SUMMARY

ECJ 13 May 2015, case C-392/13 (Andrés Rabal Cañas - v - Nexea Gestión Documental SA and Fondo de Garantía Salarial), Collective redundancies

Facts

Mr Rabal Cañas worked for a company called Nexea. It had two establishments: one in Madrid with 164 employees and one in Barcelona with 20 employees including Rabal Cañas. In July 2012, Nexea dismissed 14 employees in Madrid. In August 2012 it dismissed two employees in Barcelona. In September it dismissed one more in Madrid. In October and November it did not renew the temporary contracts of five employees, three in Madrid and two in Barcelona. In December it dismissed 13 in Barcelona including Rabal Cañas.

Rabal Cañas claimed that his dismissal was void on the ground that Nexea had failed to follow the procedure for collective redundancies as provided in Article 51 of the Spanish Workers' Statute. It provides that a consultation process shall be followed where, over a period of 90 days, a termination of employment on economic, technical, organisational or production grounds affects at least (a) 10 workers in undertakings employing fewer than 100 workers [*underlining added, Editor*]. This provision is the Spanish transposition of Directive 98/59. The latter defines collective redundancies as "dismissals effected by an employer for one or more reasons not related to the individual workers concerned, where the number of redundancies is (i) [...] or (ii) over a period of 90 days, at least 20 whatever the number of workers normally employed in the establishment in question" [*underlining added, Editor*]. The court referred four questions to the ECJ.

ECJ's findings

Does the Directive preclude national legislation which defines the concept of 'collective redundancies' using the undertaking (in this case Nexea as a whole) as the sole reference unit and not the establishment (in this case, the Barcelona branch only)? The Directive does not define 'establishment'. This term must be interpreted autonomously (§ 40-42).
In Rockfon (C-449/93), the ECJ interpreted 'establishment' as designating the unit to which the workers are assigned to carry out their duties, regardless whether that unit has a management that can independently effect collective redundancies. In Athinaiki (C-270/05), the ECJ clarified this as follows. An establishment may consist of a distinct entity, having a certain permanence and stability, which is assigned to perform one or more given tasks and which has a workforce, technical means and a certain organisational structure. An 'undertaking' may have one or more 'establishments'. Since the Directive concerns the socioeconomic effects that collective redundancies may have in a given local context and social environment, the entity in question need not have any legal autonomy, nor need it have economic, financial, administrative or technical autonomy, in order to be regarded as an 'establishment' (§ 43-47).
Although the offices in Madrid and Barcelona had a single production manager and joint accounting and budgetary management and although they carried out identical tasks, the Barcelona office had a manager of its own. Therefore, the establishment in Barcelona was capable of meeting the criteria for being an establishment within the meaning of the Directive (§ 50-51).
Replacing 'establishment' by 'undertaking' can be favourable to workers if that element is additional. This is the case where it provides for information and consultation in the event 10 workers are dismissed in establishments normally employing more than 20 and less than 100 workers (§ 51-54).
In the present case, the dismissals at issue did not reach the threshold of 10% of Nexea's workforce (under Spanish law) nor the threshold of more than 20 in the Barcelona establishment (under the Directive) (§ 55-56).
Article 2 of the Directive provides that it shall not apply to collective redundancies effected under contracts of employment concluded for limited periods of time. This means that nonextension of a fixed-term contract does not count for the purpose of assessing whether the Directive's threshold has been met (§ 59-67).

Ruling

Article 1(1)(a) of Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws

of the Member States relating to collective redundancies must be interpreted as precluding national legislation that introduces the undertaking and not the establishment as the sole reference unit, where the effect of the application of that criterion is to preclude the information and consultation procedure provided for in Article 2 to 4 of that directive, when the dismissals in question would have been considered 'collective redundancies', under the definition in Article 1(1)(a) of that directive, had the establishment been used as the reference unit.

Article 1(1) of Directive 98/59 must be interpreted as meaning that, for the purposes of establishing whether 'collective redundancies', within the meaning of that provision, have been effected, there is no need to take into account individual terminations of contracts of employment concluded for limited periods of time or for specific tasks, when those terminations take place on the date of expiry of the contract or on the date on which that task was completed.

Article 1(2)(a) of Directive 98/59 must be interpreted as meaning that, for the purposes of establishing the existence of collective redundancies effected under contracts of employment concluded for limited periods of time or for specific tasks, it is not necessary for the cause of such collective redundancies to derive from the same collective contractual framework for the same duration or the same task.

Creator: European Court of Justice (ECJ)
Verdict at: 2015-04-13
Case number: C-392/13