SUMMARY

ECJ 8 November 2012, joined cases C-229/11 and 230/11 (Alexander Heimann – v – Kaiser GmbH) and C-230/11 (Konstantin Toltschin – v – Kaiser GmbH), Working time and leave, Paid leave

Facts

In 2009, Kaiser, a sub-contracting business in the motor industry, was in financial difficulties. It agreed with its works council, in a social plan, to make use of the German Kurzarbeit agreement, under which employees get a temporary reduction in working time with a corresponding reduction in salary in exchange for an allowance (Kurzarbeitgeld) granted by the Federal Employment Agency, but paid by the employer. This case concerns two of Kaiser's employees, Messrs Heimann and Toltschin, whose working time and salary were reduced to nil ("Kurzarbeit Null") for a one year period. At the end of that year they were dismissed. Kaiser took the position that Messrs Heimann and Toltschin had not acquired paid annual leave during the year in which they had been employed without performing any work.

National proceedings

Messrs Heimann and Toltschin applied to the local Arbeitsgericht. This court referred two questions to the ECJ on the interpretation of Article 31(2) of the Charter of Fundamental Rights of the EU ("Every worker has the right to [...] an annual period of paid leave") and Article 7(1) of Directive 2003/88 ("Member States shall take the measures necessary to ensure that every worker is entitled to paid leave ..."). The first question was whether a worker whose working week is reduced may acquire no more than a proportionately reduced entitlement to

paid leave. The second question related specifically to the situation where the working week is reduced to nil.

ECJ's findings

1. The Schultz-Hoff doctrine cannot be applied to Kurzarbeit, because the situation of a worker who is unable to work as a result of an illness and that of a worker on a short-time working arrangement are fundamentally different. First, the short-time working at issue was based on a social plan. Secondly, workers on Kurzarbeit Null are free to rest and relax. Thirdly, the purpose of Kurzarbeit is to reduce the need for dismissals and, if employers had to pay for annual leave, that might make them reluctant to agree to a social plan such as the one in question (§ 26-30).

2. The situation of a worker on short-time working is comparable to that of a part-time worker. In the Landeskrankenhäuser Tirols case (C-486/08), the ECJ applied to the grant of annual leave the pro rata temporis principle enshrined in the Framework Agreement on Part-time Work annexed to Directive 97/81 (§ 31-34).

3. In the light of the foregoing it is not necessary to reply to the second question.

Ruling

Article 31(2) of the Charter and Article 7(1) of Directive 2003/88 do not preclude national legislation or practice, such as a social plan agreed between an undertaking and its works council, under which the paid annual leave of a worker on short-time working is calculated according to the rule of pro rata temporis.

Creator: European Court of Justice (ECJ)
Verdict at: 2012-11-08
Case number: C-229/11 and 230/11