SUMMARY

2018/31 Working as a 'relief parent' for a child protection association falls within the scope of the Working Time Directive and the Finnish Working Hours Act (FI)

In its follow-up judgment to the ECJ's preliminary ruling in the Hälvä case (C-175/16), the Finnish Supreme Court has held that 'relief parents' relieving foster parents in a child protection association on the latter's holidays fall within the scope of the Finnish Working Hours Act even though the work was performed in the homes provided by the association for the children to live in. Therefore, the relief parents were entitled to the rights guaranteed by the Act (subject to the fact that some of their claims had expired).

Facts

The respondent (the 'employer') in this case was the Finnish SOS-Lapsikylä ry, a child protection association providing accommodation and family-based care for vulnerable children. The plaintiffs (the 'employees') in the main proceedings were 'relief parents' employed by SOS-Lapsikylä ry between 2006 and 2010. They worked when the children's foster parents were away (e.g. on annual leave).

The employees claimed that the employer should pay them for overtime and night work as well as for Saturday and Sunday work. The District Court of South Savo had dismissed the claim as it considered the employees were not subject to Working Hours Act, which provides these entitlements. According to section 2(1)(3) of Working Hours Act, the Act does not apply

to work performed by an employee at home or otherwise in conditions where it cannot be considered a duty of the employer to monitor time spent on the work. The Court of Appeal of Eastern Finland upheld this judgment. The employees then appealed before the Supreme Court of Finland.

The Supreme Court had to determine whether the activities of relief parents fell within the scope of the Working Hours Act and, if so, whether their claims had expired. The Working Hours Act not only transposes Directive 2003/88 (Working Time Directive) by governing working hours, overtime, night work, shift work, rest periods and Sunday work, but also fixes the compensation payable for different reasons, such as pay for overtime and Sunday work. Citing the ECJ's ruling in *Union syndicale Solidaires Isère* (C-428/09), the Supreme Court deduced that relief parents fall within the scope of the Working Time Directive, except where they qualify as 'parents' as defined in Article 17(1)(b).

The Supreme Court requested a preliminary ruling from the ECJ as to whether Article 17(1) of Directive 2003/88 should be interpreted as including activity performed in a children's home, in which the employee acts as a replacement for foster parents of children in care on the foster parents' days off; lives during this period with the children in a family-like setting; and during this time independently attends equally to the children's and the family's needs, as parents generally do.

In *Hälvä* (C-175/16), the ECJ held that it could not be argued that the working hours of the relief parents as a whole, could have not been measured or predetermined by the employer because of the specific characteristics of the work in question. Consequently, the employees' work for the association did not bring the activity within the 'family work' exception laid down in Article 17(1) (b) of Directive 2003/88, which requires a family-tie between the 'employer' and the 'employee'.

Judgment

After receiving the preliminary ruling, the Supreme Court pointed out that the employees' working periods began at a certain time and continued throughout the days marked in the daily schedules. The length of the working periods varied between a few days and several weeks and consisted not only of active working hours, but also stand-by time when the relief parents had to be present at the workplace. On the other hand, the relief parents could decide independently about how to organise the work and what it should consist of, within the limits imposed by the children's needs. However, the relief parents were also obliged to follow a care and education programme prepared for each child, and consult the foster parents on any

practical matters.

According to the Supreme Court, even though the association did not directly control the work of the relief parents or issue orders in respect of working hours or rest periods, the association's representative prepared daily lists indicating the house in which the relief parents were to work in. Moreover, the children's daily needs and activities limited the freedom of the relief parents to decide independently on how to use their rest periods. Taking into account the ECJ's ruling and facts of the case, the Supreme Court held that the relief parents' work did not fall within the scope of section 2(1) (3) of Working Hours Act, as the employer was able to monitor the way time was spent on the work.

The second question was whether or not the claims had expired, which depended on which law applied. The relief parents claimed that the applicable law was the Employment Contracts Act, for which the limitation period is five years after the due date (i.e. the date on which the salary item should have been paid) or, if the employment has been terminated, two years after the date on which it ended. By contrast, the employer claimed that the Working Hours Act applied. In this Act, the limitation period is two years from the end of the calendar year in which the entitlement has arisen.

The Supreme Court held that the provisions in Employment Contracts Act are general and apply when no special regulation has been established. The Court felt that to apply the provisions of Employment Contracts Act to claims based on the Working Hours Act would endanger legal certainty. It also believed that limitation periods were an essential part of fair trials, as protected in the Constitution. Moreover, as the Working Hours Act requires the employer to keep a working hours register at least until the end of the limitation period under that Act, it would be unreasonable to apply a longer limitation period for an action based on those register entries.

Therefore, the Supreme Court held that even though the relief parents were entitled to the statutory compensation, some of their claims had expired owing to the two-year limitation period contained within the Working Hours Act. Equally, their more recent claims should be compensated in accordance with the provisions of the same Act.

Commentary

The Supreme Court's decision is interesting mainly because of the legal question as to whether working independently in a family-like setting is comparable to being a family worker, such that “it cannot be considered a duty of the employer to monitor the arrangement

of the time spent on said work" in accordance with section 2(1) (3) of Working Hours Act. It also clarifies the relationship between the Employment Contracts Act and the Working Hours Act, and provides certainty as to the applicable limitation period for unpaid compensation based on the Working Hours Act.

Subject: Working time

Parties: Hannele Hälvä et al. – v – SOS Children's Village Foundation

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