SUMMARY

ECJ 11 November 2015, case C-219/14 (Kathleen Greenfield - v - The Care Bureau Ltd), Paid leave

Facts

Ms Greenfield was employed by Care Bureau from 15 June 2009. She worked under a contract of employment in which it was stipulated that working hours and days differed from week to week. The remuneration payable for any week varied according to the number of days or hours of work performed. Under both UK law and the contract of employment, Ms Greenfield was entitled to 5.6 weeks of leave per year. The leave year began on 15 June. Ms Greenfield left Care Bureau on 28 May 2013. It is not disputed that she took 7 days of paid leave during the final leave year. She worked for a total of 1,729.5 hours and took a total of 62.84 hours of paid leave. Ms Greenfield took those 7 days of paid leave in July 2012. During the 12-week period immediately preceding that holiday, her work pattern was 1 day per week. From August 2012 Ms Greenfield began working a pattern of 12 days on and 2 days off taken as alternate weekends. That pattern amounted to an average of 41.4 hours of work per week. It was specified by Care Bureau that all Ms Greenfield's hours, including any overtime, would be used in the calculation of her entitlement to paid annual leave. In November 2012 Ms Greenfield requested a week of paid leave. Care Bureau informed her that, as a result of the holiday taken in June and July 2012, she had exhausted her entitlement to paid annual leave. The entitlement to paid leave was calculated at the date on which leave was taken, based on the working pattern for the 12-week period prior to the leave. Since Ms Greenfield had taken her leave at a time when her work pattern was one day per week, she had taken the equivalent of 7 weeks of paid leave, and accordingly exhausted her entitlement to paid annual leave. Taking the view that she was entitled to an allowance in lieu of paid leave not taken, Ms Greenfield brought proceedings against her employer in the Birmingham Employment

Tribunal, which allowed her claim.

National proceedings

Before the Birmingham Employment Tribunal, Ms Greenfield argued that national law, read in conjunction with EU law, requires that leave already accrued and taken should be retroactively recalculated and adjusted following an increase in working hours, for example, following a move from part-time to full-time work, so as to be proportional to the new number of working hours and not the hours worked at the time leave was taken. Care Bureau maintains that EU law does not provide for a new calculation and that, therefore, Member States are not required to make such an adjustment under national law. Having doubts as to the interpretation of EU law in the case before it, the Birmingham Employment Tribunal decided to stay the proceedings and to refer questions to the Court for a preliminary ruling.

ECJ's findings

The entitlement to minimum paid annual leave, within the meaning of Directive 2003/88, must be calculated by reference to the days, hours and/or fractions of days or hours worked and specified in the contract of employment (§ 32).
As for the period of work to which the right to paid annual leave relates, and the possible consequences that an alteration in the work pattern, in relation to the number of hours worked, can or must have on the total leave rights already accumulated and on the exercise of those rights over time, it should be noted that, according to the Court's settled case-law, the taking of annual leave in a period after the period during which the entitlement to leave has been accumulated has no connection to the time worked by the worker during that later period (see Zentralbetriebsrat der Landeskrankenhäuser Tirols, C 486/08 (§ 33).
The Court has also previously held that a change and, in particular, a reduction in working hours when moving from full-time to part-time employment cannot reduce the right to annual leave that the worker has accumulated during the period of full-time employment. It follows that, as regards the accrual of entitlement to paid annual leave, it is necessary to distinguish periods during which the worker worked according to different work patterns, the number of units of annual leave accumulated in relation to the number of units worked to be calculated for each period separately (§ 34-35).
That conclusion is not affected by the application of the pro rata temporis principle laid down in clause 4.2 of the Framework Agreement on part-time work. While it is the case that the application of that principle is appropriate for the grant of annual leave for a period of part-time employment, since for such a period the reduction of the right to annual leave, in comparison to that granted for a period of full-time employment, is justified on objective

grounds, the fact remains that that principle cannot be applied ex post to a right to annual leave accumulated during a period of full-time work (§ 36-37).
As for the period to which the new calculation of the right to paid annual leave must relate, where the worker, after accumulating rights to paid annual leave during a period of part-time work, increases the number of hours worked and moves to full-time work, it should be noted that the number of units of annual leave accumulated in relation to the number of hours worked must be calculated separately for each period. In a situation such as that at issue in the main proceedings, EU law therefore requires a new calculation of rights to paid annual leave to be performed only for the period of work during which the worker increased the number of hours worked. The units of paid annual leave already taken during the period of part-time work which exceeded the right to paid annual leave accumulated during that period must be deducted from the rights newly accumulated during the period of work in which the worker increased the number of hours worked (§ 42-43).
Whether the calculation of entitlement to paid annual leave is to be performed during the employment relationship or after it has ended has no effect on the way in which the calculation is performed. Therefore, the calculation of the allowance in lieu of annual leave not taken must be carried out according to the same method as that used for the calculation of normal remuneration, the time when that calculation takes place being, in principle, irrelevant (§ 46-52).

Ruling

Clause 4.2 of the Framework Agreement on part-time work [.....] must be interpreted as meaning that, in the event of an increase in the number of hours of work performed by a worker, the Member States are not obliged to provide that the entitlement to paid annual leave already accrued, and possibly taken, must be recalculated retroactively according to that worker's new work pattern. A new calculation must, however, be performed for the period during which working time increased.
Clause 4.2 of the Framework Agreement and Article 7 of Directive 2003/88 must be interpreted as meaning that the calculation of the entitlement to paid annual leave is to be performed according to the same principles, whether what is being determined is the allowance in lieu of paid annual leave not taken where the employment relationship is terminated, or the outstanding annual leave entitlement where the employment relationship continues.

Creator: European Court of Justice (ECJ)

EELA EUROPEAN EMPLOYMENT LAWYERS ASSOCIATION

Verdict at: 2015-11-11
Case number: C-219/14