

SUMMARY

ECJ 15 September 2011, case C-155/10 (Williams and others - v - British Airways plc), Paid leave

***<p>Article 7 of Directive 2003/88/EC must be interpreted as meaning that an airline pilot is entitled, during his annual leave, not only to the maintenance of his basic salary, but also (i) to all the components intrinsically linked to the performance of the tasks which he is required to carry out under his contract of employment and in respect of which a monetary amount, included in the calculation of his total remuneration, is provided and (ii) to all the elements relating to his personal and professional status as an airline pilot.</p>
<p>It is for the national court to assess whether the various components comprising that worker’s total remuneration meet those criteria.</p>***

Facts

British Airways pilots are paid (i) a fixed salary, (ii) £10 per planned flying hour ('flying pay supplement' or 'FPS') and (iii) £2.73 for every hour that they are away from the place where they are based ('time away from base allowance' or 'TAFB'), of which 82% is treated as compensation for expenses and therefore untaxed under UK tax law and 18% is treated as taxable remuneration.

Pursuant to an agreement entered into between British Airways and the pilots union BALPA, the payment pilots receive during their periods of paid annual leave is based exclusively on their fixed salary. Ms Williams and a number of other BA pilots claimed payments based on their fixed salary, their average FPS and 18% of their average TAFB.

National proceedings

The courts of first and second instance found in favour of the plaintiffs, but the Court of Appeal reversed their judgments, following which the case went to the Supreme Court. It considered that the outcome of the case depended on the correct interpretation of EU law, in particular Article 7(1) of the Working Time Directive 2003/88 ('Article 7') and to almost identical provisions in (i) a more specific earlier directive on working time in civil aviation and (ii) domestic UK law.

The first question related to the freedom of Member States to determine the level of payment during paid leave. The second and third questions were whether such payment must correspond to the worker's 'normal' pay or whether it may be less. The fourth and fifth questions asked whether, if a worker is entitled to continued payment of his 'normal' pay during leave, how such pay is to be calculated.

The plaintiffs and the Commission argued that during holiday leave a worker is entitled to his 'normal' pay, calculated by reference to a representative period before the leave. British Airways argued that the Directive lays down no requirements with respect to the nature and level of payments during leave, provided that the level is sufficiently high not to deter workers from actually taking leave. The Danish government took a slightly more nuanced view.

ECJ's findings

1. The ECJ examines all the questions together, referencing its case law that Article 7 is a particularly important principle of Community social law and that for the duration of their annual leave, employees must continue to receive their normal remuneration (§ 15-19).
2. The purpose of Article 7 is to put the worker, during his leave, in a position that is comparable to periods of work in terms of remuneration. It follows from this that an allowance, the amount of which is just sufficient to ensure that there is no serious risk that the worker will not take his leave, will not satisfy the requirements of EU law (§ 20-21).
3. The structure of a worker's ordinary remuneration is a matter for the Member States to determine. However, that structure cannot affect the worker's right to enjoy, during his period of rest and relaxation, economic conditions that are comparable to those relating to the exercise of his employment (§ 22).
4. Accordingly, any inconvenience that is intrinsically linked to the performance of the tasks the worker is contractually bound to carry out and in respect of which a sum of money is

included when calculating the workers' total pay (such as, in the case of airline pilots, for time spent flying), must be taken into account when calculating annual leave. By contrast, components of the worker's pay that are intended only to cover occasional or ancillary costs arising at the time of performance (such as for time away from base), need not be taken into account in calculating pay during annual leave. (§ 24-25).

5. Pay during leave must be calculated based on an average over a representative period in accordance with the ECJ's case law to the effect that entitlement to annual leave and to payment in respect of that are treated as being two aspects of a single right (§ 26).

6. As ruled in *Parviainen* (C-471/08), all remuneration components relating to the personal and professional status of an airline crew member must be maintained during (in that case: maternity, in this case, paid annual) leave (§ 28).

Ruling

Article 7 of Directive 2003/88/EC must be interpreted as meaning that an airline pilot is entitled, during his annual leave, not only to the maintenance of his basic salary, but also (i) to all the components intrinsically linked to the performance of the tasks which he is required to carry out under his contract of employment and in respect of which a monetary amount, included in the calculation of his total remuneration, is provided and (ii) to all the elements relating to his personal and professional status as an airline pilot.

It is for the national court to assess whether the various components comprising that worker's total remuneration meet those criteria.

Creator: European Court of Justice (ECJ)

Verdict at: 2011-09-15

Case number: C-155/10