



Press and Information

Court of Justice of the European Union
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Judgment in Case C-539/12
Z.J.R. Lock v British Gas Trading Limited

A salesperson's holiday pay cannot be limited to their basic salary

Where such a worker is paid commission calculated on the basis of the sales that they make, that commission must also be included in the calculation of the holiday pay

The Working Time Directive¹ provides that every worker has the right to paid annual leave of at least four weeks.

Since 2010, Mr Lock has been employed by British Gas as an Internal Energy Sales Consultant. His task is to persuade business clients to buy his employer's energy products. His remuneration consists of two main components: a basic salary (of £1222.50 per month at the time of the facts) and commission. The commission, also payable on a monthly basis, is calculated on the basis of the sales made by Mr Lock. It is paid not at the time that the sales are made, but several weeks or months following the conclusion of the contract between British Gas and the client.

Mr Lock was on paid annual leave from 19 December 2011 to 3 January 2012. For December 2011, his remuneration was composed of basic pay of £1222.50 and commission earned over previous weeks of £2350.31. In 2011, Mr Lock earned an average monthly commission of £1912.67.

Having not worked during his annual leave, Mr Lock did not make any new sales and therefore did not generate any commission. Since this had an adverse effect on his salary during the months following his annual leave, Mr Lock decided to bring an action before the Employment Tribunal in order to claim the remainder of his holiday pay to which, in his view, he was entitled for the period from 19 December 2011 to 3 January 2012.

The Employment Tribunal has asked the Court of Justice whether, in such circumstances, the commission which a worker would have earned during his annual leave must be taken into account in the calculation of his holiday pay and, if so, how the sum payable to the worker must be calculated.

In today's judgment, the Court points out that, during annual leave, a worker must receive his normal remuneration. The purpose of holiday pay is to put the worker, during that period of rest, in a situation which is, as regards his salary, comparable to periods of work.

According to British Gas, that objective was achieved since Mr Lock received, during his annual leave, a salary including not only his basic salary, but also the commission resulting from sales achieved during previous weeks. The Court rejects that argument. It takes the view that, notwithstanding the remuneration received by Mr Lock during his annual leave, the financial disadvantage which, although deferred, is nonetheless genuinely suffered by him during the period following that leave, may deter him from exercising his right to annual leave. As British Gas conceded, the worker does not generate any commission during the period of his annual leave. Consequently, in the period following his annual leave the worker is only paid his basic salary. That adverse financial impact may deter the worker from actually taking leave, which is all the more likely in a situation such as Mr Lock's, in which commission represents on average over 60% of his

¹ 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)

monthly wage. The Court therefore finds that such a reduction in holiday pay is liable to deter the worker from actually exercising his right to take his annual leave, which is contrary to the objective pursued by the Working Time Directive.

As regards how to calculate the amount of commission payable to Mr Lock during his annual leave, the Court observes that holiday pay must, in principle, be determined in such a way as to correspond to the normal remuneration received by the worker. Where the remuneration received by a worker is made up of several components, the determination of the normal remuneration payable during annual leave requires a specific analysis.

As far as that analysis is concerned, the Court has already established² that any inconvenient aspect which is linked intrinsically to the performance of the tasks which the worker is required to carry out under his contract of employment and in respect of which a monetary amount is provided which is included in the calculation of the worker's total remuneration must necessarily be taken into account for the purposes of calculating the amount to which the worker is entitled during his annual leave.

As regards the commission received by Mr Lock, the Court notes that that is directly linked to his work within the company employing him. Consequently, there is an intrinsic link between the commission received each month by Mr Lock and the performance of the tasks he is required to carry out under his contract of employment. It follows that such commission must be taken into account in the calculation of his holiday pay.

In that context, it is for the national court or tribunal to assess whether, on the basis of an average over a reference period which is considered to be representative, under national law, the methods of calculating the commission payable to a worker, such as Mr Lock, in respect of his annual leave achieve the objective pursued by the Working Time Directive.

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 [C-155/10 Williams](#); see also Press release [No 90/11](#).