

## SUMMARY

# **<strong>ECJ 10 September 2015, case C-266/14&nbsp;(Federaci&oacute;n de Servicios Privados del sindicato Comisiones obreras - v - Tyco Integrated Security SL and Tyco Integrated Fire & Security Corporation Services SA), Working time</strong>**

## **Facts**

Tyco is a company that installs and maintains intruder detection and anti-theft systems. Until 2011, its technicians came into one of the provincial offices every morning to pick up their company car and drive to the first customer, and at the end of the day they returned to the office. The time spent travelling from home to the provincial office in the morning and the time spent travelling from the office to home in the evening did not count as working time and was not paid for. In 2011, Tyco closed its provincial offices and switched to the following work system. Each technician drives home in his company car at the end of the working day. The next morning he drives from home to the first customer. He gets his instructions from the sole remaining head office in Madrid through his smart phone.

Tyco took the position that the time spent driving from home to the first customer (sometimes over a distance of over 100km) and the time spent driving from the last customer back home was not working time. It based this position on Article 34(5) of the Workers' Statute: "Working

time shall be calculated in such a way that a worker is present at his place of work both at the beginning and at the end of the working day”. According to the referring court, this is based on the idea that the worker is free to choose where to have his home and, therefore, to live at a greater or lesser distance from his place of work.

CC.OO is a union. It took the position that the time spent travelling from home to the first customer and from the last customer back home qualifies as working time.

### **National proceedings**

The union brought the matter before the Audiencia Nacional. It was uncertain whether said Article 34(5) complies with Directive 2003/88, which defines ‘working time’ as “any period during which the worker is working, at the employer’s disposal and carrying out his activity or duties, in accordance with national law and/or practice” and it defines ‘rest period’ as “any period which is not working time”. Accordingly, it referred a question to the ECJ.

### **ECJ’s findings**

Directive 2003/88 defines the concept of ‘working time’ as any period during which the worker is (i) at work, (ii) at the employer’s disposal and (iii) carrying out his activity or duties. That concept is placed in opposition to the concept of ‘rest periods’. The two concepts are mutually exclusive and there is no intermediate category between working time and rest periods. Both concepts must be interpreted autonomously and by reference to the scheme and purpose of the directive (§25-27).

Before Tyco abolished its regional offices, it regarded the time spent travelling from those offices to the first customer and from the last customer back to those offices as working time. The nature of those journeys did not change after the regional offices were abolished. Only the departure point changed. Thus, Tyco’s workers must be regarded as carrying out their activity or duties during the time spent travelling between home and customers (§29-34).

It is true that the workers are free to manage their travelling time to the first and from the last customer as they wish and to choose any route they wish. However, during that travelling time, they are not able to use their time freely or pursue their own interests. Consequently, they are at their employer’s disposal (§35-39).

It is true that the workers could conduct personal business at the beginning and end of the day and that it would not be reasonable if the employer had to pay for the time spent conducting such personal business. This fact, however, cannot affect the legal classification of journey time. Moreover, it is possible for the employer to put in place monitoring procedures to avoid abuse. Also, in the previous situation where Tyco had regional offices, a similar potential for

abuse existed (§40-42).

Given that travelling is an integral part of being a worker without a fixed or habitual place of work, the place of work cannot be reduced to the physical areas of their work on the premises of their employer's customers. It follows that when the workers in question make their journeys to the first and from the last customer, they must be regarded as 'working' within the meaning of the directive (§43-46).

It is true that this conclusion can lead to an increase in costs for Tyco, but it remains free to determine the remuneration for the time spent travelling between home and customers (§47).

### **Ruling (judgment)**

Point (1) of Article 2 of Directive 2003/88/EC [...] must be interpreted as meaning that, in circumstances such as those at issue in the main proceedings, in which workers do not 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.

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**Creator:** European Court of Justice (ECJ)

**Verdict at:** 2015-09-10

**Case number:** C-266/14