

SUMMARY

ECJ 13 June 2013, case C-415/12 (Bianca Brandes – v – Land Niedersachsen), Working time and paid leave

Facts

Ms Brandes formerly worked five days a week. On account of maternity and parental leave she did not work for most of 2010 and 2011. During this period she accumulated an entitlement to 29 days of paid annual leave, which she had been unable to use due to her maternity and parental leave. When she resumed her work following the expiry of her parental leave, her workload was reduced to three days per week. She asked her employer to confirm that she had retained the right to 29 days of paid leave. Her employer refused to confirm this, pointing to a Bundesarbeitsgericht decision of 1998, according to which, in the case of a change in a worker's working time, the entitlement to leave already accumulated by the worker must be adjusted proportionally to the relationship between the new and the old number of days worked. Based on this decision, the employer argued that Ms Brandes was entitled to $29 \times 3 : 5 = 17$ days of paid leave accumulated in 2010/2011. With those 17 days, Ms Brandes would be able to be absent from work for the same number of weeks as she would have been able to take off had she continued to work full-time and retained entitlement to 29 days of paid leave. Granting her 29 days would be discriminating against her full-time colleagues, who needed to work more for the same amount of free time.

National proceedings

Ms Brandes applied to the local Arbeitsgericht. She asked the court to confirm her entitlement to 29 days of paid leave accumulated in 2010/2011. The court acknowledged that the ECJ had already ruled on a similar issue in Landeskrankenhäuser Tirols (C-486/08). However, that case concerned a rule on leave expressed in weeks. For that reason, the court asked the ECJ

whether EU law, in particular Clause 4 of the Framework Agreement on part-time work annexed to Directive 97/81 (as amended by Directive 98/23), must be interpreted as meaning that it precludes national provisions under which the number of days of paid annual leave which a full-time worker was unable to exercise during the reference period is, due to the fact that that worker moved to a scheme of part-time work, subject to a proportional reduction.

ECJ's findings

- Although the referring court referred in particular to Clause 4 of the Framework Agreement on part-time work, which provides that, where appropriate, the principle of pro rata temporis shall apply, Article 7 of Directive 2003/88, which provides for a minimum period of paid annual leave, must also be taken into account. As the ECJ has repeatedly stated, the entitlement of every worker to paid leave is a particularly important principle of EU social law, laid down in Article 31(2) of the Charter of Fundamental Rights of the EU, and the right to paid leave may not be interpreted restrictively (§ 24-29).
- As the ECJ held in *Landeskrankenhäuser Tirols*, the taking of annual leave in a period after the reference period has no connection to the hours worked during that later period. Consequently, a change of working hours when moving from full-time to part-time employment cannot reduce the right to annual leave that the worker has accumulated during full-time employment. The ECJ does not accept the argument that the entitlement to paid leave accumulated by Ms Brandes would not suffer any reduction since, expressed in terms of weeks of leave, it would remain identical before and after her move to part-time work. In having one “week” of leave recognised, in the context of his now part-time work, represented by three days of work per week, it is clear that the worker is being released from his obligation to work to the extent only of three days (§ 30-41).

Ruling

The relevant EU law must be interpreted as meaning that it precludes national provisions [...] under which the number of days of paid annual leave which a full-time worker was unable to exercise during the reference period is, due to the fact that that worker moved to a scheme of part-time work, subject to a reduction which is proportional to the difference between the number of days of work per week carried out by that worker before and after such a move to part-time work.

Creator: European Court of Justice (ECJ)

Verdict at: 2013-06-13

Case number: C-415/12