JUDGMENT OF THE COURT (First Chamber)
11 July 1985 *

In Case 261/84

REFERENCE to the Court under Article 177 of the EEC Treaty by the Cour du Travail [Labour Court], Mons, for a preliminary ruling in the action pending before that court between

Calogero Scaletta

and

Union nationale des fédérations mutualistes neutres de Belgique
[National Union of Neutral Friendly Societies of Belgium],

on the interpretation of Article 59 of Regulation No 574/72 of the Council of 21 March 1972 fixing the procedure for implementing Regulation No 1408/71 (consolidated in Official Journal 1980, C 138, p. 65),

THE COURT (First Chamber)

composed of: G. Bosco, President, R. Joliet and T. F. O'Higgins, Judges,

Advocate General: P. VerLoren van Themaat
Registrar: H. A. Rühl, Principal Administrator

after considering the observations submitted on behalf of:

Calogero Scaletta, the appellant in the main action, represented by D. Rossini, trade union representative,

the Commission of the European Communities, represented by J. Griesmar, a member of its Legal Department, acting as Agent,

after hearing the Opinion of the Advocate General delivered at the sitting on 6 June 1985,

gives the following

* Language of the Case: French.

JUDGMENT

(The account of the facts and issues which is contained in the complete text of the judgment is not reproduced)

Decision

1 By a judgment dated 2 November 1984, which was received at the Court on 7 November 1984, the Cour du Travail [Labour Court], Mons, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty two questions on the interpretation of Article 59 of Regulation No 574/72 of the Council of 21 March 1972 fixing the procedure for implementing Regulation (EEC) No 1408/71.

2 The questions arose in the course of a dispute concerning the decision of the competent Belgian social security institution to refuse Mr Scaletta, an Italian migrant worker, invalidity benefits in respect of the period from 16 June to 4 September 1980, during which time the institution had been unaware that he had transferred his residence from Belgium to Italy.

3 From the documents put before the Court it appears that Mr Scaletta was recognized as unfit for work until 31 October 1980. Before leaving on 16 June 1980 for Italy, where he intended to reside permanently, he did not apply, as required by Belgian legislation, for authorization from the medical officer of the competent social security institution or even notify the institution of his change of address. The Belgian institution was informed on 4 September 1980 that Mr Scaletta had transferred his residence by the Istituto Nazionale della Previdenza Sociale [National Social Welfare Institution] of Turin (Italy).

4 By a letter dated 23 October 1980, the Belgian institution informed Mr Scaletta that because he had failed to obtain authorization to transfer his residence to another Member State, he would receive no invalidity benefits in respect of the period from 16 June to 4 September 1980.

5 Mr Scaletta challenged that decision before the courts. The Cour du Travail, Mons, referred, in order to determine whether prior authorization was required, to Article 10 (1) of Regulation No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community (consolidated in Official Journal 1980, C 138, p. 1), which provides that 'invalidity . . . cash benefits ... acquired under the legislation of one or more Member States shall not be subject to any reduction, modification, suspension, withdrawal or confiscation by reason of the fact that the recipient resides in the territory of a Member State other than that in which the institution responsible for payment is situated'.

6 As to the notification of the transfer of residence, the Cour du Travail, Mons, considered that it was governed by Article 59 of Regulation No. 574/72 of the Council, which provides that: 'When a person entitled to benefits due under the legislation of one or more Member States transfers his residence from the territory of one State to that of another State, he shall notify this fact to the institution or institutions responsible for the payment of such benefits and to the paying body'. The national court decided to stay the proceedings pending a preliminary ruling from the Court of Justice on the following questions:

'(1) How and within what period must the notification provided for in Article 59 of Regulation No. 574/72 be made?

(2) Can failure to make that notification or lateness in giving it result in the withdrawal (if only temporarily) of the right to benefits, in particular when the paying body is entitled to verify that the conditions under which benefits are payable continue to exist?'

The first question

7 Mr Scaletta claims that it was unnecessary to fix in Article 59 of Regulation No 574/72 a time-limit for notification of a transfer of residence, since that provision must be applied in conjunction with the national law on limitation periods. Notification can effectively be made as long as the claim for the benefits is not out of time under the relevant national legislation.

8 The Commission observes that Article 59 of Regulation No 574/72 does not contain any rule as to the form of notification of a transfer of residence or the period within which such notification must be made. Accordingly, the Commission considers that notification may be made at any time, in writing or orally, either by the recipient of the benefit or by a person or institution acting on his behalf.

9 The Court notes, in the first place, that although it imposes on the recipient of social security benefits a duty to notify any transfer of his residence, Article 59 of Regulation No 574/72 is silent as to the form and time of the notification.

10 Consequently, the notification provided for in Article 59 of Regulation No 574/72 may be oral or in writing and may be made at any time.

11 For those reasons, the answer to the first question asked by the national court must be that the notification provided for in Article 59 of Regulation No 574/72 of the Council of 21 March 1972 fixing the procedure for implementing Regulation No 1408/71 may be made in any form and at any time.

The second question

12 Mr Scaletta considers that the recipient of social security benefits who has failed to make the notification required by Article 59 of Regulation No 574/72 is entitled to claim the benefit which could not be paid to him, provided that his claim is not out of time under the relevant national legislation when the institution responsible for payment is apprised of the transfer of residence.

13 The Commission observes that as there is no sanction attached to the obligation laid down in Article 59 of Regulation No 574/72, delay in making the notification referred to in that article should not result in the loss of entitlement to the benefits due for the period between the transfer of residence and the date of notification. According to the Commission, that does not affect the power of the competent

social security institution to check whether the recipient continued to satisfy the conditions for receipt of benefits during that period.

14 There is indeed no sanction attached to the obligation to notify a change of residence laid down in Article 59 of Regulation No 574/72.

15 Accordingly, failure to notify, or late notification of, a transfer of residence cannot entail loss of entitlement to the benefits due for the period between the transfer of residence and the date on which the competent institution was apprised of such transfer.

16 However, when the competent institution of the Member State in which the recipient formerly resided is informed of the transfer of residence, it is entitled to ascertain, by means of a check in accordance with Article 51 of Regulation No 574/72, whether the conditions for receipt of the benefits were still fulfilled during the period in question.

17 On those grounds, the answer to the second question asked by the national court must be that failure to make the notification referred to in Article 59 of Regulation No 574/72 of the Council of 21 March 1972 laying down the procedure for implementing Regulation No 1408/71, or late notification, cannot entail loss of entitlement to the benefits due for the period between the transfer of residence and the date on which the competent social security institution was apprised of that transfer, provided that the conditions for receipt of benefits were still fulfilled during that period.

Costs

18 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main proceedings are concerned, a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (First Chamber)

in answer to the questions referred to it by the Cour du Travail, Mons, by a judgment of 2 November 1984, hereby rules:

(1) **The notification referred to in Article 59 of Regulation No 574/72 of the Council of 21 March 1972 laying down the procedure for implementing Regulation No 1408/71 may be made in any form and at any time.**

(2) **Failure to make the notification referred to in Article 59 of Regulation No 574/72 of the Council of 21 March 1972 laying down the procedure for implementing Regulation No 1408/71, or late notification, cannot entail loss of entitlement to the benefits due for the period between the transfer of residence and the date on which the competent social security institution was apprised of that transfer, provided that the conditions for receipt of benefits were still fulfilled during that period.**

Bosco Joliet O'Higgins

Delivered in open court in Luxembourg on 11 July 1985.

P. Heim
Registrar

G. Bosco
President of the First Chamber