

SUMMARY

ECJ 22 May 2014, case C-539/12 (Z.J.R. Lock - v - British Gas Trading Limited), Working time and leave, Paid leave

Facts

Mr Lock was and is employed by British Gas as a Sales Consultant. His job is to sell British Gas's energy products. His remuneration consists of basic pay in the amount of £ 1,222 per month and commission, the amount of which depends on the number and type of sales he achieves. In 2011 the commission averaged

£ 1,912 per month. In other words, the commission constituted over 60% of his remuneration. Commission is paid several weeks or months after it has been earned.

Lock was on paid annual leave from 19 December 2011 to 3 January 2012. In December 2011 he was paid his basic pay for that month and an amount of £ 2,350 in respect of commission earned in a previous period. Because he generated no sales during his leave, he was paid less commission in January/February 2012 than he would have been paid had he worked during his leave. He brought a claim for outstanding holiday pay in the period 19 December 2011 – 3 January 2012.

National proceedings

The Employment Tribunal in Leicester decided to stay the proceedings and to refer questions to the ECJ regarding the correct interpretation of Article 7 of Directive 2003/88. The doubts of the Employment Tribunal as to the correct interpretation of Article 7 stemmed from the judgment by the Court of Appeal of 27 November 2002 in the Evans – v – Malley case, in which the court in a similar situation held that the employee was entitled to be paid only his basic pay in respect of annual leave.

ECJ's findings

1. By questions 1 and 2, the referring tribunal asks whether Article 7(1) of Directive 2003/88 precludes national legislation and practice under which a worker whose remuneration consists of a basic salary and sales commission is entitled, during paid leave, only to basic salary (§ 13).

2. Paid leave is a particularly important principle of EU law, whose implementation must be confined within the limits expressly laid down in Directive 2003/88. Article 7 of that Directive must be interpreted in the light of its wording and objective. The ECJ has previously held that the term “paid leave” in Article 7 means that workers must receive their normal remuneration during leave periods. The purpose of providing payment during leave periods is to put the worker in a position which is comparable to periods of work, as regards his salary (§ 14-17).

3. British Gas and the UK government submit that this purpose is achieved in respect of Mr Lock, given that during leave he received not only his basic salary but also commission resulting from sales which he had achieved during the weeks preceding the leave. This argument cannot be accepted, because Mr Lock might be deterred from taking leave, given that he will earn less commission in the period following his leave (§ 18-23).

4. By question 3, the referring court asks how to calculate the commission to which a worker such as Mr Lock is entitled during his leave (§ 25).

5. As held in *Williams* (EU:C:2011:588), all components of remuneration linked intrinsically to the performance of the worker’s contractual duties as well as components relating to a worker’s professional and personal status, such as allowances relating to seniority, length of service and professional qualifications, must be maintained during leave periods. By contrast, components intended to cover occasional or ancillary costs arising during work need not be taken into account. Mr Lock’s commission is directly linked to his work for British Gas. Consequently, it must be taken into account when calculating his remuneration during leave periods (§ 26-33).

6. It is for the UK courts to assess, in the light of the principles identified in the ECJ’s case-law whether, on the basis of an average over a reference period which is considered to be representative, the methods of calculating the commission payable to a worker such as Mr Lock achieve the objective pursued by Article 7 of Directive 2003/88 (§ 34).

Ruling

1. Article 7(1) of Directive 2003/88 [...] must be interpreted as precluding national legislation and practice under which a worker whose remuneration consists of basic salary and commission, the amount of which is fixed by reference to the contracts entered into by the

employer as a result of sales achieved by that worker, is entitled, in respect of his paid annual leave, to remuneration composed exclusively of basic salary.

2. The methods of calculating the commission to which a worker, such as the applicant in the main proceedings, is entitled in respect of his annual leave must be assessed by the national court or tribunal on the basis of the rules and criteria set out by the case law of the Court of Justice of the European Union and in the light of the objective pursued by Article 7 of Directive 2003/88.

Creator: European Court of Justice (ECJ)

Verdict at: 2014-05-22

Case number: C-539/12