JUDGMENT OF THE COURT (First Chamber)

28 September 2000 *

In Case C-193/99,

REFERENCE to the Court under Article 234 EC by the Sedgefield Magistrates' Court (United Kingdom) for a preliminary ruling in the criminal proceedings before that court against

Graeme Edgar Hume

on the interpretation of Article 8(5) of Council Regulation (EEC) No 3820/85 of 20 December 1985 on the harmonisation of certain social legislation relating to road transport (OJ 1985 L 370, p. 1),

THE COURT (First Chamber),

composed of: L. Sevón, President of the Chamber, P. Jann (Rapporteur) and M. Wathelet, Judges,

* Language of the case: English.

Advocate General: S. Alber,
Registrar: R. Grass,

after considering the written observations submitted on behalf of:

— the United Kingdom Government, by M. Ewing, of the Treasury Solicitor's Department, acting as Agent, assisted by P. Stanley, Barrister,

— the French Government, by R. Abraham, Director of Legal Affairs in the Ministry of Foreign Affairs, and S. Seam, Foreign Affairs Secretary in the Legal Affairs Directorate of that Ministry, acting as Agents,

— the Portuguese Government, by L. Fernandes, Director of the Legal Service of the Directorate-General for the European Communities in the Ministry of Foreign Affairs, and P. Borges, lawyer in the same service, acting as Agents,

— the Commission of the European Communities, by F. Benyon and M. Wolfcarius, Legal Advisers, acting as Agents,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 21 March 2000,

gives the following

Judgment

1 By order of 21 May 1999, received at the Court on 25 May 1999, the Sedgefield Magistrates' Court referred to the Court of Justice for a preliminary ruling under Article 234 EC two questions on the interpretation of Council Regulation (EEC) No 3820/85 of 20 December 1985 on the harmonisation of certain social legislation relating to road transport (OJ 1985 L 370 p. 1, hereinafter 'the Regulation').

2 Those questions were raised in criminal proceedings brought against Mr Hume on a charge of having contravened the provisions regarding weekly rest periods for drivers of vehicles.

Legal framework

The Community legislation

3 Article 6(1) of the Regulation provides:

'The driving period between any two daily rest periods or between a daily rest period and a weekly rest period, hereinafter called "daily driving period",

shall not exceed nine hours. It may be extended twice in any one week to 10 hours.

A driver must, after no more than six daily driving periods, take a weekly rest period as defined in Article 8(3).

The weekly rest period may be postponed until the end of the sixth day if the total driving time over the six days does not exceed the maximum corresponding to six daily driving periods.

In the case of the international carriage of passengers, other than on regular services, the terms "six" and "sixth" in the second and third subparagraphs shall be replaced by "twelve" and "twelfth" respectively.

Member States may extend the application of the previous subparagraph to national passenger services within their territory, other than regular services.'

4 Article 8 provides, in particular:

'...

3. In the course of each week, one of the rest periods referred to in paragraphs 1 and 2 shall be extended, by way of weekly rest, toa total of 45 consecutive hours.

This rest period may be reduced to a minimum of 36 consecutive hours if taken at the place where the vehicle is normally based or where the driver is based, or to a minimum of 24 consecutive hours if taken elsewhere. Each reduction shall be compensated by an equivalent rest taken en bloc before the end of the third week following the week in question.

...

5. In the case of the carriage of passengers to which Article 6(1), fourth or fifth subparagraph, applies, the weekly rest period may be postponed until the week following that in respect of which the rest is due and added on to that second week's weekly rest.

6. Any rest taken as compensation for the reduction of the daily and/or weekly rest periods must be attached to another rest of at least eight hours and shall be granted, at the request of the person concerned, at the vehicle's parking place or driver's base.

...'

The national legislation

5 Section 96(11A) of the Transport Act 1968 provides for the imposition of penalties in the event of contravention of the Community rules as to periods of driving or periods on or off duty.

Facts and procedure before the national court

6 On 5 January 1996 an information was laid against Mr Hume, as a result of which he was summoned to appear before the national court. He was charged with having driven a vehicle to which the Regulation applied and having failed after no more than twelve daily driving periods to take two weekly rest periods back to back as required by Article 6(1) and defined by Article 8(3) of the Regulation, contrary to section 96(11A) of the Transport Act.

7 Mr Hume was a coach driver, and the nature of his duties entitled him to the benefit of the fourth and fifth subparagraphs of Article 6(1) of the Regulation. He did not take any rest period between 16 July and 24 July 1995. He then took a rest period of 38 hours and 30 minutes between Monday, 24 July 1995 and Wednesday, 26 July 1995. Thereafter, on Thursday, 3 August 1995, he commenced a rest period of 36 hours and 30 minutes.

8 Mr Hume states that he took the weekly rest period in respect of the week commencing 17 July 1995 on 24 and 25 July 1995, by way of postponement pursuant to Article 8(5) of the Regulation, and the weekly rest period in respect

of the week commencing 24 July 1995 on 4 and 5 August, likewise by way of postponement pursuant to Article 8(5).

9 Mr Hume accordingly disputes the argument put forward by the Vehicle Inspectorate, as the prosecuting authority acting on behalf of the Secretary of State for Transport, that, in order for a weekly rest period to be added to the corresponding period in the second week, it must be taken not only in the course of that second week but also in conjunction with the rest period for that second week, that is to say, consecutively.

10 The Sedgefield Magistrates' Court was uncertain as to the interpretation to be given to the provisions of the Regulation, and therefore decided to stay proceedings and to refer the following two questions to the Court of Justice for a preliminary ruling:

'(1) Where, pursuant to Article 8(5) of Council Regulation (EEC) No 3820/85, a driver who is entitled to do so elects to postpone his weekly rest period until the week following that in which it is due, must the driver take two weekly rest periods, consecutively and without break between them, in that following week?

(2) If the answer to question (1) is in the negative, must such a driver nevertheless take two weekly rest periods in the following week, or is he permitted to postpone, in turn, the weekly rest period for that second week to the next following week?'

The first question

11 For the purposes of determining the relationship between a weekly rest period which is postponed to the week following that in which it became due and the weekly rest period for the second week, it should be borne in mind that Article 8(5) of the Regulation requires the first of those periods to be 'added on to' the second.

12 The various language versions of that phrase use the terms 'adscribirse' (Spanish), 'tages sammen' (Danish), 'angehängt' (German), 'να ληφθεί μαζί' (Greek), 'added on' (English), 'rattachée' (French), 'collegato' (Italian), 'gevoegd bij' (Dutch), 'ligado' (Portuguese), 'yhteydessä' (Finnish) and 'läggas samman' (Swedish).

13 A comparison of those terms shows that they all have the same meaning, namely that the postponed weekly rest period must be taken together with the weekly rest period for the following week.

14 That literal interpretation is in conformity with the aims of the Regulation, which, as indicated by the first recital in its preamble, pursues three objectives, namely the harmonisation of conditions of competition, the improvement of working conditions and road safety. According to the 19th recital, 'it is beneficial

to social progress and to road safety to lengthen weekly rest periods, while enabling these periods to be shortened, provided that the driver can compensate for parts of his rest period which have not been taken in a place of his choosing within a given time'.

15 To that end, Article 8(3) of the Regulation provides as a general rule for a weekly rest period of 45 consecutive hours. This must be taken in the course of each week and may be reduced in certain circumstances, on the basis that each reduction must be compensated by an equivalent rest taken *en bloc* before the end of the third week following the week in question.

16 In so far as Article 8(5) of the Regulation allows a weekly rest period to be postponed and thus constitutes a derogation from the general scheme, it is not to be interpreted broadly. Furthermore, its scope must be determined in the light of the aims pursued by the Regulation (see, to that effect, Case C-387/96 *Sjöberg* [1998] ECR I-1225, paragraph 14).

17 Clearly, the objective of improving working conditions and road safety can best be attained by interpreting Article 8(5) of the Regulation as requiring the postponed weekly rest period to be taken together with the weekly rest period for the second week.

18 Such an interpretation guarantees drivers, by way of compensation for a rest not taken by them, a longer and uninterrupted rest period, thus enabling them to take a proper rest.

19 Moreover, it is apparent from the context of Article 8(5) of the Regulation, and in particular from Article 8(6), that the intention of the legislature was to provide generally for the reduction of a rest period to be compensated by the extension of another rest period.

20 The answer to the first question must therefore be that Article 8(5) of the Regulation must be interpreted as meaning that a driver who elects to postpone his weekly rest period until the week following that in which it becomes due must take two weekly rest periods, consecutively and without any break between them, in that second week.

The second question

21 Since an answer to the second question is required only in the event that the answer to the first question is in the negative, there is no need to reply to it.

Costs

22 The costs incurred by the United Kingdom, French and Portuguese Governments and by the Commission, which have submitted observations to the Court, are not recoverable. 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.

On those grounds,

THE COURT (First Chamber),

in answer to the questions referred to it by the Sedgefield Magistrates' Court by order of 21 May 1999, hereby rules:

Article 8(5) of Council Regulation (EEC) No 3820/85 of 20 December 1985 on the harmonisation of certain social legislation relating to road transport must be interpreted as meaning that a driver who elects to postpone his weekly rest period until the week following that in which it becomes due must take two weekly rest periods, consecutively and without any break between them, in that second week.

Sevón Jann Wathelet

Delivered in open court in Luxembourg on 28 September 2000.

R. Grass

Registrar

L. Sevón

President of the First Chamber