EELA EUROPEAN EMPLOYMENT LAWYERS ASSOCIATION

SUMMARY

2014/30 Where to sue a foreign airline company? Another Ryanair case (NO)

<p>The case concerns a dispute about whether a Norwegian district court in an employment case is the correct jurisdiction under the Lugano Convention¹ (Article 19(2)(a)) and section 4-5 (4) of the Norwegian Dispute Act.</p><p>An Italian employee brought proceedings against Ryanair Limited before a Norwegian District Court claiming that she was a permanent employee of the airline. The District Court concluded that the dispute did not have sufficient links to Norway and dismissed the case. The Court of Appeal overruled the District Court’s decision. On appeal, the Supreme Court Appeals Committee upheld the Court of Appeal's decision finding that Norwegian courts have jurisdiction in the case concerned.</p>

Summary

The case concerns a dispute about whether a Norwegian district court in an employment case is the correct jurisdiction under the Lugano Convention[1] (Article 19(2)(a)) and section 4-5 (4) of the Norwegian Dispute Act.

An Italian employee brought proceedings against Ryanair Limited before a Norwegian District Court claiming that she was a permanent employee of the airline. The District Court concluded that the dispute did not have sufficient links to Norway and dismissed the case. The Court of Appeal overruled the District Court’s decision. On appeal, the Supreme Court Appeals Committee upheld the Court of Appeal's decision finding that Norwegian courts have jurisdiction in the case concerned.

Facts

On 28 March 2012 Alessandra Cocca, an Italian citizen, signed an offer of employment with the Irish company Crewlink Ireland Ltd for a period of three years. She was to be hired out to the Irish airline company Ryanair as a Cabin Services Agent. Prior to signing, Ms Cocca had successfully completed Ryanair's cabin crew training programme. Ms Cocca was stationed at Moss Airport Rygge in Norway, and had a duty to live no further than a one-hour journey from where she was stationed.

Ms Cocca was dismissed by a letter of 30 January 2013. The reason given for her dismissal was that she had not passed the trial period, which was stipulated to be one year. From the time she started working for the company on 6 April and until she was dismissed, she was stationed at Moss Airport Rygge in Norway.

Legal proceedings

On 3 April 2013, Ms Cocca instituted proceedings against Ryanair Limited before Moss District Court claiming that she should have been permanently employed with the airline from 6 April 2012. In its defence, Ryanair argued that the Norwegian courts lacked jurisdiction and that the case should therefore be dismissed. Ms Cocca carried out most of her work on board a plane, and under the Chicago Convention, Irish planes are in Irish territory. Further, she had no tasks on the ground in Norway worth mentioning, and did not habitually carry out her work in Norway.

On 21 June 2013, the Moss District Court held that the case should be dismissed. The court concluded that the dispute had insufficient links to Norway, given sections 4-3 and 4-5(4) of the Norwegian Dispute Act and Article 19(2)(a) of the Lugano Convention.[2]

Ms Cocca appealed the district court's decision to the Borgarting Court of Appeal. The Norwegian Confederation of Trade Unions (LO), the Norwegian Union of Commercial and Office Employees (HK) and the Confederation of Vocational Unions (YS) intervened in her support.

The Court of Appeal heard the case twice. In the first round it quashed the decision to dismiss the case, holding that the Norwegian District Court had jurisdiction under the Lugano Convention.. This ruling was, however, overturned by the Supreme Court Appeals Committee. The Appeal Committee found that the Court of Appeal had based its decision on a clear and undisputable error of fact. The Court of Appeal had given weight to the fact that the employee had worked with checking-in passengers, when it was later proven that she had not. This was regarded to be a procedural error which could have had an impact on the outcome, and the

Appeals Selection Committee sent the case back to the Court of Appeal for a new ruling.

In its reconsideration of the case, the Court of Appeal found that an overall assessment should be made in which the special features of the aviation industry could be taken into account, and in which the decisive question would be what constituted the employee's centre of activities, rather than the more formal circumstances or the employer's links. The Court of Appeal stated that pursuant to section 4-5(4) of the Norwegian Dispute Act, an employee may take legal action against an employer "...at the place where the employee habitually carries out his work". This provision has been modelled on the Lugano Convention of 2007. The Lugano Convention applies as Norwegian law, cf., Section 4-8 of the Norwegian Dispute Act and takes precedence over conflicting national provisions. The question is whether Ms Cocca "...habitually carries out" her work in Norway, cf., Article 19 (2) (a) of the Lugano Convention. If the answer is yes, Moss District Court is the correct legal forum for the proceedings.

The Court of Appeal further stated that parallel provisions relating to *choice of law* also should be taken into consideration. Within the EU the Rome Convention, later replaced by the Rome I Regulation, sets out provisions regarding choice of law. Norway is not a party to Rome I, but it is generally assumed that the Rome Convention/Rome I Regulation and the case law of the European Court of Justice relating to these are relevant sources of law in Norwegian international private law. Pursuant to Article 8(2) of Rome I: "[...] in which [country], or failing that, from which [country] the employee habitually carries out his work" must be taken into account. The phrase "from which" is intended to codify case law regarding *choice of law*. A corresponding codification in the Brussels Regulation regarding *jurisdiction* has been adopted, but will not enter into force until 2015.[3]

Ryanair's arguments that Ms Cocca carried out most of her work on board a plane which was registered in Ireland, and that under the Chicago Convention Irish planes are Irish territory, were disregarded by the Court of Appeal. Further, the court did not agree with Ryanair that considerable emphasis should be placed on the fact that the parties had agreed that Irish law applied to the employment relationship, that Ms Cocca was a member of the Irish National Insurance Scheme, had Irish insurance, had her wages paid into an account in an Irish bank, paid tax to Ireland, or that Ryanair does not have branches or the like in Norway or other countries, so that the organising of the work, including instructions and organisation, emanates from Ireland. The Court of Appeal did not find that these circumstances result in the proper forum being the court in Ireland pursuant to Article 19(2) (b) of the Lugano Convention. These circumstances are largely formal in nature and the employee's influence on them is normally very limited.

In the Court of Appeal's view, in the overall assessment to be made, one cannot simply

conclude that Ms Cocca's assignments on the ground were so limited that the Norwegian airport Rygge was not the centre for her work activities (i.e. the place where she performed her work). In the opinion of the Court of Appeal, emphasis must be placed on the fact that Ms Cocca, pursuant to the contract, had an obligation to live near the airport. Because of this obligation, Rygge was not just a mustering place, as Ryanair described it. The residence duty meant that she lived close to the airport as long as the employment relationship lasted. According to the Court of Appeal, this represents an actual connection that must be given substantial weight. This meant that Rygge and the area where she lived, was her natural social connection point in relation to both work and leisure. In the Court of Appeal's opinion this connection carries significant weight, even though a number of other factors must be taken into account.

As a result, the Court of Appeal ruled that the appeal was successful and that the case should be heard in Norway by the Moss District Court.

The decision by the Court of Appeal was appealed to the Supreme Court, but the Supreme Court Appeals Committee refused leave to appeal on 17 June 2014. The decision is therefore final.

Commentary

This case is interesting in terms of clarifying the limits on setting up operations within the aviation industry where this is carried out in order to avoid local jurisdictions, or less favourable local legislation (from the company's point of view).

Even though this case concerns jurisdiction and not choice of law, the link between the two questions and a similar approach in terms of deciding applicability is striking. In our understanding, the jurisdiction ruling will also be of great importance in relation to the question of applicable law, and we think it unlikely that a Norwegian district court would rule that Norwegian law does not apply following this ruling.

The case also highlights an important point of clarification made by the Appeals Selection Committee of the Supreme Court. Ryanair argued that it was incorrect of the Court of Appeal to disregard that Ms Cocca carried out most of her work on board a plane registered in Ireland, and that under the Chicago Convention, Irish planes are Irish territory. The Appeals Selection Committee stated that they did not find it legally incorrect to disregard this factor in determining where the employee habitually carries out her work. To the employee the place of registration must seem like a mere formality and giving weight to this factor would result in a significant weakening of the employee protection provided by Article 19 (2)(a). According to the Appeals Selection Committee such an interpretation would require a clear source of law

reference in order for it to be used.

Subject: Jurisdiction

Parties: Alessandra Cocca - v - Ryanair Limited

Court: Borgarting Lagmannsrett (Borgarting Court of Appeal) and Norges Høyesteretts Ankeutvalg (Supreme Court Appeals Committee)

Date: 5 March 2014 and 17 June 2014.

Case number: 13-202882ASK-BORG/04 and HR-2014-1273-U

Publication: www.lovdata.no (login required)

Creator: Borgarting Lagmannsrett (Borgarting Court of Appeal) and Norges Høyesteretts Ankeutvalg (Supreme Court Appeals Committee)
Verdict at: 2014-07-17
Case number: 13-202882ASK-BORG/04 and HR-2014-1273-U