

SUMMARY

ECJ 10 March 2011, case C-379/09 (Maurits Casteels – v – British Airways plc), Collective agreements, Others forms of free movement

<p>Article 48 TFEU has no horizontal direct effect. </p>

<p>Article 45 TFEU precludes, in the context of the mandatory application of a collective labour agreement and for the determination of entitlement to pension benefits (i) non-inclusion of service years in different Member States and (ii) treating transfer to another Member State as leaving the employer.</p>

Facts

In the course of his employment with British Airways (BA), the Belgian aircraft maintenance mechanic Mr Casteels was based in, successively, BA's establishments in Belgium (1974-1988), Germany (1988-1991), France (1991-1996) and, again, Belgium (from 1996). In each country, he was affiliated to BA's local pension scheme. Thus, while he worked in Germany, he participated in BA's German pension scheme, pursuant to a German collective agreement. Many years later, he discovered that the time he worked in Germany did not count towards determining his retirement benefits. This was because the German pension scheme provided that someone who leaves the scheme following less than five years of membership does not accrue pension benefits but merely gets his own contributions to the scheme refunded.

National proceedings

Mr Casteels took BA to court in Belgium. He claimed the balance between the retirement benefits to which he was eligible according to BA and the benefits he would have received had his years of service in Germany counted towards determining those benefits. He based his claim on the EU's free movement rules, in particular Articles 48 and 45 TFEU (at that time: Articles 39 and 42 EC). Article 48 provides that the EU shall adopt such measures in the field of social security as are necessary to provide freedom of movement for workers, including aggregation of periods worked in different Member States. Article 45 is the general provision in respect of freedom of movement for workers within the EU.

The Court of Appeal that dealt with the case referred two questions to the ECJ. The first was whether Article 48 TFEU (Article 42 EC) has horizontal direct effect. The second question related to the compatibility with Article 45 TFEU (Article 39 EC) of a pension scheme that (i) fails to take into account years of service completed with the same employer in another Member State and (ii) treats the transfer of an employee to another Member State as a voluntary termination of his employment.

ECJ's ruling

1. Article 48 TFEU does not lay down a legal rule. All it does is constitute a legal basis which allows the EU to adopt certain measures. Therefore, it cannot confer rights on individuals. In other words, it has no horizontal direct effect (§ 13-16).
2. Article 45 TFEU applies to a situation such as that at issue. It militates against any measure which, even though applicable without discrimination on grounds of nationality, is capable of hindering or rendering less attractive the exercise by EU nationals of fundamental freedoms (§ 19-22).
3. The German pension scheme at issue has the effect of placing workers such as Mr Casteels, by reason of the fact that they have exercised their right to free movement within the EU, at a disadvantage in comparison with BA's workers who have not exercised that right, for example if they have moved from one BA establishment to another within Germany. The prospect of such a disadvantage is liable to dissuade workers from accepting cross-border assignments (§ 23-29).
4. Since the pension scheme at issue constitutes an obstacle to the free movement of workers which is, in principle, prohibited by Article 45 TFEU, that scheme can be allowed only on condition that it is objectively justified. It is up to the Belgian court to determine whether this is the case, but the arguments advanced by BA in this regard are insufficient (§ 30-33).

5. On construction of BA's German pension scheme in accordance with Article 45 TFEU, Mr Casteels must be regarded as having been in BA's service from 1974 and as not having left BA when he moved to France (§ 34).

Ruling

- Article 48 TFEU has no horizontal direct effect.

- Article 45 TFEU precludes, in the context of the mandatory application of a collective labour agreement and for the determination of entitlement to pension benefits (i) non-inclusion of service years in different Member States and (ii) treating transfer to another Member State as leaving the employer.

Creator: European Court of Justice (ECJ)

Verdict at: 2011-03-10

Case number: C-379/09