Reports of Cases

Case C-266/14

Federación de Servicios Privados del sindicato Comisiones obreras (CC.OO.)
v
Tyco Integrated Security SL
and
Tyco Integrated Fire & Security Corporation Servicios SA

(Request for a preliminary ruling from the Audiencia Nacional)

(Reference for a preliminary ruling — Social policy — Directive 2003/88/EC — Protection of the health and safety of workers — Organisation of working time — Point (1) of Article 2 — Concept of 'working time' — Workers who are not assigned a fixed or habitual place of work — Time spent travelling between the workers' homes and the premises of the first and last customers)

Summary — Judgment of the Court (Third Chamber), 10 September 2015

1. *Social policy — Protection of the health and safety of workers — Directive 2003/88 concerning certain aspects of the organisation of working time — Working time — Concept — Workers who do not have or who no longer have a fixed or habitual place of work — Time spent travelling between the workers' homes and the premises of the first and last customers — Included*

   (Directive 2003/88, point (1) of Art. 2)

2. *Social policy — Protection of the health and safety of workers — Directive 2003/88 concerning certain aspects of the organisation of working time — Scope — Remuneration — Not included*

   (Directive 2003/88, Art. 7(1))

1. Point (1) of Article 2 of Directive 2003/88 concerning certain aspects of the organisation of working time must be interpreted as meaning that, in circumstances in which workers do not have or no longer have a fixed or habitual place of work, the time spent by those workers travelling each day between their homes and the premises of the first and last customers designated by their employer constitutes 'working time', within the meaning of that provision.

It has been repeatedly held that point (1) of Article 2 of Directive 2003/88 defines the concept of 'working time' as any period during which the worker is at work, at the employer's disposal and carrying out his activity or duties, in accordance with national laws and/or practices, and that that concept is placed in opposition to rest periods, the two being mutually exclusive. In that context, the directive in question does not provide for any intermediate category between working time and rest periods.

As regards, first of all, the first element of the concept of 'working time', according to which the worker must be carrying out his activity or duties, the journeys of workers, who no longer have a fixed or habitual place of work since the decision of their employer to abolish regional offices, to go

to the customers designated by their employer, is a necessary means of providing those workers' technical services to those customers. Moreover, before the abolition of the offices referred to, the employer regarded the travelling time of its workers between the regional offices and the premises of their first and last customers of the day as working time. Not taking those journeys into account would enable an employer to claim that only the time spent carrying out the activity of installing and maintaining the security systems falls within the concept of 'working time', within the meaning of point (1) of Article 2 of Directive 2003/88, which would distort that concept and jeopardise the objective of protecting the health and safety of workers.

As regards, next, the second element of that concept, according to which the worker must be at the employer's disposal during that time, the decisive factor is that the worker is required to be physically present at the place determined by the employer and to be available to the employer in order to be able to provide the appropriate services immediately, in case of need. Accordingly, in order for a worker to be regarded as being at the disposal of his employer, that worker must be placed in a situation in which he is legally obliged to obey the instructions of his employer and carry out his activity for that employer. Conversely, the possibility for workers to manage their time without major constraints and to pursue their own interests is a factor capable of demonstrating that the period of time in question does not constitute working time within the meaning of Directive 2003/88. In the present case, the workers concerned are obliged, during the time spent travelling between their first and last customer of the day, to obey the instructions of their employer, who may change the order of the customers or cancel or add an appointment.

In respect, last, of the third element of the concept of 'working time', according to which the worker must be working during the period in question, if a worker who no longer has a fixed place of work is carrying out his duties during his journey to or from a customer, that worker must also be regarded as working during that journey. Given that travelling is an integral part of being a worker without a fixed or habitual place of work, the place of work of such workers cannot be reduced to the physical areas of their work on the premises of their employer's customers.

(see paras 25, 26, 30, 32, 33, 35-39, 43, 50 and operative part)

2. See the text of the decision.

(see para. 48)