Reports of Cases

Joined Cases C-168/16 and C-169/16

Sandra Nogueira and Others
v
Crewlink Ireland Ltd
and

Miguel José Moreno Osacar
v
Ryanair Designated Activity Company

(Requests for a preliminary ruling from the cour du travail de Mons)

(References for a preliminary ruling — Judicial cooperation in civil matters — Jurisdiction — Jurisdiction over individual contracts of employment — Regulation (EC) No 44/2001 — Article 19(2)(a) — Concept of 'place in which the employee habitually carries out his work' — Airline sector — Airline crew — Regulation (EEC) No 3922/91 — Concept of 'home base')

Summary — Judgment of the Court (Second Chamber), 14 September 2017

1. *Judicial cooperation in civil matters — Jurisdiction and the enforcement of judgments in civil and commercial matters — Regulation No 44/2001 — Provisions of that regulation regarded as equivalent to those of the Brussels Convention — Interpretation of those provisions in accordance with the case-law of the Court relating to the Convention — Jurisdiction over individual contracts of employment — Concept of place in which the employee habitually carries out his work or of the place where the business which hired the employee is situated — Independent interpretation — Taking account of the corresponding provisions in the Rome Convention — Lawfulness*

   (Rome Convention of 19 June 1980, preamble; Council Regulation No 44/2001, Art. 19(2))

2. *Judicial cooperation in civil matters — Jurisdiction and enforcement of judgments in civil and commercial matters — Regulation No 44/2001 — Jurisdiction over individual contracts of employment — Concept of place where the employee habitually carries out his work — Broad interpretation*

   (Council Regulation No 44/2001, Art. 19(2))

3. *Judicial cooperation in civil matters — Jurisdiction and the enforcement of judgments in civil and commercial matters — Regulation No 44/2001 — Jurisdiction over individual contracts of employment — Concept of place where the employee habitually carries out his work — Determination where work carried out in more than one Member State — Work relationships in the transport sector — Criteria for determining that place*

   (Convention of 19 June 1980, Art. 5(1); Council Regulation No 44/2001, Arts 19(2))

4. *Judicial cooperation in civil matters — Jurisdiction and the enforcement of judgments in civil and commercial matters — Regulation No 44/2001 — Jurisdiction over individual contracts of employment — Concept of place where the employee habitually carries out his work — Action brought by a member of the air crew, assigned to or employed by an airline — Concept not being comparable to that of home base, within the meaning of Annex III to Regulation No 3922/91 — Concept of home base capable of constituting a significant indicium for the purposes of determining that place*

(Council Regulation No 3922/91, Annex III and Council Regulation No 44/2001, Art. 19(2))

5. *Judicial cooperation in civil matters — Jurisdiction and the enforcement of judgments in civil and commercial matters — Regulation No 44/2001 — Jurisdiction over individual contracts of employment — Concept of place where the employee habitually carries out his work — Action brought by a member of the air crew, assigned to or employed by an airline — Place not being comparable to the territory of the Member State of nationality of that airline*

(Chicago Convention of 7 December 1944, Art. 17; Council Regulation No 44/2001, Art. 19(2)(a))

1. See the text of the decision.

(see paras 45-48, 55, 56)

2. See the text of the decision.

(see para 57)

3. As regards an employment contract performed in the territory of several Contracting States and where there is no effective centre of professional activities from which an employee performs the essential part of his duties vis-à-vis his employer, the Court has held that Article 5(1) of the Brussels Convention must — in view of the need to establish the place with which the dispute has the most significant link, so that it is possible to identify the courts best placed to decide the case in order to afford proper protection to the employee as the weaker party to the contract and to avoid multiplication of the courts having jurisdiction — be interpreted as referring to the place where, or from which, the employee actually performs the essential part of his duties vis-à-vis his employer. Thus, in such circumstances, the concept of 'place where the employee habitually carries out his work' enshrined in Article 19(2)(a) of the Brussels I Regulation must be interpreted as referring to the place where, or from which, the employee in fact performs the essential part of his duties vis-à-vis his employer.

In the present case, the disputes in the main proceedings concern employees employed as members of the air crew of an airline or assigned to the latter. Thus, the court of a Member State seised of such disputes, when it is not able to determine with certainty the 'place where the employee habitually carries out his work', must, in order to assess whether it has jurisdiction, identify 'the place from which' that employee principally discharged his obligations towards his employer. As the Advocate General pointed out in point 95 of his Opinion, it is also apparent from the case-law of the Court that, to determine specifically that place, the national court must refer to a set of indicia.

As observed by the Advocate General in point 85 of his Opinion, as regards work relationships in the transport sector, the Court, in the judgments of 15 March 2011, *Koelzsch* (C-29/10, EU:C:2011:151, paragraph 49), and of 15 December 2011, *Voogsgeerd* (C-384/10, EU:C:2011:842, paragraphs 38 to 41), mentioned several indicia that might be taken into consideration by the national courts. Those courts must, in particular, determine in which Member State is situated (i) the place from which the employee carries out his transport-related tasks, (ii) the place where he returns after his tasks, receives instructions concerning his tasks and organises his work, and (iii) the place where his work tools are

to be found. In that regard, in circumstances such as those at issue in the main proceedings, and as pointed out by the Advocate General in point 102 of his Opinion, the place where the aircraft aboard which the work is habitually performed are stationed must also be taken into account.

(see paras 58-61, 63, 64)

4. Article 19(2)(a) of Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that, in the event of proceedings being brought by a member of the air crew, assigned to or employed by an airline, and in order to establish the jurisdiction of the court seised, the concept of 'place where the employee habitually carries out his work', within the meaning of that provision, cannot be equated with that of 'home base', within the meaning of Annex III to Council Regulation (EEC) No 3922/91 of 16 December 1991 on the harmonisation of technical requirements and administrative procedures in the field of civil aviation, as amended by Regulation (EC) No 1899/2006 of the European Parliament and of the Council of 12 December 2006.

The concept of 'home base' constitutes nevertheless a significant indicium for the purposes of determining the 'place where the employee habitually carries out his work'. That concept is defined in Annex III to Regulation No 3922/91, under OPS 1.1095, as the place from which the air crew systematically starts its working day and ends it by organising its daily work there and close to which employees have, during the period of performance of their contract of employment, established their residence and are at the disposal of the air carrier. It would only be if, taking account of the facts of each of the present cases, applications, such as those at issue in the main proceedings, were to display closer connections with a place other than the 'home base' that the relevance of the latter for the identification of 'the place from which employees habitually carry out their work' would be undermined (see, to that effect, judgment of 27 February 2002, *Weber*, C-37/00, EU:C:2002:122, paragraph 53, as well as, by analogy, judgment of 12 September 2013, *Schlecker*, C-64/12, EU:C:2013:551, paragraph 38 and the case-law cited).

(see paras 70, 73, 77, operative part)

5. See the text of the decision.

(see paras 75 and 76)