

SUMMARY

ECJ 17 March 2015, case C-533/13 (Auto- ja Kuljetusalan Työntekijäliitto AKT ry - v - Oyjtuote ry and Shell Aviation Finland Oy), Temporary agency work

Facts

Shell Aviation Finland Oy ('Shell') delivers fuel to 18 airports in Finland. It is a member of 'Ölytuote', the Finnish association of employers in the fuel industry. AKT is the trade union for the tank truck and oil products industry. It brought legal proceedings against Shell for breach of Article 8(3) of a collective agreement concluded in 1997 between the national associations of employers and employees (the '1997 collective agreement') and Clause 29(1) of the collective agreement for the tank truck and oil products industry (the 'tank truck collective agreement'). These two, similarly worded provisions provide that employers may only make use of temporary agency workers ('agency workers') in order to cope with peaks in workload or for temporary and limited tasks that cannot be performed by their own staff on account of urgent need, limited duration, specific skills, the use of special equipment or other similar reasons. Article 8(3) of the 1997 collective agreement prohibits employers from making use of external labour supply wherever agency workers are being utilized for normal work alongside company staff and under the same supervisors. AKT alleged that Shell had been employing agency workers for the same tasks as its own employees, regularly and on a large scale, since 2008. Shell responded that its use of agency workers had been mainly to replace its own staff during vacations and sick leave periods. In addition, Shell argued that Clause 29(1) of the tank truck collective agreement contains a restriction that is not compatible with Article 4(1) of Directive 2008/104 on temporary agency work, which provides that:

"Prohibitions or restrictions on the use of temporary agency work shall be justified only on grounds

of general interest relating in particular to the protection of temporary agency workers, the requirement for health and safety at work or the need to ensure that the labour market functions properly and abuses are prevented.”

National proceedings

AKT applied to the court seeking an order that Shell pay it a fine in accordance with the Finnish law on collective agreements. The court referred three questions to the ECJ. It observed that Clause 29(1) takes a different approach than the Directive, where it prohibits the use of agency work except in certain specific situations. The questions raise three issues: (1) the extent of the obligations placed on the Member States by the Directive, (2) the extent to which Member States may restrict the use of agency work and (3) whether Article 4(1) of the Directive can be applied in a dispute between private parties.

ECJ’s findings

In order to ascertain the exact meaning of Article 4(1) of the directive, that provision needs to be read as a whole, taking into account its context (§ 22-27).

Article 4(2) and (3) of the directive provides that the Member States shall review any prohibitions or restrictions on the use of temporary agency work and inform the Commission of the results of the review by 5 December 2001. It follows that Article 4(1), read in conjunction with paragraphs 2 and 3 of that Article, is addressed solely to Member States (§ 28).

Depending on the result of the review, the Member States could have been obliged to amend their legislation. However, the fact remains that they are free to either remove or adapt prohibitions and restrictions to render their legislation compliant with Article 4(1) (§ 29-30).

Ruling

Article 4(1) of Directive 2008/104/EC [...] on temporary agency work must be interpreted as meaning that:

the provision is addressed only to the competent authorities of the Member States, imposing on them an obligation to review in order to ensure that any potential prohibitions or restrictions on the use of temporary agency work are justified; and therefore, the provision does not impose an obligation on national courts not to apply any rule of national law containing prohibitions or restrictions on the use of temporary agency work which are not justified on grounds of general interest within the meaning of Article 4(1).

Creator: European Court of Justice (ECJ)

Verdict at: 2015-03-17

Case number: C-533/13