SUMMARY

2013/31 Supreme Court rules on duration, continuity and burden of proof in respect of daily rest breaks (FR)

<p>Every employee who has worked at least six hours on one day (even discontinuously) is entitled to take a continuous break of 20 minutes, which cannot be replaced by two separate shorter paid breaks. The employer is responsible for bringing forward the evidence that he has provided this rest break.</p>

Summary

Every employee who has worked at least six hours on one day (even discontinuously) is entitled to take a continuous break of 20 minutes, which cannot be replaced by two separate shorter paid breaks. The employer is responsible for bringing forward the evidence that he has provided this rest break.

Facts

This report concerns three groups of cases. The first case concerns a cashier in a Lidl supermarket. She was dismissed after she became medically unfit for her job. She brought a claim for unfair dismissal. One of her arguments was that Lidl had breached Article L. 3121-33 of the French Labour Code (*Code du travail*), which provides that after six hours of work in one day, workers are eligible for a rest break lasting no less than 20 minutes, or longer if a more favourable collective agreement so provides. The collective agreement in question provided that employees were eligible for a paid break of seven minutes for every half day of six hours or less. As a result, the plaintiff had been given shorter breaks than provided by law. She alleged that this had contributed to her medical condition.

Lidl argued (i) that it had no need to provide the plaintiff with statutory 20-minute breaks, given that the seven-minute break interrupted the six hour period referenced in Article L. 3121-33, i.e. that after the break, the calculation of the statutory six hours started anew, and (ii) that the majority of the staff found a seven-minute paid break more favourable than a 20-minute unpaid break. The courts of first and second instance dismissed the plaintiff's claim, reasoning that the six- hour period referred to in Article L. 3121-33 had been interrupted. The plaintiff appealed to the Supreme Court (*Cour de cassation*).

The second group of cases concerned six employees employed by the metallurgical company FAUN. They worked seven hour shifts. After 3½ hours they were given a paid rest break of 15 minutes and at the end of the day they were given a second paid 15-minutebreak. Thus, they worked a total of 6½ hours but were given paid breaks totalling 30 minutes. This was pursuant to the relevant collective agreement. The six plaintiffs and their union brought a claim based on the contention that FAUN was in breach of Article L.3121-33. The court of first instance dismissed the claim, but the Cour de cassation overturned this judgment, ruling that the relevant provision in the collective agreement was invalid because it violated Article L. 3121-33, as well as Directive 2003/88, Article 4 of which provides:

"Member States shall take the measures necessary to ensure that, where the working day is longer than six hours, every worker is entitled to a rest break, the details of which, including duration and the terms on which it is granted, shall be laid down in collective agreements […] or, failing that, by national legislation."

The third case again deals with a Lidl employee. She claimed that Lidl had failed to grant her the rest breaks to which she was entitled by law. Lidl denied this, pointing out that the plaintiff had provided no evidence for her claim. The courts of first and second instance upheld the claim, holding that the burden of proof that the plaintiff had been given daily 20-minute breaks was on Lidl and that Lidl had not been able to demonstrate that it had granted such breaks. The courts took into account Article L.3171-4 of the *Code du travail*, which provides that, in a dispute regarding the number of hours worked, the employer bears the burden of proof. Lidl appealed to the Cour de cassation.

Judgments

The Cour de cassation held:

| in the first case: that an interruption of the six hour period referenced in Article L. 3121-33 by a seven-minute break does not exempt the employer from the requirement to provide the employee with a daily uninterrupted 20-minute break;

| in the second case: that any employee who has worked more then six hours in any day, whether or not continuously, is entitled to a 20-minute uninterrupted break that cannot be replaced by two 15-minute breaks;

| in the third case: that although Article L.3171-4 regarding the burden of proof does not apply where the dispute concerns the issue of whether the employee had been able to taken sufficient breaks, the burden of proof of that issue is nevertheless on the employer.

Commentary

The right to a minimum daily rest break results from Article 4 of Directive 2003/88/EC on the organisation of working time. According to this provision, every employee who has worked six hours on one day (even discontinuously) is entitled to take a rest break.

The provision has been transposed in France through Article L. 3121- 33 of the *Code du Travail*, according to which "*when his daily working time has reached six hours, every employee is entitled to take a minimum 20-minute break*". Collective agreements can depart from this legal provision, but only in a more favourable way for employees.

Many issues remained unresolved on this topic. For example, must the six-hour working period be worked without interruption? Can the 20-minute break be split in shorter breaks?

The Supreme Court addressed these issues by interpreting the provisions of the Code du Travail in the light of the EU Directive's objectives.

In the first decision reported above, the Supreme Court ruled that an interruption of the six-hour working period by a seven-minute paid break does not exempt the employer from providing the employee with the compulsory continuous break of 20 minutes.

In other words, neither the interruption of the six-hour working period by breaks shorter than 20-minutes, nor the payment of the rest break, exempt the employer from providing employees with an uninterrupted minimum 20-minute break once they have worked for six hours in one day.

The abovementioned Supreme Court's decisions appear to be logical. Indeed, any other solutions would allow the minimum daily rest break to be bypassed by short intervals during the day, which is likely to be less favourable to employees. Nevertheless, it is, of course, permitted and even recommended that employees should benefit from a 20-minute break before they reach six-hours.

In its second decision, the Supreme Court stated, for the first time, the principle of temporal

uniqueness of the 20 minute break, ruling that every employee who has effectively worked more than six-hours a day is entitled to take a continuous 20-minute break that cannot be replaced by two separate 15-minute breaks. The fact that the total duration of the daily rests in this case (2 x 15 = 30 minutes) exceeds the statutory minimum of 20 minutes does not alter the view of the Court.

Beyond the literal text's interpretation ("*every employee is entitled to a rest break*"), it is clear that the division of the break does not accord with the purpose of the rest period, as provided by Directive 2003/88/ EC - which is to ensure the effectiveness of workers' rights to health and safety at work.

Even if this is debatable, it is generally considered that four five- minute breaks, for example, do not produce the same rest benefits for workers as one continuous 20-minute break.

Finally, in its last decision, the Cour de cassation considered that the Code du Travail's provisions in relation to the burden of proof of time worked, do not apply in cases where the issue to be proved is the effectiveness of the minimum daily rest break. Indeed, where this is a matter of evidencing that working time thresholds and limits provided by French and EU law have been fulfilled, the burden of proof is always on the employer.

From a legal standpoint, these decisions provide a good example of national judges' role in interpreting and transposing EC regulations.

Comments from other jurisdictions

Austria (Martin Risak): The Austrian Working Time Act provides for 30 minutes minimum (unpaid) rest break if the working day lasts longer than six hours – but it also makes it possible to split up the break either into two times 15 minutes or three times 20 minutes if it is in the interest of the worker or justified by operational reasons. The break may also be split up into different portions (one part at least lasting 10 minutes), but only with the consent of the works council or the labour inspectorate. Under Austrian law the employer has to document the rest breaks and may be fined if it is unable to present proper documentation to the labour inspectorate.

Subject: Working time

Parties: (1) X – v – Lidl, (2)X and 5 others – v – FAUN, (3)X – v – Lidl

EELA EUROPEAN EMPLOYMENT LAWYERS ASSOCIATION

Court: Cour de cassation (Supreme Court)

Date: 20 February 2013

Case numbers: 11-26793, 11-28612 to 28617 and 11-21848

Publication: www.legifrance.gouv.fr > jurisprudence judiciaire > cour de cassation > case number

---

Creator: Cour de cassation (French Supreme Court)
Verdict at: 2013-02-20
Case number: 11-26793, 11-28612 to 28617 and 11-21848