))
2. *Social policy — Protection of the safety and health of workers — Organisation of working time — Right to paid annual leave*
(European Parliament and Council Directive 2003/88, Art. 7(1))
3. *Social policy — Protection of the safety and health of workers — Organisation of working time — Right to paid annual leave*
(European Parliament and Council Directive 2003/88, Art. 7(2))

1. Article 7(1) of Directive 2003/88 concerning certain aspects of the organisation of working time must be interpreted as not precluding national legislation or practices according to which a worker on sick leave is not entitled to take paid annual leave during that sick leave.

workers may exercise the right, without making the very existence of that right, which derives directly from that directive, subject to any preconditions whatsoever.

(see paras 28, 31, 32, operative part 1)

Nor does Directive 2003/88 preclude national legislation or practices which allow a worker on sick leave to take paid annual leave during that sick leave.

It is for the Member States to lay down, in their domestic legislation, conditions for the exercise and implementation of the right to paid annual leave, by prescribing the specific circumstances in which

2. Article 7(1) of Directive 2003/88 concerning certain aspects of the organisation of working time must be interpreted as meaning that it precludes national legislation or practices which provide that the right to paid annual leave is extinguished at the end of the leave year and/or of a carry-over period laid down by national law even where the worker has been on sick leave for the whole or part of

the leave year and where his incapacity for work persisted until the end of his employment relationship, which was the reason why he could not exercise his right to paid annual leave.

(see paras 49, 52, operative part 2)

3. Article 7(2) of Directive 2003/88 concerning certain aspects of the organisation of working time must be interpreted as precluding national legislation or practices which provide that, on termination of the employment relationship, no allowance in lieu of paid annual leave not

taken is to be paid to a worker who has been on sick leave for the whole or part of the leave year and/or of a carry-over period, which was the reason why he could not exercise his right to paid annual leave.

For the calculation of the allowance in lieu, the worker's normal remuneration, which is that which must be maintained during the rest period corresponding to the paid annual leave, is also decisive.

(see para. 62, operative part 3)