JUDGMENT OF THE COURT (First Chamber)

10 September 2009 *

In Case C-277/08,

REFERENCE for a preliminary ruling under Article 234 EC from the Juzgado de lo Social nº 23 de Madrid (Spain), made by decision of 17 June 2008, received at the Court on 26 June 2008, in the proceedings

Francisco Vicente Pereda

v

Madrid Movilidad SA,

THE COURT (First Chamber),

composed of P. Jann, President of the Chamber, M. Ilešič, A. Borg Barthet, E. Levits (Rapporteur) and J.-J. Kasel, Judges,

* Language of the case: Spanish.

Advocate General: V. Trstenjak,
Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— Vicente Pereda, by E. Dominguez Tejeda, abogada,

— the Spanish Government, by B. Plaza Cruz, acting as Agent,

— the Commission of the European Communities, by I. Martínez del Peral and M. van Beek, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 7(1) of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time (OJ 2003 L 299, p. 9).

2 The reference has been made in the course of proceedings between Mr Vicente Pereda and his employer, Madrid Movilidad SA, concerning Mr Pereda's request to use his annual leave outside the period of leave allocated in the undertaking's annual leave planning schedule, during which period he was on sick leave.

Legal context

Community legislation

3 Article 1 of Directive 2003/88 provides as follows:

‘Purpose and scope

1. This Directive lays down minimum safety and health requirements for the organisation of working time.

2. This Directive applies to:

(a) minimum periods of … annual leave …

…’

4 Article 7 of that directive reads as follows:

‘Annual leave

1. Member States shall take the measures necessary to ensure that every worker is entitled to paid annual leave of at least four weeks in accordance with the conditions for entitlement to, and granting of, such leave laid down by national legislation and/or practice.

2. The minimum period of paid annual leave may not be replaced by an allowance in lieu, except where the employment relationship is terminated.’

5 Article 17 of Directive 2003/88 allows Member States to derogate from certain provisions of the directive. No derogation is allowed with regard to Article 7 of the directive.

6 In accordance with Article 28 thereof, Directive 2003/88 entered into force on 2 August 2004. It repealed Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organisation of working time (OJ 1993 L 307, p. 18), of which it is the codified version.

National legislation

7 Under Spanish law, the rights and obligations of workers in their working relationships are governed by the Law on the statute of workers (Ley del Estatuto de los Trabajadores), the reworked text of which was approved by Royal Legislative Decree 1/1995 (Real Decreto Legislativo 1/1995) of 24 March 1995 (BOE No 75 of 29 March 1995, p. 9654), as amended by Framework Law 3/2007 for effective equality as between women and men (Ley orgánica 3/2007 para la igualdad efectiva de mujeres y hombres) of 22 March 2007 (BOE No 71 of 23 March 2007, p. 12611; 'the Statute').

8 Article 38 of the Statute provides:

'1. The period of paid annual leave, which may not be replaced by an allowance in lieu, shall be that agreed in collective agreements or individual contracts. In no circumstances shall the period of leave be less than 30 calendar days.

2. The period or periods during which leave may be taken shall be scheduled by mutual consent between the employer and the employees, in accordance, where appropriate, with the provisions of the collective agreements on the annual planning of leave.

In the case of disagreement between the parties, the competent court shall set the dates of the leave to be allocated and its decision shall be final. The proceedings shall be summary and dealt with as a matter of priority.

3. Each undertaking shall establish a leave schedule. Employees shall be made aware of the days to which they are entitled, at the latest, two months in advance of the start of their leave.

When the period of leave set out in the undertaking's leave schedule to which the previous paragraph refers coincides with a period of temporary disability resulting from pregnancy, labour or breastfeeding or with the period of suspension of the contract of employment laid down in Article 48.4 of this Law, employees shall be entitled to take the leave, at a different point in time from that period of temporary disability or other period of leave, to which they are entitled under the … provision [cited above] following the period of suspension, even if the calendar year to which that leave relates has ended.'

9 Article 17 of the collective agreement of Madrid Movilidad SA (BOCM, 18 October 2006; 'the Collective Agreement') provides:

'17.1. Duration

The period of paid annual leave, which may not be replaced by an allowance in lieu, is 22 working days (from Monday to Friday) or, where applicable, the corresponding proportion if the length of service does not cover the whole year. These days of leave cannot be combined with special unpaid leave.

The same proportion is applied to staff who cease working, for whatever reason, during the year, days being added to or deducted from the period of leave taken, if applicable, in the corresponding calculation.

17.2. Period of leave

This runs between 1 January and 31 December. Eleven working days of leave must be taken between 1 July and 15 September, provided that, during that period, the service is guaranteed by at least 50% of the staff.

Leave taken between 1 January and 30 June and between 15 September and 31 December shall be taken on a voluntary basis by staff who have requested leave one month in advance and may be taken by a maximum of 10% of their professional group.

17.3. The works council undertakes to submit to the company, in the first three months of the year, a nominative proposal for the different leave rotas, in such a way as to meet the requirements of the service.

17.4. Workers in the same professional category may exchange the proposed periods of leave between themselves, even if they are in a different team or at a different working location, provided that the management of the company authorises that exchange. As a general rule, all changes which do not affect the established percentages and which, as a consequence, do not affect the operation of the service are permitted.

17.5. Those rotas, once approved by the company, shall be made known to the workers two months before they come into operation and changes may be made up to 45 days beforehand. Nevertheless, if there is a justified need, the joint committee shall examine whether changes may be authorised even if the time-limits stated have not been complied with.'

The dispute in the main proceedings and the question referred for a preliminary ruling

10 Mr Vicente Pereda, the applicant in the main proceedings, works as a specialist driver for Madrid Movilidad SA, an undertaking which removes cars which are wrongly parked on public highways, receiving in return the corresponding parking charges and fees.

11 In accordance with the undertaking's planned staff leave schedule for 2007, drawn up in accordance with the collective agreement for 2006 to 2009 and with the leave proposal submitted by the works committee, Mr Vicente Pereda was allocated a period of leave from 16 July to 14 August 2007.

12 Following an accident at work on 3 July 2007, Mr Vicente Pereda was unable to work until 13 August 2007, with the result that the period of annual leave allocated to him for 2007 during which he was not simultaneously on sick leave was limited to 14 and 15 August 2007.

13 On 19 September 2007, he asked his employer to allocate to him a new period of paid annual leave for 2007, from 15 November to 15 December 2007, on the ground that he had been on sick leave during the period of annual leave originally allocated to him.

14 Madrid Movilidad SA rejected that request without giving any reasons.

15 The applicant in the main proceedings has challenged that decision before the Juzgado de lo Social nº 23 de Madrid. That court is unsure whether the decision of the defendant in the main proceedings is attributable to an incorrect interpretation of Article 7(1) of Directive 2003/88 which fails to have regard for the very concept of paid annual leave as laid down in Community law.

16 In those circumstances, the Juzgado de lo Social nº 23 de Madrid decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'Must Article 7(1) of Directive 2003/88/EC be interpreted as meaning that when the period of leave allocated in the undertaking's annual planning of leave coincides in time with a temporary disability following an accident at work which happened before that period of leave began, the employee affected, once he returns to work, has the entitlement to use his leave on dates different from those originally allocated, irrespective of whether the calendar year to which they relate has ended?'

The question referred

17 By its question, the referring court asks, essentially, whether Article 7(1) of Directive 2003/88 must be interpreted as precluding national provisions or collective agreements which provide that a worker who is on sick leave during a period of annual leave scheduled in the annual leave planning schedule of the undertaking which employs him does not have the right, following his recovery, to take his annual leave at a time other than that originally scheduled, if necessary outside the corresponding reference period.

18 From the outset, it must be borne in mind that, as is clear from the actual wording of Article 7(1) of Directive 2003/88, a provision from which no derogation is permitted by that directive, every worker is entitled to paid annual leave of at least four weeks. That entitlement to paid annual leave must be regarded as a particularly important principle of Community social law from which there can be no derogations and the implementation of which by the competent national authorities must be confined within the limits expressly laid down by Directive 2003/88 itself (see, to that effect, with regard to Directive 93/104, Case C-173/99 *BECTU* [2001] ECR I-4881, paragraph 43; Case C-342/01 *Merino Gómez* [2004] ECR I-2605, paragraph 29; and Joined Cases C-131/04 and C-257/04 *Robinson-Steele and Others* [2006] ECR I-2531, paragraph 48).

19 In that regard, the Court has already held that Article 7(1) of Directive 2003/88 does not preclude, as a rule, national legislation which lays down conditions for the exercise of the right to paid annual leave expressly conferred by the directive, including even the loss of that right at the end of a leave year or of a carry-over period, provided, however, that the worker who has lost his right to paid annual leave has actually had the opportunity to exercise that right. Thus, the right to paid annual leave is not extinguished at the end of the reference period laid down by national law where the worker was on sick leave for the whole or part of the leave year and has not actually had the opportunity to exercise that right (see Joined Cases C-350/06 and C-520/06 *Schultz-Hoff and Others* [2009] ECR I-179, paragraphs 43 and 55).

20 A worker must normally be entitled to actual rest, with a view to ensuring effective protection of his health and safety, since it is only where the employment relationship is terminated that Article 7(2) of Directive 2003/88 permits an allowance to be paid in lieu of paid annual leave (see, to that effect, with regard to Directive 93/104, *BECTU*, paragraph 44, and *Merino Gómez*, paragraph 30).

21 It is, moreover, common ground that the purpose of the entitlement to paid annual leave is to enable the worker to rest and to enjoy a period of relaxation and leisure. The purpose of the entitlement to sick leave is different. It is given to the worker so that he can recover from being ill (see *Schultz-Hoff and Others*, paragraph 25).

22 It follows from the foregoing and, in particular, from that stated purpose of the entitlement to paid annual leave that a worker who is on sick leave during a period of previously scheduled annual leave has the right, on his request and in order that he may actually use his annual leave, to take that leave during a period which does not coincide with the period of sick leave. The scheduling of that new period of annual leave, corresponding to the duration of the overlap between the period of annual leave originally scheduled and the sick leave, is subject to the rules and procedures of national law which are applicable to the scheduling of workers' leave, taking into account the various interests involved, including overriding reasons relating to the interests of the undertaking.

23 If such interests preclude acceptance of the worker's request for a new period of annual leave, the employer is obliged to grant the worker a different period of annual leave proposed by him which is compatible with those interests, without excluding in advance the possibility that that period may fall outside the reference period for the annual leave in question.

24 According to the case-law of the Court, while the positive effect of paid annual leave for the safety and health of the worker is deployed fully if it is taken in the year prescribed for that purpose, namely the current year, the significance of that rest period in that regard remains if it is taken during a later period (see Case C-124/05 *Federatie Nederlandse Vakbeweging* [2006] ECR I-3423, paragraph 30, and *Schultz-Hoff and Others*, paragraph 30).

25 Consequently, although Directive 2003/88 does not preclude national legislation or practices which allow a worker on sick leave to take paid annual leave during that sick leave (*Schultz-Hoff and Others*, paragraph 31), it follows from paragraph 22 of the present judgment that, where that worker does not wish to take annual leave during a period of sick leave, annual leave must be granted to him for a different period.

26 In the light of all the foregoing, the answer to the question referred is that Article 7(1) of Directive 2003/88 must be interpreted as precluding national provisions or collective agreements which provide that a worker who is on sick leave during a period of annual leave scheduled in the annual leave planning schedule of the undertaking which employs him does not have the right, after his recovery, to take his annual leave at a time other than that originally scheduled, if necessary outside the corresponding reference period.

Costs

27 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber) hereby rules:

Article 7(1) of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time must be interpreted as precluding national provisions or collective agreements which provide that a worker who is on sick leave during a period of annual leave scheduled in the annual leave planning schedule of the undertaking which employs him does not have the right, after his recovery, to take his annual leave at a time other than that originally scheduled, if necessary outside the corresponding reference period.

[Signatures]