JUDGMENT OF THE COURT
18 FEBRUARY 1975 [1]

Auditeur du Travail
v Jean-Pierre Cagnon and Jean-Paul Taquet
(preliminary ruling requested by the Tribunal de Police de Mons)

Case 69/74

Summary

Transport — Social provisions — Harmonization — Daily rest period — Obligatory observance — Persons covered
(Regulation No 543/69 of the Council, Article 11 (2), first paragraph)

The phrase 'shall have had . . . a . . . rest period' in the first paragraph of Article 11 (2) of Regulation (EEC) No 543/69 of 25 March 1969 must be interpreted as meaning that the provisions on daily rest must be observed both by crew members themselves, who are required to stop all activities referred to in Article 14 of the Regulation for the minimum period laid down, and by the employer running a road transport undertaking, who is required to take the necessary measures to permit the crew members to have the daily rest period laid down.

In Case 69/74

Reference to the Court under Article 177 of the EEC Treaty by the Tribunal de Police de Mons for a preliminary ruling in the criminal proceedings pending before that court between

AUDITEUR DU TRAVAIL at the Tribunal de Mons

v

1. JEAN-PIERRE CAGNON, driver, residing at Amiens,

2. JEAN-PAUL TAQUET, transport contractor, residing at Amiens,

1 — Language of the Case: French.

on the interpretation of Article 11 (2), first paragraph, of Regulation No 543/69 of the Council of 25 March 1969 on the harmonization of certain social legislation relating to road transport (OJ L 77, 1969, p. 49),

THE COURT

composed of: R. Lecourt, President, J. Mertens de Wilmars and Lord Mackenzie Stuart, Presidents of Chambers. A. M. Donner, R. Monaco (Rapporteur), P. Pescatore, H. Kutscher, M. Sørensen and A. O'Keeffe, Judges,

Advocate-General: G. Reischl
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts

The order of reference and the written observations submitted under Article 20 of the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and written procedure

1. Article 11 (2), first paragraph, of Regulation No 543/69 of the Council of 25 March 1969 (OJ L 77, 1969, p. 53) on the harmonization of certain social legislation relating to road transport provides:

'Every crew member engaged in the carriage of passengers shall have had, during the twenty-four-hour period preceding any time when he is performing any activity covered by Article 14 (2) (c) or (d):

— a daily rest period of not less than ten consecutive hours, which shall not be reduced during the week, or ...'

Article 14 (2) (c) of the same Regulation refers to 'driving periods'.

2. The present proceedings result from an action pending before the Tribunal de Police de Mons in which the Auditeur du Travail (at the Tribunal du Travail de Mons) is prosecuting Jean-Pierre Cagnon, coach driver, as the defendant and Jean-Paul Taquet, his employer who is civilly and jointly liable. In the summons the defendant is charged with not having complied with the provisions of the first paragraph of Article 11 (2) of the aforementioned Regulation No 543/69 of the Council of 25 March 1969 and of Article 2 of the Belgian Royal Decree of 23 March 1970 implementing the said Regulation by reason of the fact that during a trip to Germany,

— being a member of a crew engaged in the carriage of passengers, not having

had, during the twenty-four-hour period preceding any time when he is performing an activity covered by Article 14 (2) (c) of Regulation No 543/69, a daily rest period of not less than ten consecutive hours.

During the main proceedings the defendant did not dispute the facts with which he was charged, but objected that the Community provision in question did not involve any obligation on his part in that it was only employers who were bound to respect the daily rest period and not crew members of road vehicles.

3. The Tribunal de Police de Mons found first of all that since the defence raised by the employer, according to which Mr Cagnon had been instructed to spend the night at Dortmund, the destination of the vehicle driven by the defendant, had not been challenged, there was no misconduct on the part of Mr Taquet. It then stated that the defence related to the interpretation of the first paragraph of Article 11 (2) of Regulation No 543/69 since it was a question of whether 'the driver must have had the possibility of taking the rest laid down by the legislation or whether, on the other hand, he is required to respect the Regulation, that is to say, to have in fact rested'.

Following a suggestion by the prosecutor to request the Court of Justice to give a ruling on the question of interpretation thus raised, the Tribunal de Police de Mons by judgment of 6 September 1974 stayed the proceedings and referred to the Court of Justice under Article 177 of the EEC Treaty the question:

'What is the meaning of the words 'shall have had . . . a . . . rest period' in the first paragraph of Article 11 (2) of Regulation No 543/69'

4. The order of reference was filed at the Court on 18 September 1974.

In accordance with Article 20 of the Statute of the Court of Justice of the EEC, written observations were submitted on behalf of the Commission of the European Communities by its legal adviser, Marc Sohier, acting as agent.

On hearing the report of the Judge-Rapporteur and the opinion of the Advocate-General the Court decided to open the oral procedure without a preparatory inquiry.

II — Written observations submitted under Article 20 of the Protocol

On the Statute of the Court of Justice

Observations submitted by the Commission of the European Communities.

The Commission makes the following points:

— Since Regulation No 543/69 is binding in its entirety and directly applicable in all Member States, Article 11 (2) applies to every subject including both the transport undertakings referred to by the provision as employers as well as the crew members of the road vehicles.

— The wording of the provision in question expresses in a clear and authoritative manner that every crew member engaged in the carriage of passengers 'is required' to have 'in fact' rested for the minimum period laid down under the system of daily rest to which he is subject during the current week.

— The requirement of daily rest is laid down by the provision referred to as distinct from the other activities referred to in Article 14 (2) (c) and (d) of the same Regulation. The daily rest required of crew members is not limited to the concept of rest in the strictly physical sense of the word but may likewise cover the practice of any other relaxing activity, save expressly the driving of the vehicle

and any kind of presence at work properly speaking.

— If the rules of Regulation No 543/69, in particular those relating to the minimum duration of daily and weekly rest, were only optional on the part of crew members and did not require them to have in fact rested, none of the three objectives of the Regulation would be achieved. It would mean:
  — there would be no harmonization of the provisions affecting competition in transport (cf. the second citation in the Regulation);
  — social progress would be stultified (cf. third recital of the Regulation);
  — the objective of road safety would be totally disregarded (cf. third, eighth and ninth recitals of the Regulation).

In view of these opservations the Commission proposes the following reply to the question raised:

'The provision of Article 11 (2) of Regulation (EEC) No 543/69 of 25 March 1969 must be interpreted as meaning that it must be observed both by crew members of road vehicles engaged in the carriage of passengers, in respect of whom it involves an obligation to comply with the system of daily rest by stopping, for the minimum period laid down, any of the activities referred to in Article 14 (2) (c) and (d), and by employers, in respect of whom it involves the obligation of taking the necessary measures to permit the crew members to have the system of daily rest laid down.'

III — Oral procedure

Oral observations were made at the hearing on 23 January 1975 by Jean-Pierre Cagnon and Jean-Paul Taquet, represented by Maître Detaeye, and the Commission of the European Communities, represented by its Legal Adviser, Marc Sohier, acting as agent.

Both accused agreed with the statement of facts and the interpretation proposed by the Commission and made submissions relying on the Court's discretion.

The Advocate-General delivered his opinion on 30 January 1975.

Law

1 By judgment dated 6 September 1974, filed at the Registry of the Court on 18 September 1974, the Tribunal de Police de Mons requested a preliminary ruling under Article 177 of the EEC Treaty on the interpretation of the first paragraph of Article 11 (2) of Regulation No 543/69 of the Council of 25 March 1969 (OJ L 177, 1969) on the harmonization of certain social legislation relating to road transport.

2 The question arose in police proceedings in which a coach driver was charged with not having taken, as a crew member engaged in the carriage of passengers, the daily rest referred to in the aforementioned first paragraph of Article 11 (2).

3 The defendant challenged the validity of the proceedings on the ground that only employers had to observe the requirement for daily rest and not crew members of road vehicles.

4 The Court is requested for this purpose to rule as to the meaning which must be given to the words 'shall have had . . . a . . . rest period'.

5 The first paragraph of Article 11 (2) of Regulation No 543/69 provides 'every crew member engaged in the carriage of passengers shall have had, during the twenty-four-hour period preceding any time he is performing any activity covered by Article 14 (2) (c) or (d): a daily rest period of not less than ten consecutive hours, which shall not be reduced during the week . . .'.

6 Article 14 (2) (c) and (d) refers to 'driving periods' and 'other periods of attendance at work'.

7 The third and tenth recitals of Regulation No 543/69 show that the Regulation has among other objectives 'to improve road safety' for which purpose it is desirable 'to lay down the minimum duration of and other conditions governing the daily and weekly rest periods of crew members'.

8 Such an objective would not be achieved if the provisions enacted in relation to daily and weekly rest applied only to the employer running the road transport service, and did not likewise apply to crew members by requiring them to have in fact rested for the prescribed minimum period.

9 For the precise purpose of ensuring that this requirement is observed, Article 14 of the said regulation provides that crew members shall carry an individual control book.

10 As a result the phrase 'shall have had ... a ... rest period' in the first paragraph of Article 11 (2) of Regulation (EEC) No 543/69 of 25 March 1969 must be interpreted as meaning that the provisions on daily rest must be observed both by crew members themselves, who are required to stop all activities referred to in Article 14 of the Regulation for the minimum period

laid down, and by the employer running a road transport undertaking, who is required to take the necessary measures to permit the crew members to have the daily rest period laid down.

Costs

11 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable.

12 Since the proceedings are, in so far as the parties to the main action are concerned, a step in the action before the national court, costs are a matter for that court.

On those grounds,

THE COURT

in answer to the question referred to it by the Tribunal de Police de Mons by judgment of 6 September 1974, hereby rules:

the phrase 'shall have had . . . a . . . rest period' in the first paragraph of Article 11 (2) of Regulation (EEC) No 543/69 of 25 March 1969 must be interpreted as meaning that the provisions on daily rest must be observed both by crew members themselves, who are required to stop all activities referred to in Article 14 of the Regulation for the minimum period laid down, and by the employer running a road transport undertaking, who is required to take the necessary measure to permit the crew members to have the daily rest period laid down.

Lecourt Mertens de Wilmars Mackenzie Stuart Donner Monaco
Pescatore Kutscher Sørensen O'Keeffe

Delivered in open court in Luxembourg on 18 February 1975.

A. Van Houtte — Registrar

R. Lecourt — President