

SUMMARY

ECJ 8 July 2021, case C-428/19 (Rapidsped), Posting of Workers and Expatriates

***OL, PM, RO – v – Rapidsped Fuvarozási és Szállítmányosi Zrt.,
Hungarian case***

Summary

A daily allowance is part of the minimum wage during posting, unless it is paid in reimbursement of expenditure actually incurred on account of the posting. A bonus to reduce fuel consumption is allowed, unless it encourages the driver to endanger road safety.

Questions

Must Directive 96/71 be interpreted as applying to the transnational provision of services in the road transport sector?

Must Article 1(1) of Directive 96/71, read in conjunction with Articles 3 and 5 of that directive, be interpreted as meaning that a breach, by an employer established in one Member State, of another Member State's provisions concerning the minimum wage, may be relied on against that employer by workers posted from the first Member State, before a court of that State.

Must the second subparagraph of Article 3(7) of Directive 96/71 must be interpreted as meaning that a daily allowance intended to cover expenditure incurred during the posting of workers abroad must be regarded as part of the minimum wage?

Must Article 10 of Regulation No 561/2006 be interpreted as precluding a road haulage undertaking from granting drivers a bonus calculated on the basis of the savings made in the form of reduced fuel consumption in relation to the journey made?

Ruling

Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services must be interpreted as applying to the transnational provision of services in the road transport sector. Article 3(1) and Article 6 of Directive 96/71, read in conjunction with Article 5 of that directive, must be interpreted as requiring that a breach, by an employer established in one Member State, of another Member State's provisions concerning minimum wage, may be relied on against that employer by workers posted from the first Member State, before a court of that State, if that court has jurisdiction.

The second subparagraph of Article 3(7) of Directive 96/71 must be interpreted as meaning that a daily allowance, the amount of which varies according to the duration of the worker's posting, constitutes an allowance specific to the posting and is part of the minimum wage, unless it is paid in reimbursement of expenditure actually incurred on account of the posting, such as expenditure on travel, board or lodging, or unless it corresponds to an allowance which alters the relationship between the service provided by the worker, on the one hand, and the consideration which he or she receives in return, on the other.

Article 10(1) of Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85 must be interpreted as not precluding, in principle, a road haulage undertaking from granting drivers a bonus calculated on the basis of the savings made in the form of reduced fuel consumption in relation to the journey made. Nevertheless, such a bonus would infringe the prohibition laid down in that provision if, instead of being linked solely to saving fuel, it rewarded such saving on the basis of the distances travelled and/or the amount of goods carried, in such a way as to encourage the driver to act in a manner that endangers road safety or infringes Regulation No 561/2006.

Creator: European Court of Justice (ECJ)

Verdict at: 2021-07-08

Case number: C-428/19