# JUDGMENT OF THE COURT OF 15 DECEMBER 1977 [1]

## Auditeur du Travail v Bernard Dufour, S.A. Creyf's Interim and S.A. Creyf's Industrial (preliminary ruling requested by the Tribunal Correctionnel, Charleroi)

Case 76/77


Summary

*Road transport — Social legislation — Harmonization — Individual control book — Issue — Transport undertaking — Duty — Undertaking providing temporary labour — Responsibility*

*(Regulation (EEC) No 543/69, Article 14 (7) and (8))*

It is for the transport undertaking to judge whether an individual control book must be issued to crew members and it is accordingly the duty of that undertaking to ensure that the provisions of Article 14 (7) and (8) of Regulation (EEC) No 543/69 are observed. The position would be different only if national legislation adopted in pursuance of Article 14 (9) of the regulation in the special case of the hiring of labour were to impose that duty on the undertaking providing the temporary labour.


In Case 76/77

Reference to the Court under Article 177 of the EEC Treaty by the Tribunal Correctionnel, Charleroi, for a preliminary ruling in the action pending before that court between

AUDITEUR DU TRAVAIL

and

BERNARD DUFOUR, S.A. CREYF'S INTERIM AND S.A. CREYF'S INDUSTRIAL

on the interpretation to be placed on the word 'undertaking' in Article 14 (7) and (8) of Regulation (EEC) No 543/69 of the Council of 25 March 1969 on the harmonization of certain social legislation relating to road transport,

1 — Language of the Case: French.

THE COURT

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

Advocate-General: F. Capotorti
Registrar: A. Van Houtte

gives the following

# JUDGMENT

## Facts and issues

The facts and the arguments advanced by the parties during the written and oral procedure may be summarized as follows:

### I — Facts and procedure

It appears from the judgment making the reference that on 30 July 1975, as a result of a police check at Ronse, Belgium, a lorry used by Daniel Construction Company International and driven by André Gustin, driver, was found to be without the individual control book provided for under Article 14 (1) of Regulation (EEC) No 543/69 of the Council and, moreover, that the lorry was not carrying any recording equipment, which might have made the control book unnecessary. Daniel Construction Company International explained that it had hired the services of André Gustin, the driver, from S.A. Creyf's Interim to drive one of its own lorries. Bernard Dufour, the manager of the latter company, stated that he had hired to Daniel Construction Company International a driver who held a valid driving licence and explained that S.A. Creyf's possessed no vehicles.

The Procureur du Roi brought proceedings against Bernard Dufour for contravention of the Arrêté Royal (Royal Decree) of 23 March 1970, which was authorized by Article 2 of the Law of 18 February 1969, and against S.A. Creyf's interim as being civilly liable.

The Tribunal Correctionnel, Charleroi, thereupon found that the question which arose was whether the duty to issue an individual control book to crew members lay upon the undertaking whose sole business activity is the hiring out of labour, in this case a lorry driver, or with the undertaking which had taken that labour on hire and used the services of the said driver for its road transport business.

The Tribunal Correctionnel found:

— That Article 14 (1) of Regulation (EEC) No 543/69 of the Council (OJ, English Special Edition (I) p. 170) requires crew members of a vehicle not assigned to a regular service to

carry an individual control book conforming to a model in the annex to the said regulation;
- That Article 14 (7) provides that all undertakings must keep a register of the individual books and that the register must show the name of each crew member to whom a book is issued; and
- That, under Article 14 (8), all completed individual books must be kept by the undertaking for at least one year.

Having tried in vain to find a definition of the concept of undertaking in Article 1 of Regulation (EEC) No 543/69, in which the terms used in the subsequent provisions are defined, the Tribunal Correctionnel pointed out that as regards the laws, regulations or administrative provisions which might be necessary for implementation of the regulation, Article 18 of the regulation refers to the measures to be taken by the Member States themselves in due time and after consulting the Commission; Article 18 lays down that such measures shall cover, *inter alia,* the organization of, procedure for and means of control and the *penalties to be imposed* in case of breach.

Having thus sought and studied the national provisions adopted by the Belgian authorities for the implementation of the Community regulation, No 543/69, the Tribunal Correctionnel considered the Arrêtés Royaux of 23 March 1970 and 7 May 1973 and came to the conclusion that they went no further than the Community provision in defining the concept of undertaking. Nor was there anything to be found in the Belgian Cour de Cassation on the point at issue.

The Tribunal Correctionnel, Charleroi, thereupon decided to avail itself of the opportunity provided for in Article 177 of the EEC Treaty and to submit the following questions for a preliminary ruling to the Court of Justice of the European Communities:

*'The interpretation to be given to the word "undertaking" appearing in the text of Article 14 (7) and (8) of Regulation (EEC) No 543/69 of 25 March 1969 and in the text of the annexes to the Belgian Royal Decrees of 23 March 1970 and 7 May 1973:*

1. Does the word "undertaking" refer exclusively to the natural or legal person who, in fact, either himself or through servants, is engaged in carriage by road, even if such carriage constitutes only a part of his business activities?
2. Where the person described above employs hired labour for the purpose of driving his vehicle or vehicles, is that person released from the duty to issue an individual control book to every crew member, and in this case does the word "undertaking" refer to the natural or legal person who hires out the labour?
3. Is it to be understood that the word "undertaking" means "employer" and that in this case the relationship of subordination as between the hirer of the labour and the worker continues to exist, or that such a relationship comes into existence as between the person to whom the labour has been hired and the worker?'

The Commission of the European Communities and the Government of the Kingdom of the Netherlands submitted written observations under Article 20 of the Protocol on the Statute of the Court of Justice.

Having heard the views of the Advocate-General, the Court decided to open the oral procedure without a preparatory inquiry. It did however request the court which submitted the questions to supply if possible:
- 'The contract for hire of services concluded between the "two undertakings" concerning the driver André Gustin;
- The correspondence exchanged between the undertakings in this connexion;

– The contract between the driver Gustin and the undertaking hiring out his services; and
– A statement identifying the undertaking which pays Gustin's salary and pays social insurance contributions on his account.'

The Commission was also requested to state during the hearing who, in its view, should 'normally' issue the control book: the owner of the lorry or the party which has hired out the driver.

## II – Summary of the observations submitted under Article 20 of the Statute of the Court

*Admissibility*

The *Commission* states that it does not wish to make any comments as regards the admissibility of the request from the Tribunal Correctionnel, Charleroi, 'to the extent to which it relates to the interpretation of provisions of Community law'.

*Legal considerations*

The view of the *Netherlands Government* concerning the first question referred to the Court of Justice is that the concept of undertaking within the meaning of Regulation (EEC) No 543/69 refers exclusively to any natural or legal person who either on his own or through his own staff or hired labour is engaged, whole-time or part-time, in the business of road transport or in operations ancillary thereto.

As regards Questions 2 and 3, the Netherlands Government is of the opinion that, in the circumstances described in the question, the concept of undertaking must be taken to refer to the natural or legal person for whom a crew member actually performs work in connexion with road transport. The duty to issue the individual control book is imposed on that person and that person must be liable in criminal law for the non-observance of any provision applicable to the undertaking and, *inter alia,* of the duty to issue the individual control book. In the view of the Netherlands Government, this is the most suitable answer if only because it is fair that the person who is in the best position to see that the above-mentioned rules are complied with should be responsible in criminal law.

The *Commission* recalls the facts of the case and the position under the rules and emphasizes the importance of Regulation (EEC) No 543/69, the three objectives of which (social progress, harmonization of the conditions of competition and road safety) were referred to by the Court in its judgment of 25 January 1977 in Case 65/76 [1977] ECR 29.

The question raised in this case is the meaning to be attributed to 'undertaking' within the meaning of the regulation, especially in the specific case where the services of the driver who drives the vehicle of a transport undertaking are 'hired out' by an undertaking for hire of temporary labour (on the question of temporary labour in the Community, the Commission refers to an article by Professor G. Schnorr, CDE 1973, p. 131).

It is clear from Regulation (EEC) No 543/69 and from the Belgian implementing provisions that a clear distinction is drawn between the undertaking and the crew members and their respective duties and that the national authorities who issue the individual control books do so not directly to the crew members but hold them available for the undertakings, who themselves issue them.

After consideration of the regulation and the annex, the Commission is of the view that the concepts of undertaking and employer are used interchangeably, as the Court pointed out in paragraph 11 of the decision in Case 67/76, referred to

above. Moreover, the word 'undertaking' must be understood in the widest sense and embrace not only the person in respect of whom the driver is an agent under a contract of service but also the employer who pays the wages and bears the social charges.

The difficulty in this case lies in the very fact that, through the intervention of an undertaking hiring out temporary labour, the person for whom the driver is under a duty to work is not the person whom it is his duty to obey; the driver is, moreover, the subject of a double service relationship. 'This means that the undertaking for hire of temporary labour cannot hire out the services of a driver without making sure that the latter is in possession of an individual control book, which is just as essential as, for example, a driving licence; similarly, the undertaking which arranges the transport cannot allow the driver to leave on one of its vehicles without having made sure that he is carrying the book; finally, the driver cannot start his journey without the book, which he must keep up to date daily'.

Accordingly, since there is an 'obligation de résultat' (an obligation to produce a specific result) the Commission considers that 'in a case, therefore, where there are several "undertakings" involved, they are under a duty to arrange among themselves that the control book is issued by one or other of them so that the regulation may be fully applied'.

In the circumstances, several possibilities may be envisaged:

(a) The national legislature may have enacted the provisions necessary to this end and, in cases like that under consideration, may have laid down which undertaking must actually issue the control book to crew members.

(b) In the absence of such provisions, contractual stipulations between the undertakings concerned should establish which of them is under a duty to issue the book.

It is, of course, for the national court to ascertain to what extent such provisions exist. But in the absence of such provisions, undertakings engaged, directly or indirectly, occasionally or permanently, in transport operations to which the regulation applies must in every case ensure, in advance of the crew's departure, that the members have been issued with the individual book.

The duty to issue the book is an unconditional obligation to produce a specific result and is imposed on all to whom the regulation applies and serves to ensure that neither party can evade its responsibility by referring to that of the other party.

In circumstances in which the undertakings concerned have not assured themselves in advance that the control book has been issued, they must be considered as being equally responsible for the failure to issue it.

The Commission accordingly submits that the questions referred to the Court of Justice for a preliminary ruling by the Tribunal Correctionnel, Charleroi, should be answered as follows:

— 'The word "undertaking" within the meaning of Regulation (EEC) No 543/69 means any natural or legal person engaged directly or indirectly, occasionally or permanently, in a transport operation to which the regulation applies, such as when he uses the labour of an employee whom he has hired or when he hires out that labour;

— In the absence of national provisions or of agreements concluded between the parties laying down which is responsible for issuing the book, the various undertakings concerned must ensure amongst themselves that the individual control book has actually been issued;

— If the undertakings have not assured themselves that the book has been issued, they must be considered as being equally responsible for failure to issue it.'

III — Oral procedure

At the hearing on 26 October 1977 Etienne Lasnet, acting as Agent, appeared for the Commission.

He replied to two questions from the Judge-Rapporteur and made the following points:

— The Commission emphasizes that a situation like that which has given rise to the proceedings should normally be governed by a national provision.
— In the absence of such provision, an alternative solution might be the existence of an amicable arrangement between the undertakings concerned.
— In the absence of rules or private agreement, undertakings must ensure among themselves that the Community rules are observed; the driver himself should know them since ignorance of the law is no excuse.
— In any case, the obligation to produce a 'specific result' under the Community rules is an unconditional one, and this is the basis of the possible joint responsibility of the undertaking.
— Only where certain evidence is available can such responsibility be attributed to one undertaking rather than another, as the Government of the Netherlands suggests.

The Advocate-General delivered his opinion at the hearing on 22 November 1977.

## Decision

1 By judgment of 13 June 1977, which was received at the Court Registry on 30 June 1977, the Tribunal Correctionnel de l'Arrondissement de Charleroi asked the Court, under Article 177 of the EEC Treaty, what interpretation to place on the word 'undertaking' which both appears in the provisions of Article 14 (7) and (8) of Regulation (EEC) No 543/69 of 25 March 1969 (OJ, English Special Edition 1969 (I) p. 170) on the harmonization of certain social legislation relating to road transport and is repeated in the annexes to the Arrêtés Royaux of 23 March 1970 and 7 May 1973 for implementing the said regulation.

2 This question was submitted in connexion with criminal proceedings against the manager of a temporary labour undertaking which had provided a transport undertaking with a 'temporary driver' who had been checked by the police on 30 July 1975 while driving a lorry having a maximum permissible weight of more than 3·5 tonnes without being in possession of the individual control book required by Article 14 (1) of Regulation (EEC) No 543/69, an offence which is punishable under Article 2 of the Belgian Law of 18 February 1969.

3 The national court raises the question whether the duty to issue the individual control book to crew members is imposed on the undertaking whose business activity is the hiring out of labour or on the undertaking using the services of the driver for its road transport, since the conditions set out in the annex employ the concepts of undertakings and employers although they are not defined by Regulation (EEC) No 543/69.

4 The national court has submitted the following questions:

1. Does the word 'undertaking' refer exclusively to the natural or legal person *who,* in fact, either himself or through servants, *is engaged in carriage by road,* even such carriage constitutes only a part of his business activities?

2. Where the person described above employs hired labour for the purpose of driving his vehicle or vehicles, is that person released from the duty to issue an individual control book to every crew member, and in this case does the word 'undertaking' refer ro the natural or legal person who hires out the labour?

3. Is it to be understood that the word 'undertaking' means 'employer' and that in this case the relationship of subordination as between the hirer of the labour and the worker continues to exist, or that such a relationship comes into existence as between the person to whom the labour has been hired and the worker?

5 These questions require the interpretation of Regulation (EEC) No 543/69 in view of the existence of temporary employment undertakings and of user undertakings.

6 In 1969, when the Community institutions harmonized road transport conditions, temporary employment undertakings were small in number, which explains why the problems which they raise in this particular field have not been resolved.

7 Under Article 14 (9) of Regulation (EEC) No 543/69, the responsibility for taking 'all necessary measures concerning the issue and control of the books' was left to the Member States.

8 Article 14 (7) and (8) of Regulation (EEC) No 543/69 require that 'all undertakings shall keep a register of the individual books' and that 'all completed individual books shall be kept by the undertaking for at least one year'.

9 Only the Italian version of the regulation described the undertaking which is required to keep a register of the individual books and confined this duty to a 'transport undertaking'.

10 On the other hand the word 'undertaking' is unqualified in the versions in the other official languages of the Community.

11 In view of these different versions and the facts of the present case, the individual field of application of the regulation in relation to the undertaking responsible for issuing the said book must be determined in the light of the scheme laid down by the regulation and of its objectives.

12 That regulations pursues, as part of the harmonization of national laws, a group of objectives which are concerned with the social protection of the driver, road safety and equality of competition between transport undertakings.

13 In order to ensure that these objectives are complied with, the regulation introduced *inter alia* an individual book containing daily sheets on which are entered in particular the driving periods, rest periods and a weekly report showing the total number of hours of occupational activities during the week.

14 The book is not compulsory in the case of carriage by vehicles listed in Article 4 of Regulation (EEC) No 543/69 or outside the Community (Article 2).

15 In view of the fact that it is the transport undertaking which determines the vehicle to be driven, the route to be followed and the destination as well as the driving and rest periods, the transport undertaking is in a position to judge whether an individual control book must be issued to crew members

and it is in consequence upon that undertaking that the duty to comply with the provisions of Article 14 (7) and (8) is imposed.

16 The position would be different only if national legislation adopted in pursuance of Article 14 (9) of the regulation in the special case of the hiring of labour were to impose that duty on the undertaking providing the temporary labour.

17 It must be concluded from the foregoing that, in the present state of Community rules, in the light of the objectives which they pursue and of national laws and as the facts stand, a general answer to the effect indicated by the foregoing considerations must be given to the three questions submitted by the national court.

## Costs

18 The costs incurred by the Commission of the European Communities and the Government of the Netherlands, which submitted observations to the Court, are not recoverable.

19 As these proceedings are, in so far as the parties to the main action are concerned, a step in the action pending before the national court, costs are a matter for that court.

## On those grounds

## THE COURT,

in answer to the questions submitted to it by the Tribunal Correctionnel de l'Arrondissement de Charleroi, by judgment of 13 June 1977, hereby rules:

**It is the duty of the transport undertaking to ensure that the provisions of Article 14 (7) and (8) of Regulation (EEC) No 543/69 are observed.**

**The position would be different only if national legislation adopted in pursuance of Article 14 (9) of the regulation in the special case of the hiring of labour were to impose that duty on the undertaking providing the temporary labour.**

Kutscher Sørensen Bosco Donner Mertens de Wilmars

Pescatore Mackenzie Stuart O'Keeffe Touffait

Delivered in open court in Luxembourg on 15 December 1977.

A. Van Houtte — Registrar

H. Kutscher — President

## OPINION OF MR ADVOCATE-GENERAL CAPOTORTI DELIVERED ON 22 NOVEMBER 1977 [1]

*Mr President,*
*Members of the Court,*

1. In this case a preliminary ruling is sought on the interpretation of Article 14 (7) and (8) of Regulation (EEC) No 543/69 of the Council of 25 March 1969 on the harmonization of certain social legislation relating to road transport, and of the ancillary and amending provisions contained in the Annex to the regulation and in subsequent Regulations Nos 514/72 and 515/72 of 28 February 1972.

For reasons relating to both social welfare and road safety, Regulation (EEC) No 543/69 contains detailed provisions on the composition of the crews of transport vehicles, the length of driving periods, and rest periods. To ensure that these provisions are complied with, Article 14 (1) provides as follows: 'Crew members of a vehicle not assigned to a regular service shall carry an individual control book, which shall conform to the model in the Annex to this regulation'. Article 14 (6) provides: 'Crew members shall produce the individual control book whenever required to do so by any authorized inspecting officer'. Article 14 (7) imposes the obligation on 'all undertakings', which in the Italian version of the regulation appears as 'ogni *impresa di transporto'* (all *transport undertakings)* to keep a register of the individual books, which must also be produced at the request of any authorized inspecting officer; the register must show *inter alia* on what date and to whom an undertaking has issued an individual book. Under Article 14 (8) all completed individual books shall be kept by the

1 — Translated from the Italian.