

JUDGMENT OF THE COURT

(Second Chamber)

of 16 September 2004

in Case C-400/02 (reference for a preliminary ruling from the Bundesarbeitsgericht): Gerard Merida v Bundesrepublik Deutschland ⁽¹⁾

(Article 39 EC — Collective agreement — Supplementary temporary allowance in favour of former civilian employees of the allied forces in Germany — Frontier workers — Determination of the basis of calculation of that allowance — Notional taking into account of German tax on wages)

(2004/C 273/10)

(Language of the case: German)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-400/02: reference for a preliminary ruling under Article 234 EC, by the Bundesarbeitsgericht (Germany), made by decision of 27 June 2002, received at the Court on 12 November 2002, in the proceedings between Gerard Merida and Bundesrepublik Deutschland — the Court (Second Chamber), composed of: C.W.A. Timmermans, President of the Chamber, J.-P. Puissechet, J.N. Cunha Rodrigues (Rapporteur), R. Schintgen and N. Colneric, Judges; C. Stix-Hackl, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, has given a judgment on 16 September 2004, in which it has ruled:

Articles 39 EC and 7(4) of Council Regulation (EEC) No 1612/68 of 15 October 1968 on freedom of movement for workers within the Community preclude national legislation provided for in a collective agreement under which the amount of a social benefit such as interim assistance ('Überbrückungsbeihilfe') paid by the Member State of employment is calculated in such a way that the tax on wages payable in that State is notionally deducted on determination of the basis of assessment of that benefit, even though, under a double taxation agreement, salaries, wages and analogous emoluments paid to workers not residing in the Member State of employment are chargeable to tax only in the Member State in which such workers are resident.

⁽¹⁾ OJ C 31, 8.2.2003.

JUDGMENT OF THE COURT

(Second Chamber)

of 16 September 2004

in Case C-404/02 (reference for a preliminary ruling from the High Court of Justice of England and Wales (Chancery Division): Nichols plc v Registrar of Trade Marks ⁽¹⁾)

(Trade marks — Directive 89/104/EEC — Article 3(1)(b) — Trade mark comprising a common surname — Distinctive character — Impact of Article 6(1)(a) on assessment)

(2004/C 273/11)

(Language of the case: English)

In Case C-404/02: reference for a preliminary ruling under Article 234 EC, from the High Court of Justice of England and Wales, Chancery Division, (United Kingdom), made by decision of 3 September 2002, registered at the Court on 12 November 2002, in the proceedings between Nichols plc and Registrar of Trade Marks — the Court (Second Chamber), composed of: C.W.A. Timmermans, President of the Chamber, C. Gulmann (Rapporteur), J.-P. Puissechet, R. Schintgen and N. Colneric, Judges; D. Ruiz-Jarabo Colomer, Advocate General; M. Múgica Arzamendi, Principal Administrator, for the Registrar, has given a judgment on 16 September 2004, in which it has ruled:

In the context of Article 3(1)(b) of the First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks, the assessment of the existence or otherwise of the distinctive character of a trade mark constituted by a surname, even a common one, must be carried out specifically, in accordance with the criteria applicable to any sign covered by Article 2 of that directive, in relation, first, to the products or services in respect of which registration is applied for and, second, to the perception of the relevant consumers. The fact that the effects of registration of the trade mark are limited by virtue of Article 6(1)(a) of that directive has no impact on that assessment.

⁽¹⁾ OJ C 7, 11.1.2003.