

Court of Justice of the European Union PRESS RELEASE No 142/12

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Judgment in Joined Cases C-229/11 and C-230/11 Alexander Heimann and Konstantin Toltschin v Kaiser GmbH

Press and Information

Paid annual leave may be reduced proportionally to the reduction in working time agreed to in a social plan

It is not contrary to EU law for an undertaking and its works council to conclude a social plan providing for the proportional reduction of the paid annual leave of a worker on short-time working

EU law¹ provides that every worker is entitled to paid annual leave of at least four weeks. If the employment relationship is terminated, that minimum period of paid annual leave may be replaced by an allowance in lieu.

The Arbeitsgericht Passau (Passau Labour Court, Germany) asked the Court of Justice whether EU law precludes national legislation or practice – such as a social plan agreed between an undertaking and its works council – under which paid annual leave is reduced proportionally to workers' reduced working time during a period of financial difficulties for the undertaking.

The disputes before that court – between Mr Heimann and Mr Toltschin, respectively, and their former employer, Kaiser GmbH, a subcontracting business in the motor industry – concern an allowance in lieu claimed on the basis of annual paid leave which those workers were not able to take in 2009 and 2010. Due to financial difficulties, Kaiser had dismissed Mr Heimann and Mr Toltschin with effect from the end of June and August 2009, respectively. However, by means of a social plan agreed between Kaiser and its works council, their contracts had been formally extended for one year. During that period Heimann and Toltschin were not required to work ('zero hours short-time working' ['Kurzarbeit Null']), and Kaiser did not have to pay them a salary. In return, Mr Heimann and Mr Toltschin received, via Kaiser, an allowance known as 'Kurzarbeitergeld' from the Federal Employment Agency. Kaiser claims that, during that period of 'zero hours short-time working', Mr Heimann and Mr Toltschin did not acquire any rights to paid annual leave.

In its judgment delivered today, the Court answers that EU law does not preclude national legislation or practice – such as a social plan agreed between an undertaking and its works council – under which the paid annual leave of a worker is reduced in proportion to the reduction in working time (the rule of *pro rata temporis*).

The Court points out that the situation of a worker on short-time working in the context of a social plan is fundamentally different from that of a worker who is unable to work as a result of an illness, the latter being entitled, in accordance with the Court's case-law, to paid annual leave in the same way as a worker in active employment.

In the context of short-time working, the obligations of both the worker and the employer are, by staff agreement, suspended. Moreover, in contrast to a worker unable to work due to his state of health, who is subject to physical or psychological constraints caused by his illness, the worker on short-time working may use his free time to rest or to engage in recreational and leisure activities. Furthermore, if the employer was required to pay annual paid leave during the period of short-time working, it would be liable to bring about a reluctance on the part of the employer to agree to a

¹ The Charter of Fundamental Rights of the European Union read in conjunction with of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time (OJ 2003 L 299, p. 9).

social plan under which the contract of employment is extended for purely social reasons and therefore in the interests of the worker.

However, the situation of an employee on short-time working is comparable to that of a part-time worker. Accordingly, in accordance with its case-law², the Court points out that, for a period of part-time working, paid annual leave may be reduced proportionally to the reduction in working time.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The full text of the judgment is published on the CURIA website on the day of delivery.

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² Case <u>C-486/08</u> Zentralbetriebsrat der Landeskrankenhäuser Tirols [2010].