SUMMARY

ECJ 11 February 2021,Joined Cases C-407/19 and C-471/19 (Katoen Natie Bulk Terminals and General Services Antwerp), Other Forms of Free Movement

Katoen Natie Bulk Terminals NV and General Services Antwerp NV – v – Belgische Staat and Middlegate Europe NV – v – Ministerraad, Belgian cases

Summary

Legislation which reserves dock work to recognised workers may be compatible with EU law if it is aimed at ensuring safety in port areas and preventing workplace accidents. However, the intervention of a joint administrative committee in the recognition of dockers is neither necessary nor appropriate for attaining the objective pursued.

Question

1. Must Articles 49 and 56 TFEU, Articles 15 and 16 of the Charter and the principle of equal treatment be interpreted as precluding national legislation which obliges persons or undertakings wishing to carry out port activities in a port area – including activities which, strictly speaking, are unrelated to the loading and unloading of ships – to have recourse only to dockers recognised as such in accordance with the conditions and arrangements laid down pursuant to that legislation?

2. Must Articles 45, 49 and 56 TFEU must be interpreted as precluding national legislation under which:

– the recognition of dockers falls to an administrative committee, composed jointly of members designated by employers' organisations and by workers' organisations;

– that committee also decides, according to the need for labour, whether or not recognised dockers must be included in a quota of dockers;

– for dockers not included in that quota, the duration of their recognition is limited to the duration of their employment contract, provided that it is of indefinite duration, it being understood that, pursuant to a transitional provision, that benefit is progressively extended, initially, to dockers who have an employment contract of shorter duration and, subsequently, to those with an employment contract of whatever duration;

– no maximum period within which that committee must act is prescribed, and

– only judicial review is provided for against the decisions of the same committee relating to the recognition of a docker?

3. Must Articles 45, 49 and 56 TFEU be interpreted as precluding national legislation under which, unless he or she can show that he or she satisfies equivalent conditions in another Member State, a worker must, in order to be recognised as a docker:

– be declared medically fit for dock work by an external prevention and protection at work service, to which is affiliated an organisation to which all employers active in the port area concerned must obligatorily become affiliated;

– pass the psychotechnical tests conducted by the body designated for that purpose by that employers' organisation;

– attend a three-week preparatory course relating to work safety and obtaining a professional qualification, and

– pass the final test for that training?

4. Must Articles 45, 49 and 56 TFEU be interpreted as precluding national legislation under which dockers, recognised as such in accordance with the statutory regime that was applicable to them before the entry into force of that legislation, retain, pursuant to that legislation, the status of recognised docker and are included in the quota of dockers provided for in that legislation?

5. Must Articles 45, 49 and 56 TFEU be interpreted as precluding national legislation which provides that the transfer of a docker to the quota of workers of a port area other than that in which he or she obtained his or her recognition is subject to conditions and arrangements laid down by a CLA?

6. Must Articles 45, 49 and 56 TFEU be interpreted as precluding national legislation which provides that logistics workers must hold a 'safety certificate', issued on presentation of their identity card and employment contract and whose issuance modalities and obtainment procedure are fixed by a CLA?

Ruling

1. Articles 49 and 56 TFEU must be interpreted as not precluding national legislation which obliges persons or undertakings wishing to carry out port activities in a port area – including activities which, strictly speaking, are unrelated to the loading and unloading of ships – to have recourse only to dockers recognised as such in accordance with the conditions and arrangements laid down pursuant to that legislation, provided that those conditions and arrangements, first, are based on objective, non-discriminatory criteria known in advance and allow dockers from other Member States to prove that they satisfy, in their State of origin, requirements equivalent to those applied to national dockers and, second, do not establish a limited quota of workers eligible for such recognition.

2. Articles 45, 49 and 56 TFEU must be interpreted as precluding national legislation under which:

– the recognition of dockers falls to an administrative committee composed jointly of members designated by employers' organisations and by workers' organisations;

– that committee also decides, according to the need for labour, whether or not recognised dockers must be included in a quota of dockers, it being understood that, for dockers not included in that quota, the duration of their recognition is limited to the duration of their employment contract, such that a new recognition procedure must be initiated for each new employment contract that they conclude, and

– no maximum period within which that committee must act is prescribed.

3. Articles 45, 49 and 56 TFEU must be interpreted as not precluding national legislation under which, unless he or she can show that he or she satisfies equivalent conditions in another Member State, a worker must, in order to be recognised as a docker:

– be declared medically fit for port work by an external prevention and protection at work

service, to which is affiliated an organisation to which all employers active in the port area concerned must obligatorily become affiliated;

– pass the psychotechnical tests conducted by the body designated for that purpose by that employers' organisation;

– attend a three-week preparatory course relating to work safety and obtaining a professional qualification, and

– pass the final test,

in so far as the role conferred on the employers' organisation and, as the case may be, on the recognised dockers' unions in the designation of the bodies responsible for conducting such examinations or tests is not such as to call into question the transparent, objective and impartial nature of those examinations or tests.

4. Articles 45, 49 and 56 TFEU must be interpreted as not precluding national legislation under which dockers, recognised as such in accordance with the statutory regime that was applicable to them before the entry into force of that legislation, retain, pursuant to that legislation, the status of recognised docker and are included in the quota of dockers provided for in that legislation.

5. Articles 45, 49 and 56 TFEU must be interpreted as not precluding national legislation which provides that the transfer of a docker to the quota of workers of a port area other than that in which he or she obtained his or her recognition is subject to conditions and arrangements laid down by a collective labour agreement, provided that those conditions and arrangements prove necessary and proportionate to the objective of ensuring safety in each port area, which is for the national court to determine.

6. Articles 45, 49 and 56 TFEU must be interpreted as not precluding national legislation which provides that logistics workers must hold a 'safety certificate', issued on presentation of their identity card and employment contract and whose issuance modalities and obtainment procedure are fixed by a collective labour agreement, provided that the conditions for the issue of such a certificate are necessary and proportionate to the objective of ensuring safety in port areas and the procedure prescribed for its obtainment does not impose unreasonable and disproportionate administrative burdens.

Creator: European Court of Justice (ECJ)
Verdict at: 2021-02-11

EUROPEAN EMPLOYMENT LAWYERS ASSOCIATION

Case number: C-407/19 and C-471/19