JUDGMENT OF THE COURT (Fifth Chamber)

18 January 2001 *

In Case C-297/99,

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

Skills Motor Coaches Ltd,

B.J. Farmer,

C.J. Burley

and

B. Denman

on the interpretation of Article 15 of Council Regulation (EEC) No 3821/85 of 20 December 1985 on recording equipment in road transport (OJ 1985 L 370, p. 8),

* Language of the case: English.

THE COURT (Fifth Chamber),

composed of: A. La Pergola, President of the Chamber, M. Wathelet, D.A.O. Edward, P. Jann (Rapporteur) and L. Sevón, Judges,

Advocate General: A. Saggio,
Registrar: D. Louterman-Hubeau, Head of Division,

after considering the written observations submitted on behalf of:

— Skills Motor Coaches Ltd and Messrs Farmer, Burley and Denman, by M. Laprell, Barrister, instructed by Pellys, Solicitors,

— the United Kingdom Government, by M. Ewing, acting as Agent, and S. Masters, Barrister,

— the Swedish Government, by A. Kruse, acting as Agent,

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

having regard to the Report for the Hearing,

after hearing the oral observations of Skills Motor Coaches Ltd and Messrs Farmer, Burley and Denman, represented by M. Laprell; of the United Kingdom Government, represented by G. Amodeo, acting as Agent, and S. Masters; of the Netherlands Government, represented by J. van Bakel, acting as Agent; of the Swedish Government, represented by B. Hernqvist, acting as Agent; and of the

Commission, represented by M. Shotter, acting as Agent, at the hearing on 21 June 2000,

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

gives the following

Judgment

1 By order of 30 June 1999, received at the Court on 6 August 1999, Nottingham Magistrates' Court referred to the Court of Justice for a preliminary ruling under Article 234 EC a question on the interpretation of Article 15 of Council Regulation (EEC) No 3821/85 of 20 December 1985 on recording equipment in road transport (OJ 1985 L 370, p. 8).

2 That question was raised in criminal proceedings against Skills Motor Coaches Ltd (hereinafter 'Skills') and its drivers B.J. Farmer, C.J. Burley and B. Denman, who are charged with having infringed provisions concerning the use of recording equipment in road transport.

Legal background

Community legislation

3 Article 1(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) provides:

'In this regulation,

...

5. "rest" means any uninterrupted period of at least one hour during which the driver may freely dispose of his time'.

4 Article 4(3) of the same regulation provides:

'This regulation shall not apply to carriage by:

...

3. vehicles used for the carriage of passengers on regular services where the route covered by the service in question does not exceed 50 kilometres'.

5 Article 15(2) and (3) of Regulation No 3821/85 provides:

'2. Drivers shall use the record sheets every day on which they are driving, starting from the moment they take over the vehicle. The record sheet shall not be withdrawn before the end of the daily working period unless its withdrawal is otherwise authorised. No record sheet may be used to cover a period longer than that for which it is intended.

When, as a result of being away from the vehicle, a driver is unable to use the equipment fitted to the vehicle, the periods of time indicated in paragraph 3, second indent (b), (c) and (d) below shall be entered on the sheet, either manually, by automatic recording or other means, legibly and without dirtying the sheet.

Drivers shall amend the record sheets as necessary should there be more than one driver on board the vehicle, so that the information referred to in Chapter II (1) to (3) of Annex I is recorded on the record sheet of the driver who is actually driving.

3. Drivers shall:

— ensure that the time recorded on the sheet agrees with the official time in the country of registration of the vehicle,

— operate the switch mechanisms enabling the following periods of time to be recorded separately and distinctly:

(a) under the sign: [symbol not reproduced] driving time;

(b) under the sign: [symbol not reproduced] all other periods of work;

(c) under the sign: [symbol not reproduced] other periods of availability, namely:

— waiting time, i.e. the period during which drivers need remain at their posts only for the purpose of answering any calls to start or resume driving or to carry out other work,

— time spent beside the driver while the vehicle is in motion,

— time spent on a bunk while the vehicle is in motion;

(d) under the sign: [symbol not reproduced] breaks in work and daily rest periods.'

The national legislation

6 Section 97 of the Transport Act 1968 imposes penalties for non-compliance, in particular, with the conditions laid down in Articles 13 to 15 of Regulation No 3821/85.

Facts and procedure before the national court

7 Skills is a passenger coach operator established in Nottingham. Messrs Farmer, Burley and Denman were employed by it as coach drivers. As part of their work, Skills drivers may be called on to pick up coaches at a point away from either the company base or their home. Drivers are free to choose how they reach the place specified by the company.

8 The Vehicle Inspectorate, an agency of the Department of Transport, examined tachograph record sheets for drivers employed by Skills for December 1997. At that time it also examined the duty roster supplied by Skills, which purported to show the duties carried out by drivers and where and when they were due to start work on a particular trip or duty. A comparison of the records with the roster disclosed a number of discrepancies concerning the times at which Messrs Farmer, Burley and Denman started their duties.

9 The first category of prosecutions ('Category A') concerns Messrs Farmer and Burley. On several occasions they travelled by car either from their homes or from Skills's operating centre to the point at which they were to take over a vehicle

which was subject to the requirement to install and use a tachograph (hereinafter a 'tachograph vehicle'). The time the drivers spent reaching that point appeared as working periods on the roster but was not shown manually on the tachograph sheets as required by Article 15(2) and (3) of Regulation No 3821/85.

10 The second category of prosecutions ('Category B') concerns Mr Denman, who started work on 18 December 1997 by doing work which qualified as a regular national service and thus, under Article 4(3) of Regulation No 3820/85 and Article 3(1) of Regulation No 3821/85, fell outside the scope of those regulations. Subsequently, Mr Denman took over a tachograph vehicle in Nottingham but the tachograph record sheets produced did not record the period between the time at which, according to the duty roster, he commenced driving on the regular service and the time at which he took over the tachograph vehicle.

11 Skills and Messrs Farmer, Burley and Denman (hereinafter 'the defendants in the main proceedings') are thus charged with using vehicles to which section 97 of the Transport Act 1968 applies in which the recording equipment was not used as provided by Articles 13 to 15 of Regulation No 3821/85.

12 The national court refers, first, to the judgment in Case C-313/92 *Van Swieten* [1994] ECR I-2177, according to which the term 'each period of 24 hours' in Article 8(1) of Regulation No 3820/85 must be interpreted as meaning any period of 24 hours commencing at the time when the driver activates the tachograph following a weekly or daily rest period. Where the daily rest is taken in two or three separate periods, the calculation must commence at the end of the period of not less than eight hours.

13 Second, the national court refers to Case C-394/92 *Michielsen and GTS* [1994] ECR I-2497, in which the Court held that the 'daily working period' within the meaning of Article 15(2) of Regulation No 3821/85 comprises the driving time, all other periods of work, the period of availability, breaks in work and, where the driver divides his daily rest into two or three separate periods, such a period, provided that it does not exceed one hour. The Court added that that period commences at the time when the driver activates the tachograph following a weekly or daily rest period, or, if the daily rest is divided into separate periods, following the rest period of at least eight hours' duration.

14 Relying on that case-law, the defendants in the main proceedings contend that the periods before a tachograph vehicle is taken over should not have to be recorded on the record sheets.

15 Uncertain as to how the relevant provisions of Community law should be interpreted, Nottingham Magistrates' Court stayed proceedings pending a preliminary ruling from the Court of Justice on the following question:

'Are the requirements in Article 15(2) and (3) of Council Regulation (EEC) No 3821/85 for a driver to record "all other periods of work" and "breaks in work and daily rest periods" on the vehicle record sheet to be construed so that those terms include:

(a) a period of time spent travelling to take over a vehicle which is subject to the requirement to instal and use vehicle recording equipment in the circumstances set out in Category A above, i.e.

(i) time spent travelling pursuant to the instructions of the employer or

(ii) time (forming part of the daily or weekly rest period following the last period of work) during which the employee travels at a time and in a manner of his own choosing;

(b) a period of time spent performing driving or other duties which are exempt from the requirement to instal and use vehicle recording equipment in the circumstances set out in Category B above?'

The question referred to the Court

16 It should be noted at the outset that, according to the third recital in its preamble, Regulation No 3281/85 is intended to ensure effective application of the provisions of Regulation No 3820/85.

17 According to the first recital in the preamble to Regulation No 3820/85, its aim is the harmonisation of conditions of competition and the improvement of working conditions for drivers and road safety.

18 Articles 6 to 9 of Regulation No 3820/85 contain provisions concerning driving periods, breaks and rest periods which, as is clear from the 14th recital in the preamble, are a response to road-safety considerations.

19 Those provisions seek to ensure that driving times and rest periods alternate, so that drivers do not remain at the wheel of their vehicles for periods of such length as to cause tiredness and jeopardise road safety (*Van Swieten*, cited above, paragraph 23).

20 It is in the light of those considerations that the two distinct hypotheses put to the Court should each be examined.

The first part of the question

21 By the first part of its question, the national court seeks essentially to ascertain whether, on a proper construction of Article 15 of Regulation No 3821/85, the driver's obligation to record all other periods of work extends to periods necessarily spent travelling to take over a vehicle subject to the obligation to instal and use a tachograph and which is not at the driver's home or the employer's operating centre. It also asks whether the answer to that question will differ depending on whether or not the employer has given instructions as to when and how the driver should travel.

22 The defendants in the main proceedings contend that a driver who travels from his home to the pick-up point for a vehicle, freely choosing how he travels, may

freely dispose of his time, with the result that the time thus spent must be regarded as forming part of rest as defined in Article 1(5) of Regulation No 3820/85.

23 That interpretation is unacceptable. A driver who goes to a specific place, other than the undertaking's operating centre, indicated to him by his employer in order to take over and drive a vehicle is satisfying an obligation towards his employer. During that journey, therefore, he does not freely dispose of his time.

24 Moreover, the Court has already held that 'period of work' for the purposes of Article 15 of Regulation No 3821/85 includes times at which the driver is actually engaged in activities having a bearing on driving, including driving time (*Michielsen,* cited above, paragraph 14).

25 Time spent by a driver to reach the place where he takes over a tachograph vehicle is liable to have a bearing on his driving, in that it will affect his state of tiredness.

26 In the light of the aim of improving road safety pursued by Regulation No 3820/85, such time must be regarded as forming part of all other periods of work within the meaning of Article 15 of Regulation No 3821/85.

27 That interpretation is also consistent with the aim of improving drivers' working conditions, since it ensures that periods during which they perform an activity from which a benefit accrues to their employers are not treated as rest periods.

28 In that connection, the question whether the driver has received precise instructions as to how he should travel is not decisive. By going to a specific place at some distance from his employer's operating centre, the driver is performing a task required of him by virtue of his employment relationship. During that period he does not freely dispose of his time.

29 As regards the defendants' argument that it can be inferred from the judgments in *Van Swieten* and *Michielsen*, cited above, that no period is required to be entered on record sheets until the tachograph vehicle has been taken over, it must be borne in mind that in those judgments the Court was called on to interpret the terms 'each period of 24 hours', as used in Article 8(1) of Regulation No 3820/85, and 'daily working period', as used in Article 15(2) of Regulation No 3821/85. Having regard to the aims pursued by those regulations, the Court defined those periods as commencing at the time when the driver activates the tachograph following a weekly or daily rest period. When giving that definition, the Court was considering a case in which the tachograph vehicle was driven immediately after a rest period. It cannot be inferred from those judgments that the Court thereby wished to exclude from periods of work periods of actual activity occurring between the end of a rest period and the time at which a tachograph vehicle is taken over.

30 The obligation to enter on record sheets periods preceding the time at which the vehicle is taken over is, moreover, perfectly consistent with Article 15(2) of Regulation No 3821/85.

31 Although that provision requires drivers to use record sheets every day they drive, starting from the moment they take over the vehicle, that may in fact involve the recording of periods preceding that time, a requirement specifically imposed when the driver is away from his vehicle.

32 It is also clear from that provision that such periods cannot be regarded as forming part of driving time, even if they are spent driving a vehicle which is not itself subject to the obligation to observe the driving and rest periods provided for in Regulation No 3820/85.

33 In the case of periods spent away from a tachograph vehicle, which include by definition time spent driving another vehicle, Article 15(2) of Regulation No 3821/85 provides only for them to be recorded under one of the headings mentioned in subparagraphs (b), (c) and (d) of the second indent of Article 15(3) to the exclusion of time recorded under the heading mentioned in subparagraph (a) of the same indent, which relates only to time spent driving the vehicle concerned.

34 In so far as this aspect of the rules may adversely affect road safety, any decision to introduce an amendment is a matter for the Community legislature.

35 The answer to the first part of the question must therefore be that on a proper construction of Article 15 of Regulation No 3821/85, a driver's obligation to record all other periods of work extends to time which a driver necessarily spends travelling to take over a vehicle subject to the obligation to instal and use a tachograph, and which is not at the driver's home or the employer's operational centre, regardless of whether the employer gave instructions as to when and how to travel or whether that choice was left to the driver.

The second part of the question

36 By the second part of its question, the national court seeks essentially to ascertain whether, on a proper construction of Article 15 of Regulation No 3821/85, the driver's obligation to record all other periods of work extends to driving time spent by him performing a transport service falling outside the scope of Regulation No 3821/85 before taking over a vehicle to which that regulation applies.

37 It is undisputed that such time constitutes a period when the driver is actually engaged in activities liable to have a bearing on driving, during which he does not freely dispose of his time.

38 For the reasons given in paragraphs 29 to 31 of this judgment, the obligation to record such a period applies — notwithstanding the defendants' arguments to the contrary set out in paragraph 14 of this judgment — regardless of whether it precedes the taking over of a tachograph vehicle.

39 It follows that the answer to the second part of the question must be that, on a proper construction of Article 15 of Regulation No 3821/85, a driver's obligation to record all other periods of work extends to periods of driving spent by him whilst performing a transport service falling outside the scope of Regulation No 3821/85 before taking over a vehicle to which that regulation applies.

Costs

40 The costs incurred by the United Kingdom, Netherlands and Swedish 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 proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Fifth Chamber),

in answer to the question referred to it by the Nottingham Magistrates' Court by order of 30 June 1999, hereby rules:

On a proper construction of Article 15 of Council Regulation (EEC) No 3821/85 of 20 December 1985 on recording equipment in road transport, a driver's obligation to record all other periods of work extends to:

— **time which a driver necessarily spends travelling to take over a vehicle subject to the obligation to instal and use a tachograph and which is not at the driver's home or the employer's operational centre, regardless of whether the**

employer gave instructions as to when and how to travel or whether that choice was left to the driver;

— **periods of driving spent by a driver whilst performing a transport service falling outside the scope of Regulation No 3821/85 before taking over a vehicle to which that regulation applies.**

La Pergola Wathelet Edward

Jann Sevón

Delivered in open court in Luxembourg on 18 January 2001.

R. Grass

Registrar

A. La Pergola

President of the Fifth Chamber