Reports of Cases

Case C-385/17

Torsten Hein
v
Albert Holzkamm GmbH & Co. KG

(Request for a preliminary ruling from the Arbeitsgericht Verden)

(Reference for a preliminary ruling — Social policy — Organisation of working time — Directive 2003/88/EC — Right to paid annual leave — Article 7(1) — Legislation of a Member State under which collective agreements may provide for account to be taken of periods of short-time working when calculating remuneration to be paid in respect of annual leave — Temporal effects of judgments ruling on interpretation)

Summary — Judgment of the Court (Fourth Chamber), 13 December 2018

1. *Social policy — Protection of the safety and health of workers — Organisation of working time — Right to paid annual leave — National legislation under which collective agreements may provide for account to be taken of periods of short-time working when calculating remuneration to be paid in respect of that annual leave — Remuneration, for the duration of the minimum period of annual leave, that is lower than the normal remuneration received by the worker during periods of work — Inadmissible obligation to interpret national legislation in conformity with EU law — No limitation on the temporal effects of the ruling — Precedence to be given to the interpretation of EU law over the protection of the legitimate expectations of employers*

   (Charter of Fundamental Rights of the European Union, Art. 31(2); European Parliament and Council Directive 2003/88, Art. 7(1))

2. *Questions referred for a preliminary ruling — Interpretation — Temporal effects of judgments ruling on interpretation — Retroactive effect — Limitation by the Court — Conditions*

   (Art. 267 TFEU)

1. Article 7(1) of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time and Article 31(2) of the Charter of Fundamental Rights of the European Union must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which, for the purpose of calculating remuneration for annual leave, allows collective agreements to provide for account to be taken of reductions in earnings resulting from the fact that during the reference period there were days when no work was actually performed owing to short-time working, with the consequence that the worker receives, for the duration of the minimum period of annual leave to which he is entitled under Article 7(1) of the directive, remuneration for annual leave that is lower than the normal remuneration which he receives during periods of work. It is for the referring court to interpret the national legislation, so far as possible, in the light of the wording and the purpose of Directive 2003/88, in such a way that the

remuneration for annual leave paid to workers in respect of the minimum annual leave provided for in Article 7(1) is not less than the average of the normal remuneration received by those workers during periods of actual work.

In that regard, an increase in the entitlement to paid annual leave beyond the minimum required by Article 7(1) of Directive 2003/88 or the possibility of obtaining entitlement to unbroken paid annual leave are measures favourable to workers which go beyond the minimum requirements laid down in that provision and, as a result, are not governed by it. Those measures cannot serve to compensate for the negative effect that a reduction in the remuneration due for annual leave has on the worker without undermining the right to paid annual leave under that provision, an integral part of which is the right for the worker to enjoy, during his period of rest and relaxation, economic conditions which are comparable to those relating to the exercise of his employment.

It should be borne in mind, in that regard, that the purpose of normal remuneration being received during the period of paid annual leave is to allow the worker actually to take the days of leave to which he is entitled (see, to that effect, judgments of 16 March 2006, *Robinson-Steele and Others*, C-131/04 and C-257/04, EU:C:2006:177, paragraph 49, and of 22 May 2014, *Lock*, C-539/12, EU:C:2014:351, paragraph 20). When the remuneration paid on account of the entitlement to paid annual leave provided for by Article 7(1) of Directive 2003/88 is, as in the situation in the main proceedings, less than the normal remuneration that the worker receives during periods actually worked, the worker might well be encouraged not to take his paid annual leave, at least during periods of actual work, as it would lead to a reduction in his remuneration during those periods.

It is not appropriate to limit the temporal effects of the present judgment and EU law must be interpreted as precluding national courts from protecting, on the basis of national law, the legitimate expectation of employers that the case-law of the highest national courts, which confirmed the lawfulness of the provisions concerning paid annual leave in the collective framework agreement for the construction industry, will continue to apply.

(see paras 43, 44, 53, 63, operative part 1, 2)

2. See the text of the decision.

(see paras 56, 57)