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Press and Information

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Judgment of the Court of Justice in Joined Cases C-131/04 and C-257/04

C.D. Robinson-Steele v R.D. Retail Services Ltd

Michael Jason Clarke v Frank Staddon Ltd

J.C. Caulfield and Others v Hanson Clay Products, formerly Marshalls Clay Products Ltd

**PAYMENT FOR ANNUAL LEAVE INCLUDED IN HOURLY OR DAILY
REMUNERATION ('ROLLED-UP HOLIDAY PAY') IS CONTRARY TO THE
WORKING TIME DIRECTIVE**

Such a system may lead to situations in which the minimum period of paid annual leave is replaced by an allowance in lieu.

According to the working time directive¹, the Member States must take the measures necessary to ensure that every worker is entitled to paid annual leave of at least four weeks. The minimum period of paid annual leave may not be replaced by an allowance in lieu, except where the employment relationship is terminated. Under the United Kingdom regulations which transposed the directive, any contractual remuneration paid to a worker in respect of a period of leave goes towards discharging any liability of the employer to make payments under the relevant regulation in respect of that period.

Messrs Robinson-Steele, Clarke, J.C. Caulfield, C.F. Caulfield and Barnes, who work for various undertakings, received payment for annual leave in the form of remuneration included in the hourly remuneration, a system known as 'rolled-up holiday pay', instead of receiving such payment in respect of a specific period of leave.

Those workers applied to the Employment Tribunal claiming payment for annual leave. The Leeds Employment Tribunal, to which Mr Robinson-Steele applied, and the Court of Appeal, sitting on appeal in the cases brought by Messrs Clarke, Caulfield, Caulfield and Barnes, asked the Court of Justice of the European Communities whether the system of 'rolled-up holiday pay' is compatible with the working time directive.

¹ Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organisation of working time (OJ 1993 L 307, p. 18).

The Court recalls that the entitlement of every worker to paid annual leave is an important principle of Community social law from which there can be no derogation. Holiday pay is intended to enable the worker actually to take the leave to which he is entitled. The Court finds that the term ‘paid annual leave’ means that remuneration must be maintained for the duration of the leave within the meaning of the directive and that workers must receive their normal remuneration for that period of rest. In those circumstances, the Court considers that the directive precludes part of the remuneration from being attributed to payment for annual leave without the worker receiving, in that respect, a payment additional to that for work done. Also, there can be no derogation from that entitlement by contractual arrangement.

As regards the point at which the payment for annual leave must be made, the Court notes that there is no provision in the directive which lays it down expressly. None the less, the purpose of the requirement of payment for that leave is to put the worker, during such leave, in a position which is comparable to periods of work as regards remuneration. Accordingly, the point at which the payment for annual leave is made must, as a rule, be fixed in such a way that, during that leave, the worker is put in a position comparable to periods of work as regards remuneration.

Furthermore, the Court holds that a regime of ‘rolled-up holiday pay’ may lead to situations in which the minimum period of paid annual leave is, in effect, replaced by an allowance in lieu, which the directive prohibits, except where the employment relationship is terminated, in order to ensure that a worker is normally entitled to actual rest.

Consequently, the Court holds that **payment for minimum annual leave through a system of ‘rolled-up holiday pay’** rather than by means of a payment in respect of a specific period during which the worker actually takes leave, **is contrary to the working time directive.**

As regards sums already paid to workers in respect of holiday through the system of ‘rolled-up holiday pay’, the Court holds that payments made, transparently and comprehensibly, may, as a rule, be set off against the payment for specific leave. On the other hand, such set-off is excluded where there is no transparency or comprehensibility. The burden of proof in that respect is on the employer. The Court points out that the Member States are required to take the measures appropriate to ensure that practices incompatible with the provisions of the directive relating to the entitlement to annual leave are not continued.

Unofficial document for media use, not binding on the Court of Justice.

Languages available: CS, DE, EN, ES, FR, HU, IT, NL, PL, SK

The full text of the judgment may be found on the Court’s internet site

<http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-131/04>

It can usually be consulted after midday (CET) on the day judgment is delivered.

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