

Case C-277/08

Francisco Vicente Pereda

v

Madrid Movilidad SA

(Reference for a preliminary ruling
from the Juzgado de lo Social n° 23 de Madrid)

(Directive 2003/88/EC — Organisation of working time — Entitlement to paid annual leave — Sick leave — Annual leave coinciding with sick leave — Entitlement to take annual leave at another time)

Judgment of the Court (First Chamber), 10 September 2009 I - 8407

Summary of the Judgment

Social policy — Protection of the safety and health of workers — Organisation of working time — Entitlement to paid annual leave

(European Parliament and Council Directive No 2003/88, Art. 7(1))

Article 7(1) of Directive 2003/88 concerning certain aspects of the organisation of working time must be interpreted as precluding national provisions or collective agreements which provide that a worker who is on sick leave during a period of annual leave scheduled in the annual leave planning schedule of the undertaking which employs him does not have the right, after his recovery, to take his annual leave at a time other than that originally scheduled, if necessary outside the corresponding reference period.

The purpose of the entitlement to paid annual leave is to enable the worker to rest and to enjoy a period of relaxation and leisure. That purpose thus differs from that of entitlement to sick leave, the latter being given to the worker so that he can recover from being ill. It follows, in particular, from that stated purpose of the entitlement to paid annual leave that a worker who is on sick leave during a period of previously scheduled annual leave has the

right, on his request and in order that he may actually use his annual leave, to take that leave during a period which does not coincide with the period of sick leave. The scheduling of that new period of annual leave, corresponding to the duration of the overlap between the period of annual leave originally scheduled and the sick leave, is subject to the rules and procedures of national law which are applicable to the scheduling of workers' leave, taking into account the various interests involved, including overriding reasons relating to the interests of the undertaking. If such interests preclude acceptance of the worker's request for a new period of annual leave, the employer is obliged to grant the worker a different period of annual leave proposed by him which is compatible with those interests, without excluding in advance the possibility that that period may fall outside the reference period for the annual leave in question.

(see paras 21-23, 26, operative part)