

SUMMARY

2010/88: Shared liability of employer and employee for breach of European road transportation rules (HU)

<p>Regulation 561/2006 makes the employer of a truck driver liable for failure by the latter to observe the rules provided therein. However, the Regulation allows Member States to exempt from such liability those employers who have done all they reasonably could have to prevent their drivers from breaking the rules. This makes it possible for Hungarian courts to fine drivers and their employers in proportion to their respective share of responsibility for an offence.</p>

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Facts

This case concerns a truck, the company that owned it (the “plaintiff”) and the driver of the truck (the “driver”). While en route in Hungary, the truck was inspected by customs officials. They imposed a fine of approximately € 2,000 on the plaintiff for failure to comply with EU Regulation 561/2006, such failure being punishable under Hungarian national law. The regulation requires truck drivers to observe certain minimum periods of rest. The plaintiff appealed, first in an administrative procedure, then to the county court and finally to the Supreme Court.

The relevant provision of Regulation 56/2006, Article 10, provides in paragraphs 1 and 2 that drivers shall not be paid in a manner that encourages infringement of the rules (e.g. by means of mileage-based bonuses), that their employers (“undertakings”) shall organise their work in such a way as to enable them to comply with the rules, that employers shall instruct their drivers properly and that employers shall make regular checks to ensure compliance with the rules. Paragraph 3 provides two things. One is that employers are liable for infringements committed by their drivers. The other is that “Member States may make this liability conditional on the undertaking’s infringement of paragraphs 1 and 2. Member States may consider any evidence that the transport undertaking cannot reasonably be held responsible for the infringement”.

The plaintiff argued that it had complied fully with paragraphs 1 and 2, having instructed the driver to take regular periods of rest, etc, and that therefore the driver was personally responsible for the offence. This being the case, the plaintiff invoked a provision of Hungarian law according to which, if an offence has been committed by more than one person, the fine imposed for that offence is split between the offenders in proportion to their respective share of responsibility.

Judgment

The Supreme Court, although upholding the lower court’s finding that the plaintiff was liable under said paragraph 3, found that the lower court should have examined how responsibility should be apportioned between the plaintiff and the driver. It remitted the case back to the lower court to examine this and then to assess liability for the fine in proportion to the plaintiff’s and the driver’s level of responsibility.

Commentary

Hungarian law provides that an employer is liable for any damage caused by its employees in the course of their work. This case is a unique example of a court departing from this basic principle by considering the employee’s responsibility as well.

Comments from other jurisdictions

Austria (Martin E. Risak): Under Austrian working time law only employers (and never employees) are criminally liable for breach of an obligation to take minimum periods of rest. Infringement results in the imposition of (administrative) fines. Though employers may be exempted when they have done all they reasonably could have to prevent breaches of working time law, the Austrian Supreme Administrative Court (*Verwaltungsgerichtshof*) takes a tough stance and only lets employers off the hook if they have really and truly exhausted all options

to monitor their employees and to discipline them in the case of infringement.

If the employer is fined for infringements committed by the employee, it cannot deduct the fine from salary, as it is deemed that the employer has breached its legal obligation to ensure that the employee observes working time law. The courts have held that it would even contravene the fundamental principles of criminal law if an employer were able to shift the payment of a fine to the employee, as this would remove its incentive to act in accordance with the law and therefore frustrate the (pecuniary) aim of the legislation.

The Netherlands (Peter Vas Nunes): Dutch law also provides that employers are liable for damage caused by their employees, either to their employer or to third parties. But how does this relate to liability for traffic fines? Suppose, for example, that a truck driver, in the course of his work, incurs a speeding fine, a parking fine or a fine for driving through a red light. If the driver himself is fined, can he seek compensation from his employer? Conversely, if the employer is fined, can it deduct the fine from the employee's salary? Until 2008 these were hotly debated questions. In that year the Supreme Court held that employees who commit such traffic offences should themselves bear the cost of any fine imposed themselves. This judgment has met with considerable criticism.

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