Ville de Nivelles v Rudy Matzak [2018]

Background

The CJEU has ruled that stand-by time of a worker at home who is obliged to respond to calls from the employer within a short period must be regarded as 'working time' because the obligation to remain physically present at the place determined by the employer and the requirement to reach the place of work within a short period very significantly restrict a worker's opportunities for other activities.

Mr Matzak was a part-time firefighter in the town of Nivelles in Belgium. He also had another job. Volunteer firefighters are involved in the operations of the fire service. Among other tasks devolved to them, they are, in particular, on stand-by and on duty at the fire station, for which a roster is established at the beginning of the year. Mr Matzak was on standby one week in four during weekends and evenings. After some 29 years as a volunteer, Mr Matzak brought judicial proceedings seeking an order that the town of Nivelles pay him a provisional sum of one euro by way of damages and interest for failure to pay remuneration for his services as a volunteer firefighter during his years of service, particularly for his stand-by services.

Remuneration for working time, as the CJEU continually points out, is outside the jurisdiction of that Court. The CJEU concerned itself with the definition of 'working time' and whether the act of being on-call at the behest of the fire service constituted working time. And the Court found that on-call is working time because the restrictions placed on a worker limit flexibility and " significantly restrict a worker's opportunities for other activities".

Mr Matzak was a volunteer. But was he a worker? It appears so, and Member States have little scope to vary this, it appears:

"Third, as regards Mr Matzak's classification as 'worker', it should be noted that, for the purposes of applying Directive 2003/88, that concept may not be interpreted differently according to the law of the Member States but has an autonomous meaning specific to EU law (judgment of 14 October 2010, Union syndicale Solidaires Isère, C-428/09, EU:C:2010:612, paragraph 28). In accordance with settled case-law on the matter, any person who pursues real, genuine activities — with the exception of activities on such a small scale as to be regarded as purely marginal and ancillary — must be regarded as a 'worker'. The defining feature of an employment relationship resides in the fact that for a certain period of time a person performs for and under the direction of another person services in return for which he receives remuneration (judgment of 26 March 2015, Fenoll, C-316/13, EU:C:2015:200, paragraph 27 and the case-law cited)... The Court has also held that the legal nature of an employment relationship under national law cannot have any consequence in regard to whether or not the person is a worker for the purposes of EU law (judgment of 20 September 2007, Kiiski, C-116/06, EU:C:2007:536, paragraph 26 and the case-law cited)... Thus, as regards the case in the main proceedings, the fact that under national law Mr Matzak does not have the status of a professional firefighter, but that of a volunteer

firefighter, is irrelevant for his classification as 'worker', within the meaning of Directive 2003/88... Having regard to the foregoing, it must be held that a person in Mr Matzak's circumstances must be classified as a 'worker', within the meaning of Directive 2003/88, in so far as it appears from the information available to the Court that he was integrated into the Nivelles fire service where he pursued real, genuine activities under the direction of another person for which he received remuneration..."

Notwithstanding the above, the Court reiterated that Member States can exclude payment for rest periods and that remuneration is outside the scope of the CJEU on this matter.

The CJEU concluded:

- Member States may not derogate, with regard to certain categories of firefighters recruited by the public fire services, from all the obligations arising from the provisions of that directive, including Article 2 thereof, which defines, in particular, the concepts of 'working time' and 'rest periods'.
- Article 15 of Directive 2003/88 must be interpreted as not permitting Member States to maintain or adopt a less restrictive definition of the concept of 'working time' than that laid down in Article 2 of that directive.
- Member States may lay down in their national law that the remuneration of a worker in 'working time' differs from that of a worker in a 'rest period', and even to the point of not granting any remuneration during the latter type of period. So, Article 2 of Directive 2003/88 must be interpreted as not requiring Member States to determine the remuneration of periods of stand-by time such as those at issue in the main proceedings according to the classification of those periods as 'working time' or 'rest period'.
- Article 2 of Directive 2003/88 must be interpreted as meaning that stand-by time which a worker spends at home with the duty to respond to calls from his employer within 8 minutes, very significantly restricting the opportunities for other activities, must be regarded as 'working time'. But Mr Matzak's situation differs from that of a worker who, during his stand-by duty, must simply be at his employer's disposal inasmuch as it must be possible to contact him.

This case could have major ramifications for employers throughout Europe who retain emergency workers as part-time volunteers - presumably most of them must be available quickly when on-call or the service would not meet the needs of emergencies. However, according to the CJEU, Mr Matzak's position could be distinguished from a worker who must be contactable but is not under such constraints as to be available within 8 minutes or who must remain home:

"Finally, it must be observed that the situation is different where the worker performs a stand-by duty according to a stand-by system which requires that the worker be permanently accessible without being required to be present at the place of work. Even if he is at the disposal of his employer, since it must be possible to contact him, in that situation the worker may manage his time with fewer constraints and pursue his own interests. In those

circumstances, only time linked to the actual provision of services must be regarded as 'working time', within the meaning of Directive 2003/88..."

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Even where the response time is not immediate / within a few minutes, the national courts must carry out an overall assessment of all the facts of the case, including the consequences of that time limit and, if appropriate, the average frequency of activity during that period, establishes that the constraints imposed on that worker during that period are such as to affect, objectively and very significantly, the latter's ability freely to manage, during the same period, the time during which his or her professional services are not required and to devote that time to his or her own interests.

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This decision confirms the points above and refers to the above decision regularly. They were decided on the same day, with the above decision being decided first. However, some additional points that were made are provided below:

It follows from all the foregoing considerations that the answer to the questions referred is that Article 2(1) of Directive 2003/88 must be interpreted as meaning that a period of stand-by time according to a stand-by system, during which a worker must be able to reach the town boundary of his or her workplace within a 20 minute response time, in uniform with the service vehicle made available to him or her by his or her employer, using traffic regulations privileges and rights of priority attached to that vehicle, constitutes, in its entirety, 'working time', within the meaning of that provision, solely if it follows from an overall assessment of all the circumstances of the case, in particular the consequences of such a response time and, where appropriate, the average frequency of interventions during that period, that the constraints imposed on that worker during that period are of such a nature as to constrain objectively and very significantly the ability that he or she has to freely manage, during the same period, the time during which his or her professional services are not required and to devote that time to his or her own interests.