



Luxembourg, 27 November 2017

PRESS RELEASE 15/2017

Judgment in Case E-19/16 *Thorbjørn Selstad Thue v The Norwegian Government*

TRAVEL TIME TO/FROM ANOTHER LOCATION, AS REQUIRED BY THE EMPLOYER, TO PERFORM WORK DUTIES CONSTITUTES “WORKING TIME”

In a judgment delivered today, the Court answered questions referred to it by the Supreme Court of Norway (*Norges Høyesterett*), concerning the interpretation of the notion “working time” within the meaning of Article 2 of Directive 2003/88/EC concerning certain aspects of the organisation of working time (“the Directive”).

Mr Thorbjørn Selstad Thue (“the appellant”) has been employed at Gaular rural police station in Sogn og Fjordane county since 1995. Between 2005 and 2014, he was also a member of a special response unit in the police district, whose duties include armed response actions and escort assignments. His habitual place of attendance is Gaular rural police station. However, when carrying out assignments as member of the response unit, the place of attendance could be elsewhere in the police district.

The case concerns three such assignments. The driving distance between the appellant’s home and the place of attendance varied between one and three hours. The majority of these journeys were approved by the Norwegian Government (“the respondent”) as travel time, entitling the employee either to time off or a monetary payment, but not as working time. The appellant has challenged this classification before the Norwegian courts.

The Supreme Court referred three questions to the Court. They concerned in essence whether the time spent on journeys ordered by the employer, to and/or from a place of attendance other than the employee’s fixed or habitual place of attendance, when such travel takes place outside normal working hours, constitutes working time within the meaning of Article 2 of the Directive.

The Court noted that the Directive does not generally apply to the remuneration of workers. Furthermore, the terms “working time” and “rest period”, as defined in Article 2 of the Directive, must be interpreted in an autonomous manner. No distinction can be drawn between “active work” and other forms of work for the purposes of being classified as “working time”. The Court further noted that the concept of “working time” consists of three conditions, namely the employee must be: (i) carrying out his activity or duties; (ii) at the employer’s disposal; and (iii) working or at work.

With respect to the first condition, the Court noted that the journeys of a worker, such as the appellant, taken in order to perform tasks specified by his employer at a location away from his fixed or habitual place of attendance, are necessary for the worker to perform his duties.

In relation to the second condition, the Court noted that the intensity of the work performed by the worker is not relevant to the concept of “working time”. In the case at issue, the Court found that during the necessary travel time, the appellant remained under the employer’s instruction and therefore at its disposal.

With regard to the final condition, the Court noted that it is immaterial how frequently the employer specifies a place of attendance other than the fixed or habitual one, unless its effect is to transfer the employee's place of employment. Therefore, if a worker, such as the appellant, is required to undertake certain assignments away from his fixed or habitual place of attendance, travelling to and from that location must be considered an intrinsic aspect of his work. Consequently, during the necessary travel time he must be considered to be "working". Further, it is immaterial whether such journeys take place outside the worker's normal working hours.

Therefore, the Court held that the necessary time spent travelling, outside normal working hours, by a worker, such as the appellant, to and/or from a location other than his fixed or habitual place of attendance in order to carry out his activity or duties in that other location, as required by his employer, constitutes "working time" within the meaning of Article 2 of the Directive.

The full text of the judgment may be found on the internet at: www.eftacourt.int.

This press release is an unofficial document and is not binding upon the Court.