

**Reference for a preliminary ruling from the Watford Employment Tribunal (United Kingdom) made on 19 September 2019  
– B v Yodel Delivery Network Ltd**

**(Case C-692/19)**

(2019/C 423/30)

*Language of the case: English*

**Referring court**

Watford Employment Tribunal

**Parties to the main proceedings**

*Applicant:* B

*Defendant:* Yodel Delivery Network Ltd

**Questions referred**

1. Does Directive 2003/88/EC <sup>(1)</sup> concerning certain aspects of the organisation of working time preclude provisions of national law which require an individual to undertake to do or perform all of the work or services required of him, 'personally' in order to fall within the scope of the Directive?
2. In particular:
  - 2.1. Does the fact that an individual has the right to engage sub-contractors or 'substitutes' to perform all or any part of the work or services required of him mean that he is not to be regarded as a worker for the purposes of Directive 2003/88/EC either:
    - 2.1.1. at all (the right to substitute being inconsistent with the status of worker); or
    - 2.1.2. only in respect of any period of time when exercising such right of substitution (so that he is to be regarded as a worker in relation to periods of time actually spent performing work or services)?
  - 2.2. Is it material to a determination of worker status for the purposes of Directive 2003/88/EC that the particular claimant has not in fact availed himself of the right to sub-contract or use a substitute, where others engaged on materially the same terms have done so?
  - 2.3. Is it material to a determination of worker status for the purposes of Directive 2003/88/EC that other entities including limited companies and limited liability partnerships are engaged on materially the same terms as the particular claimant?
3. Is it material to a determination of worker status for the purposes of Directive 2003/88/EC that the putative employer is not obliged to offer work to the individual claimant i.e. that it is offered on a 'when needed' basis; and/or that the individual claimant is not obliged to accept it i.e. it is 'subject always to the Courier's absolute right not to accept any work offered'?

4. Is it material to a determination of worker status for the purposes of Directive 2003/88/EC that the individual claimant is not obliged to work exclusively for the putative employer but may concurrently perform similar services for any third party, including direct competitors of the putative employer?
5. Is it material to a determination of worker status for the purposes of Directive 2003/88/EC that the particular claimant has not in fact availed himself of the right to perform similar services for third parties, where others engaged on materially the same terms have done so?
6. For the purposes of Art. 2.1 of Directive 2003/88/EC how is a worker's working time to be calculated in circumstances where the individual claimant is not required to work fixed hours but is free to determine his own working hours within certain parameters e.g. between the hours of 7.30am and 9pm? In particular how is working time to be calculated when:
  - 6.1. the individual is not required to work exclusively for the putative employer during those hours and/or that certain activities performed during those hours (e.g. driving) may benefit both the putative employer and a third party;
  - 6.2. the worker is afforded a great deal of latitude as to the mode of delivery of work, such that he may tailor his time to suit his personal convenience rather than solely the interests of the putative employer.

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(<sup>1</sup>) 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 (OJ 2003, L 299, p. 9).

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**Request for a preliminary ruling from the Tribunal Supremo (Spain) lodged on 24 September 2019 — Novo Banco S.A. v Junta de Andalucía**

**(Case C-712/19)**

(2019/C 423/31)

*Language of the case: Spanish*

**Referring court**

Tribunal Supremo

**Parties to the main proceedings**

*Appellant:* Novo Banco S.A.

*Respondent:* Junta de Andalucía

**Questions referred**

1. Must Articles 49, 56 and 63 TFEU, which guarantee the freedom of establishment, the freedom to provide services and the free movement of capital, respectively, be interpreted as precluding, *inter alia*, a system of deductions like that laid down for the IDECA in points 2 and 3 of Article 6(7) of Andalusian Law 11/2010 of 3 December on fiscal measures for the reduction of the government deficit and for sustainability?