SUMMARY

ECJ 15 September 2001, case C-386/09 (Johnny Briot – v – Randstad Interim, Sodexho SA and Council of the European Union), Unfair dismissal, employees who transfer/refuse to transfer

<p>Mr Briot was employed by a temporary employment agency, Randstad. It assigned him to work in the restaurant of the EU Council in Brussels. Although he had performed this work since 1998, his temporary contract was not extended when it expired pursuant to Belgian law on 20 December 2002. This was a mere 11 days before 1 January 2003, the date on which the Council terminated its contract with Randstad and awarded the contract for running its restaurant to a catering company, Sodexho.</p>

Facts

Mr Briot was employed by a temporary employment agency, Randstad. It assigned him to work in the restaurant of the EU Council in Brussels. Although he had performed this work since 1998, his temporary contract was not extended when it expired pursuant to Belgian law on 20 December 2002. This was a mere 11 days before 1 January 2003, the date on which the Council terminated its contract with Randstad and awarded the contract for running its restaurant to a catering company, Sodexho.

National proceedings

Apparently (this is not quite clear from the judgment), Mr Briot claimed that the non-extension of his temporary contract amounted to a dismissal as prohibited by Article 4 of Directive 2001/23 ("the transfer of the [...] business shall not in itself constitute grounds for dismissal ..."), that he should therefore be deemed as having continued to be a Randstad employee until 1 January 2003, that the switch from Randstad to Sodexho constituted a transfer of undertaking and that he had therefore become an employee of Sodexho. The court of first instance held, *inter alia*, that, as there was no contract of employment between Mr Briot and the Council, the rights and obligations arising from his contract of employment (with Randstad) could not have been transferred to Sodexho. Mr Briot appealed. The Court of Appeal referred three questions to the ECJ for a preliminary ruling.

ECJ's ruling

1. The ECJ addressed only one of the three questions (No. 2). It asked "whether the non-renewal of the fixed-term contracts of employment of the temporary workers attributable to the transfer of the activity to which they were assigned disregards the prohibition laid down in Article 4(1) of Directive 2001/23 in such a way that those temporary workers must be regarded as still being available to the user business on the date of the transfer". The ECJ points out that the protection that Directive 2001/23 is intended to provide only concerns workers who have an employment contract existing at the date of the transfer. Whether or not this is the case is for the national court to determine (§ 26-28).

2. Workers who are dismissed because of an impending transfer of undertaking (i.e. contrary to Article 4(1) of Directive 2001/23) must be regarded as still being employed by the transferor on the date of the transfer and they therefore go across to the transferee (§ 29-30).

3. A worker who concludes a fixed-term contract is fully aware that the contract will end on the agreed date and that he or she is not entitled to a renewal of the contract. The fact that the expiry date of such a contract precedes the date laid down for the transfer of the activity to which the worker was assigned cannot create such a right (§ 31-33).

4. The non-renewal of a fixed-term contract cannot be regarded as a dismissal in the

meaning of Article 4(1) of Directive 2001/23 (§ 34).

5. Given that the referring court has only asked questions on Directive 2001/23, the ECJ merely notes that Mr Briot could perhaps be eligible to receive protection against the misuse of successive fixed-term contracts under Directive 1999/70.

Ruling

Mr Briot must not be regarded as still being employed on the date of the transfer.

Creator: European Court of Justice (ECJ)
Verdict at: 2009-09-15
Case number: C-386/09