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Judgment of the Court of 17 December 1970. - S.A.R.L. Manpower v Caisse primaire d'assurance maladie de Strasbourg. - Reference for a preliminary ruling: Commission de première instance du contentieux de la sécurité sociale et de la mutualité sociale agricole du Bas-Rhin - France. - Case 35-70.

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SOCIAL SECURITY FOR MIGRANT WORKERS - LEGISLATION APPLICABLE - CRITERIA FOR DETERMINING SUCH LEGISLATION - EMPLOYER'S ESTABLISHMENT - PLACE WHERE THE ACTIVITY OF THE UNDERTAKING IS NORMALLY CARRIED ON

(REGULATION NO 3 OF THE COUNCIL, ARTICLE 13 (1) (A))

SOCIAL SECURITY FOR MIGRANT WORKERS - LEGISLATION APPLICABLE - DETERMINATION - TEMPORARY WORK PERFORMED ON BEHALF OF AN UNDERTAKING HIRING OUT LABOUR WITH ANOTHER UNDERTAKING OF ANOTHER MEMBER STATE

(REGULATION NO 3 OF THE COUNCIL, ARTICLE 13 (1) (A))

Summary

THE REFERENCE MADE BY ARTICLE 13 (1) (A) TO THE ESTABLISHMENT SITUATED IN THE STATE WHERE THE UNDERTAKING IS ESTABLISHED AND TO WHICH THE WORKER IS NORMALLY ATTACHED IS MEANT ESSENTIALLY TO LIMIT THE APPLICABILITY OF THAT

PROVISION TO THOSE WORKERS ENGAGED BY UNDERTAKINGS NORMALLY PURSUING THEIR ACTIVITY IN THE TERRITORY OF THE STATE IN WHICH THEY ARE ESTABLISHED .

THE PROVISIONS OF ARTICLE 13 (1) (A) OF REGULATION (EEC) NO 3 OF THE COUNCIL ON SOCIAL SECURITY FOR MIGRANT WORKERS ARE APPLICABLE TO A WORKER WHO IS ENGAGED BY AN UNDERTAKING PURSUING ITS ACTIVITY IN A MEMBER STATE, IS PAID BY THAT UNDERTAKING, IS ANSWERABLE TO IT FOR MISCONDUCT, IS ABLE TO BE DISMISSED BY IT AND WHO ON BEHALF OF THE UNDERTAKING PERFORMS WORK TEMPORARILY IN ANOTHER UNDERTAKING IN ANOTHER MEMBER STATE .

Parties

IN CASE 35/70

REFERENCE TO THE COURT UNDER ARTICLE 177 OF THE EEC TREATY BY THE COMMISSION DE PREMIERE INSTANCE DU CONTENTIEUX DE LA SECURITE SOCIALE ET DE LA MUTUALITE SOCIALE AGRICOLE DU BAS-RHIN FOR A PRELIMINARY RULING IN THE ACTION PENDING BEFORE THAT COURT BETWEEN

S.A.R.L . MANPOWER, STRASBOURG REGIONAL CENTRE,

AND

CAISSE PRIMAIRE D' ASSURANCE MALADIE, STRASBOURG,

Subject of the case

ON THE INTERPRETATION OF ARTICLE 13 (1) (A) OF REGULATION NO 3 OF THE COUNCIL OF THE EEC OF 25 SEPTEMBER 1958 CONCERNING SOCIAL SECURITY FOR MIGRANT WORKERS, AS AMENDED BY REGULATION NO 24/64 OF 10 MARCH 1964,

Grounds

1 BY ORDER DATED 17 JUNE 1970, RECEIVED AT THE REGISTRY ON 20 JULY 1970, THE COMMISSION DE PREMIERE INSTANCE DU CONTENTIEUX DE LA SECURITE SOCIALE ET DE LA MUTUALITE SOCIALE AGRICOLE DU BAS-RHIN REFERRED TO THE COURT FOR A PRELIMINARY RULING UNDER ARTICLE 177 OF THE TREATY ESTABLISHING THE EEC THE QUESTION WHETHER AN UNDERTAKING OF A MEMBER STATE, PURSUING AN ACTIVITY SIMILAR TO THAT OF SARL MANPOWER, CAN TAKE ADVANTAGE OF THE PROVISIONS OF ARTICLE 13 (1) (A) OF REGULATION NO 3 OF THE COUNCIL OF THE EEC OF 25 SEPTEMBER 1958 AS AMENDED BY REGULATION NO 24/64 OF THE COUNCIL OF THE EEC OF 10 MARCH 1964 .

2 THE OBJECT OF THIS QUESTION IS TO DETERMINE WHETHER THE FRENCH CAISSE D' ASSURANCE MALADIE IS RESPONSIBLE FOR REIMBURSING THE MEDICAL EXPENSES ARISING FROM AN ACCIDENT INVOLVING A WORKER ENGAGED BY MANPOWER WHEN HE WAS WORKING ON A SITE IN GERMANY WHERE HE HAD BEEN SENT BY THE SAID COMPANY .

3 IT APPEARS FROM THE FILE SUBMITTED TO THE COURT THAT THE QUESTION RAISED RELATES TO AN UNDERTAKING HAVING ITS NORMAL ACTIVITY IN A MEMBER STATE

WHICH ACCORDING TO THE GENERAL CONDITIONS OF ITS CONTRACTS ENGAGES WORKERS TO " POST " THEM TO OTHER UNDERTAKINGS IN ORDER TO PROVIDE FOR TEMPORARY NEEDS FOR QUALIFIED PERSONNEL .

4 FOR THIS PURPOSE IT STIPULATES, WITH THE PERSONNEL IN QUESTION, A CONTRACT OF EMPLOYMENT PROVIDING RECIPROCAL RIGHTS AND OBLIGATIONS BETWEEN IT AND ITS TEMPORARY WORKERS FOR WORK TO BE DONE BY THE LATTER IN THE HIRING UNDERTAKINGS .

5 ALTHOUGH UNDER THE CONTRACT EACH TEMPORARY WORKER IS REQUIRED TO COMPLY WITH THE WORKING CONDITIONS AND DISCIPLINE LAID DOWN BY THE INTERNAL RULES OF THE ESTABLISHMENT TO WHICH HE IS SENT, IT APPEARS FROM AN EXAMINATION OF THE FILE THAT THIS FACT DOES NOT AFFECT THE MAINTENANCE OF THE WORKER' S RELATIONSHIP WITH THE UNDERTAKING WHICH HAS ENGAGED HIM .

6 IT IS THUS THE LATTER UNDERTAKING WHICH IS AT THE CENTRE OF THE DIFFERENT LEGAL RELATIONSHIPS, BECAUSE IT IS AT THE SAME TIME A PARTY TO THE CONTRACT WITH THE WORKER AND TO THE CONTRACT WITH THE HIRING UNDERTAKING .

7 IT IS WITHIN THE LEGAL FRAMEWORK SO DEFINED THAT THE QUESTION ASKED MUST BE ANSWERED .

8 ARTICLE 13 (1) (A) OF REGULATION NO 3, THE INTERPRETATION OF WHICH IS REQUESTED, PROVIDES FOR THE CASE OF THE " WAGE-EARNER OR ASSIMILATED WORKER WHO, BEING IN THE SERVICE OF AN UNDERTAKING HAVING IN THE TERRITORY OF A MEMBER STATE AN ESTABLISHMENT TO WHICH HE IS NORMALLY ATTACHED, IS POSTED BY THAT UNDERTAKING TO THE TERRITORY OF ANOTHER MEMBER STATE TO PERFORM WORK THERE FOR THAT UNDERTAKING ".

9 THIS PROVISION LAYS DOWN THAT THE WORKER SHALL CONTINUE TO BE " SUBJECT TO THE LEGISLATION OF THE FORMER MEMBER STATE AS THOUGH HE WERE STILL EMPLOYED IN ITS TERRITORY, PROVIDED THAT THE ANTICIPATED DURATION OF THE WORK WHICH HE HAD TO PERFORM DOES NOT EXCEED 12 MONTHS AND THAT SUCH WORKER BE NOT SENT TO REPLACE ANOTHER WORKER WHO HAS REACHED THE END OF HIS TERM OF POSTING ".

10 THE EXCEPTION TO ARTICLE 12 OF THE SAME REGULATION THUS PROVIDED IN ARTICLE 13 (1) (A) AIMS AT OVERCOMING THE OBSTACLES LIKELY TO IMPEDE FREEDOM OF MOVEMENT OF WORKERS AND AT ENCOURAGING ECONOMIC INTERPENETRATION WHILST AVOIDING ADMINISTRATIVE COMPLICATIONS FOR WORKERS, UNDERTAKINGS AND SOCIAL SECURITY ORGANIZATIONS .

11 BUT FOR THIS EXCEPTION, AN UNDERTAKING ESTABLISHED IN THE TERRITORY OF A MEMBER STATE WOULD BE REQUIRED TO REGISTER ITS WORKERS, NORMALLY SUBJECT TO THE SOCIAL SECURITY LEGISLATION OF THAT STATE, WITH THE SOCIAL SECURITY SYSTEM OF OTHER MEMBER STATES WHERE THEY WERE SENT TO PERFORM WORK OF SHORT DURATION .

12 MOREOVER, THE WORKER WOULD SUFFER MORE OFTEN THAN NOT BECAUSE NATIONAL LEGISLATIVE SYSTEMS GENERALLY EXCLUDE SHORT PERIODS FROM CERTAIN SOCIAL BENEFITS .

13 IT IS MAINTAINED THAT, SINCE THE OBJECT OF THE UNDERTAKING IS NOT TO DO WORK BUT TO ENGAGE WORKERS TO PUT THEM FOR A CONSIDERATION AT THE DISPOSAL OF OTHER UNDERTAKINGS, THE SENDING OF WORKERS TO UNDERTAKINGS

IN OTHER MEMBER STATES CANNOT BE EQUATED WITH THE POSTING OF WORKERS ABROAD PROVIDED FOR IN ARTICLE 13 (1) (A) OF REGULATION NO 3 .

14 THE SOLE FACT THAT A WORKER HAS BEEN ENGAGED TO WORK IN THE TERRITORY OF A MEMBER STATE OTHER THAN THAT IN WHICH THE UNDERTAKING WHICH ENGAGES HIM IS ESTABLISHED CANNOT OF ITSELF RULE OUT THE APPLICATION TO SUCH WORKER OF THE PROVISIONS OF THE ABOVEMENTIONED ARTICLE 13 (1) (A) .

15 SINCE THE ACTIVITY OF THE UNDERTAKING WHICH ENGAGES THE WORKER TAKES PLACE IN THE MEMBER STATE WHERE IT HAS ITS ESTABLISHMENT, ARTICLE 13 (1) (A) APPLIES BY REASON OF THE FACT THAT THE WORKER IS ATTACHED TO THAT UNDERTAKING AND THERE IS NO NECESSITY TO ENQUIRE WHETHER THE OBJECT OF THE UNDERTAKING IS TO DO WORK OR NOT .

16 THE REFERENCE MADE BY ARTICLE 13 (1) (A) TO THE ESTABLISHMENT SITUATED IN THE STATE WHERE THE UNDERTAKING IS ESTABLISHED AND TO WHICH THE WORKER IS ATTACHED IS MEANT ESSENTIALLY TO LIMIT THE APPLICABILITY OF THAT PROVISION TO THOSE WORKERS ENGAGED BY UNDERTAKINGS NORMALLY PURSUING THEIR ACTIVITY IN THE TERRITORY OF THE STATE IN WHICH THEY ARE ESTABLISHED .

17 IN THE LEGAL FRAMEWORK OF THE PRESENT CASE, THE UNDERTAKING WHICH HAS ENGAGED THE WORKERS REMAINS THEIR SOLE EMPLOYER .

18 THE MAINTENANCE OF THE WORKER' S RELATIONSHIP WITH SUCH AN EMPLOYER FOR THE ENTIRE DURATION OF THE EMPLOYMENT ARISES IN PARTICULAR FROM THE FACT THAT IT IS THE EMPLOYER WHO PAYS THE SALARY AND CAN DISMISS HIM FOR ANY MISCONDUCT BY HIM IN THE PERFORMANCE OF HIS WORK WITH THE HIRING UNDERTAKING .

19 FURTHER THE HIRING UNDERTAKING IS INDEBTED NOT TO THE WORKER BUT ONLY TO HIS EMPLOYER .

20 IN CONSEQUENCE IT MUST BE RECOGNIZED THAT THE WORKER HAS PERFORMED WORK WITHIN THE MEANING OF THE ABOVEMENTIONED ARTICLE 13 (1) (A) WITH THE HIRING UNDERTAKING FOR THE UNDERTAKING WHICH ENGAGED HIM .

21 THIS INTERPRETATION IS MOREOVER IN ACCORDANCE WITH THE ABOVEMENTIONED OBJECTIVES .

Decision on costs

22 THE COSTS INCURRED BY THE COMMISSION, WHICH HAS SUBMITTED OBSERVATIONS TO THE COURT, ARE NOT RECOVERABLE AND AS THESE PROCEEDINGS ARE, IN SO FAR AS THE PARTIES TO THE MAIN ACTION ARE CONCERNED, IN THE NATURE OF A STEP IN THE ACTION PENDING BEFORE THE NATIONAL COURT, IT IS FOR THAT COURT TO MAKE A DECISION AS TO COSTS .

Operative part

THE COURT

IN ANSWER TO THE QUESTION REFERRED TO IT BY THE COMMISSION DE PREMIERE INSTANCE DU CONTENTIEUX DE LA SECURITE SOCIALE ET DE LA MUTUALITE SOCIALE AGRICOLE DU BAS-RHIN BY ORDER OF THAT COURT DATED 17 JUNE 1970, HEREBY RULES :

THE PROVISIONS OF ARTICLE 13 (1) (A) OF REGULATION NO 3 OF THE COUNCIL OF THE EEC ON SOCIAL SECURITY FOR MIGRANT WORKERS ARE APPLICABLE TO A WORKER WHO IS ENGAGED BY AN UNDERTAKING PURSUING ITS ACTIVITY IN A MEMBER STATE, IS PAID BY THAT UNDERTAKING, IS ANSWERABLE TO IT FOR MISCONDUCT, IS ABLE TO BE DISMISSED BY IT AND WHO ON BEHALF OF THAT UNDERTAKING PERFORMS WORK TEMPORARILY IN ANOTHER UNDERTAKING IN ANOTHER MEMBER STATE .