

SUMMARY

ECJ 11 April 2013, case C-290/12 (Oreste Della Rocca - v - Poste Italiane SpA), Temporary agency work

Facts

Mr Della Rocca was employed as a 'temp' by a temporary employment agency (the 'Agency') for three consecutive periods of approximately three, eight and four months. The Agency assigned him to work for Poste Italiane, the user company. Taking the view that no proper reasons were given for the temporary nature of his contracts and their renewal, Mr Della Rocca brought an action before the Tribunale di Napoli, asking that court to find that he was in fact in a permanent employment relationship with Poste Italiane.

National proceedings

Poste Italiane submitted that the renewal of the employment contracts between the Agency and Mr Della Rocca was not subject to any statutory limitations, given that temporary agency work is governed by Legislative Decree 276/03 and that decree derogates from the Italian rules under which a second or further fixed-term contract is, in certain situations, considered to be a contract of indefinite duration (Legislative Decree 368/01).

The court expressed doubts as to the compatibility of Decree 276/03 with Clause 5 of the Framework Agreement on fixed-term work annexed to Directive 1999/70, which provides that the Member States shall introduce measures to prevent the abuse of successive fixed-term contracts, [...] such possible measures being the need to provide objective reasons justifying the renewal of a fixed-term contract. The referring court took the view that it must first be determined which employment relationship comes within the scope of the Framework Agreement: the relationship between the temp and the Agency or the relationship between the temp and the user company.

It took this view because the preamble to the Framework Agreement provides that “This agreement applies to fixed-term workers, with the exception of those placed by a temporary agency at the disposition of a user company. It is the intention of the parties to consider the need for a similar agreement relating to temporary agency work”. That intention was implemented in 2008, when Directive 2008/104 on temporary agency work was adopted. The referring court found it necessary to determine, first of all, which employment relationship comes within the scope of Directive 1999/70, because of the ECJ’s ruling in Briot (case C-386/09). That ruling appears to indicate that the relationship between the Agency and the temp remains subject to the Framework Agreement, since the exemption from that Agreement under Directive 2008/104 is limited to the relationship between the temp and the user company.

If the Framework Agreement is applicable, the referring court asked whether Clause 5 allows technical, production or organisational reasons for the conclusion of a contract for the supply of fixed-term staff to be sufficient grounds to justify the conclusion and extension of a fixed-term contract between the temp and the agency – given that these are features, not of the temporary employment business, but of the user’s undertaking and are unrelated to the specific employment relationship.

Lastly, the referring court wondered whether Clause 5 permits the consequences of abuse of fixed-term employment contracts to be borne by a third party, in this case the user company.

ECJ’s findings

1. Poste Italiane submitted that the questions referred to the ECJ are not relevant as they concern the application of the Framework Agreement to the employment relationship between the temp and the Agency, whereas Mr Della Rocca is claiming against the user company. The ECJ rejects this defence, as the ECJ may refuse to rule on a question only where it is quite obvious that the interpretation of EU law sought bears no relation to the facts of the main action or its purpose, where the problem is hypothetical, or where the ECJ does not have before it the factual or legal material necessary to give a useful answer (§ 29-31).
2. The deadline for transposing Directive 2008/104 on temporary agency work into national law was 5 December 2011. The temporary work performed by Mr Della Rocca was performed between November 2005 and January 2007. Therefore, that Directive is not applicable to the main proceedings. The issue is, therefore, limited to the applicability of the Framework Agreement (§ 33).

3. Although the Framework Agreement itself does not exclude temporary work from its scope, the preamble does. It excludes both the employment relationships between the temp and the Agency and between the temp and the user company. It is clear that it is the intention of the Framework Agreement to exclude agency work from its scope (§ 34-40).

4. There is no contradiction with Briot, which concerned a different issue (non-renewal of a fixed-term contract prior to a transfer of undertaking) (§43-44).

Ruling

The Framework Agreement on fixed-term work must be interpreted as not applying either to the fixed-term relationship between a temporary worker and a temporary employment business or to the employment relationship between such a worker and a user undertaking.

Creator: European Court of Justice (ECJ)

Verdict at: 2013-04-11

Case number: C-290/12