ECJ 9 November 2023, case C-271/22-275/22 (Keolis Agen), Paid leave

XT, KD, BX, FH and NW – v – Keolis Agen SARL, French case

Summary

The fact that an employer is a private undertaking, holding a public service delegation, is irrelevant with regard to the right of a worker to paid annual leave. National legislation or national practice which allows requests for paid annual leave made less than 15 months after the end of the reference period and limited to entitlement accrued and not exercised, due to a long-term absence from work due to illness, during two consecutive reference periods to be granted, is not precluded.

Questions

1. Must Article 7 of Directive 2003/88 be interpreted as meaning that a worker may rely on the right to paid annual leave against his or her employer, even if the employer is a private undertaking holding a public service delegation?
2. How to define the length of the carry-over period applicable to the entitlement to paid annual leave, referred to in Article 7 of Directive 2003/88, in the case of a reference period equal to one year?
3. Must Artikel 7 of Directive 2003/88 be interpreted as precluding national legislation and/or a national practice which, in the absence of a national provision laying down an express temporal limit on the carry-over of entitlements to paid annual leave accrued and not exercised due to a long term absence form work due to illness, allows applications for paid annual leave made by a worker after the end of the reference period in which the entitlement to that leave arose to be granted?

Ruling

1. Article 31(2) of the Charter of Fundamental Rights and Article 7 of Directive 2003/88 must be interpreted as meaning that a worker may rely on the right to paid annual leave, enshrined in the former provision and given concrete expression by the latter, against his or her employer and the fact that the employer is a private undertaking, holding a public service delegation, is irrelevant in that regard.
2. Article 7 of Directive 2003/88 must be interpreted as not precluding national legislation and/or a national practice which, in the absence of a national provision laying down an express temporal limit on the carry-over of entitlements to paid annual leave accrued and not exercised due to a long term absence form work due to illness, allows requests for paid annual leave submitted by a worker less than 15 months after the end of the reference period in which the entitlement to that leave arose and limited to two consecutive reference periods to be granted.

ECJ 9 November 2023, case C-477/22-275/22 (Azienda regionale sarda transporti), Working Time

ARST SpA – v – TR, OS, EK, UN, RC, RS, OA, ZB, HP, WS, IO, TK, ME, SK, TF, TC, ND, Italian case

Summary

The concept of 'total accumulated driving time during any two consecutive weeks' as set out in Article 6(3) of Regulation No 561/2006 only covers 'driving time' within the meaning of Article 4(j) of that regulation.

Questions

Must Article 3(a) of Regulation No 561/2006 be interpreted as meaning that the concept of 'route covered by the service in question [not exceeding] 50 kilometres' refers to the distance covered by the journey set by the

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transport undertaking for regular passenger services that it provides?
Must Article 2(1)(b), read in conjunction with Article 3(a), of Regulation No 561/2006 be interpreted as meaning that that regulation applies to all road transport carried out by the undertaking concerned, when the vehicles used for the carriage of passenger on regular services are used, principally, for routes covered by the service in question not exceeding 50 km and, occasionally, for routes covered exceeding 50 km?
Must Article 6(3) of Regulation No 561/2006 be interpreted as meaning that the concept of 'total accumulated driving time during any two consecutive weeks', set out in that provision, covers, other than 'driving time', within the meaning of Article 4(j) of that regulation, any 'other work' within the meaning of Article 6(5) of that regulation, carried out by the driver during those two weeks?

Ruling

Article 3(a) of Regulation No 561/2006 must be interpreted as meaning that 'the concept of 'route covered by the service in question [not exceeding] 50 kilometres' corresponds to the route set by the transport undertaking, not exceeding that distance, that the vehicle concerned must travel by road in order to link a point of departure to a point of arrival and serve, where appropriate, predetermined intermediary stops, in order to ensure the carriage of passengers on the regular service to which it is assigned.
Article 2(1)(b), read in conjunction with Article 3(a), of Regulation No 561/2006 must be interpreted as meaning that that regulation does not apply to all road transport carried out by the undertaking concerned, when the vehicles used for the carriage of passengers on regular services are used to cover, principally, routes covered by the service in question not exceeding 50 km and, occasionally, routes covered by the service in question exceeding 50 km. That regulation only applies when the routes exceed 50 km.
Article 6(3) of Regulation No 561/2006 must be interpreted as meaning that the concept of 'total accumulated driving time during any two consecutive weeks', set out in that provision, only covers 'driving time' within the meaning of Article 4(j) of that regulation, to the exclusion of any 'other work', for the purposes of Article 8(5) of that regulation, carried out by the driver during those two weeks.

ECJ 16 November 2023, case C-415/22 (Acerta and Others), Social Insurance

JD – v – Acerta, Inasti, Belgian State, Belgian case

Summary

National legislation of a Member State which subjects the income of an EU official who has remained in the service of an institution until pensionable age and who pursues a self-employed professional activity in that Member State to the social security scheme of that State infringes the exclusive competence of the EU to determine the rules applicable to EU officials as regards their social security obligations.

Question

Must Article 14 of the Protocol (No 7) on the privileges and immunities of the European Union and the provisions of the Staff Regulations, in particular Article 72 thereof, be interpreted as precluding the compulsory affiliation, under the scheme of a Member State, to the social security scheme of that State of an EU official who has remained in the service of an institution of the European Union until pensionable age and who pursues a self-employed professional activity in the territory of that Member State?

Ruling

Article 14 of the Protocol (No 7) on the privileges and immunities of the European Union and the provisions of the Staff Regulations, in particular Article 72 thereof, must be interpreted as precluding the compulsory affiliation, under the legislation of a Member State, to the social security schema of that State of an EU official who has remained in the service of an EU institution until pensionable age and who pursues a self-employed professional activity in the territory of that Member State.

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