

SUMMARY

ECJ 5 November 2014, case C-476/12 (Österreichischer Gewerkschaftsbund & v & Verband Österreichischer Banken und Bankiers), Working time and leave, Part time work

Facts

The plaintiff in this case is a trade union for employees in the Austrian

banking sector (the 'union'). It had a dispute with the relevant employers' association VÖBB on the interpretation of two provisions in the collective agreement concluded between the parties. One provision deals with 'dependent child allowance' benefits. This is a benefit provided by employers to meet part of the parents' expenses for the maintenance of a child. The collective agreement entitles part-time workers, i.e. those with a work week below 38.5 hours, to prorated allowances.

National proceedings

The union applied to the Supreme Court under a special procedure. The court referred three questions to the ECJ. The first question was whether the principle of *pro rata temporis* under Clause 4.2 of the Framework Agreement on part-time work annexed to Directive 97/81 is to be applied to a child allowance provided for in a collective agreement.

ECJ's findings

1. A child allowance such as that at issue is not a social security benefit within the meaning of

Regulation 883/2004 and it constitutes 'pay'. Although it is true that many advantages granted by an employer also reflect considerations of social policy, the fact that a benefit is in the nature of pay cannot be called into question where the worker is entitled to receive it from his employer by reason of the existence of the employment relationship (§ 13-19).

2. It follows that if the worker is employed part-time, the calculation of the dependent child allowance on a *pro rata temporis* basis is objectively justified within the meaning of Clause 4.1 and appropriate within the meaning of Clause 4.2 of the Framework Agreement (§ 20).

3. The nature of the child benefit cannot preclude the application of Clause 4.2 since it is a divisible benefit, in the same way as retirement pension (see *Schönheit*, C-4/02) and annual leave (see *Zentralbetriebsrat*, C-486/08) (§ 21-24).

4. Questions 2 and 3 required no reply (§ 26).

Ruling

Clause 4.2 of the Framework Agreement on part-time work [...], must be interpreted as meaning that the principle *pro rata temporis* applies to the calculation of the amount of dependent child allowance payable by an employer to a part-time worker pursuant to a collective agreement, such as that applicable to the employees of Austrian banks.

Creator: European Court of Justice (ECJ)

Verdict at: 2014-11-05

Case number: C-476/12