Supreme Court

KKO:2018:10

Application of the Working Time Act to the work of substitute foster parents at a children's village

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Background and the issues to be decided

Plaintiffs A, B, C and D had worked as substitute foster parents (so-called children's village parents) for an employer which organized care and welfare in a family-like environment, while the foster parents were on annual leave or otherwise on their days off. The working hours of the substitutes had been defined in the employment contracts in full days, and their work as substitutes had generally continued for several days at a time, during periods set out in the work schedule confirmed by the employer. During their period of work the substitutes had lived with the children in homes in the children's village, and had decided independently on the practical arrangement of their working duties.

The Supreme Court had to decide the question of whether the employer had to pay the plaintiffs for their overtime work as well as compensation for evening and night work, as well as Saturday and Sunday work that they had claimed. For this reason, the Supreme Court had to decide the question of whether the employment relationship in which they served as substitute foster parents in the children's village fell under the scope of the Working Time Act.

Application of the Working Time Act

According to section 1 of the Working Time Act, the Act applies to work performed under an employment contract as referred to in section 1(1) of the Employment Contracts Act (55/2001), unless otherwise provided. Section 2(1) of the Working Time Act provides for derogations to the scope of the Working Time Act. According to paragraph 3 of this provision, with the exception of section 15(3) of the Working Time Act, the Act does not apply to work performed by an employee at home or otherwise in conditions where it cannot be considered a duty of the employer to monitor arrangement of the time spent on said work.

The Working Time Act implements Working Time Directive 2003/88/EC. According to the Working Time Act, the right to additional payments that relate to working hours depends on whether the Working Time Act applies to the employment relationship in question. Even though the Working Time Directive does not apply to wages, interpretation of the provisions on the scope of its application are for this reason relevant.

Article 17 of the Working Time Directive provides for certain situations where derogations may be made from the provisions on working time. In accordance with paragraph 1, a derogation may be made for workers whose total working time is not measured or predetermined or can be determined by the workers themselves on the basis of the specific characteristics of the activity concerned. The examples given of such employees are managing executives or other persons with autonomous decision-taking powers, family workers, or workers officiating in religious ceremonies in churches and religious communities.

The Supreme Court requested a preliminary ruling from the Court of Justice on the interpretation of article 17(1) of the Working Time Directive. In Hälvä and others, C-175/16, EU:C:2017:617, the Court of Justice held, on the grounds noted in the judgment, that article 17(1) of the article was to be interpreted so that it would not apply to paid employment of the type at issue in the case, which consists in caring for children in a family-like environment, relieving the person principally responsible for that task, where it is not established that the working time as a whole is not measured or predetermined or it may be determined by the worker himself, which the referring court had to ascertain.

The Court of Justice interpreted the derogation made in article 17(1)(b) of the Working Time Directive regarding family workers as applying only to work in which the employment relationship between the employer and employee was a family relationship. The Supreme Court held that the work of a substitute children's village parent could therefore not be deemed to fall within the scope of the derogation provided in section 2(1)(3) of the Working Time Act solely on the grounds that a substitute children's village parent works in a home in a children's village in the same manner as a parent, and that for this reason the work would be comparable to work at home.

It was therefore necessary in the case to examine whether the work of the plaintiffs in the children's village would fall within the scope of section 2(1)(3) of the Working Time Act on the grounds that this work otherwise takes place in circumstances in which it could not be deemed the duty of the employer to monitor how the time spent on said work is arranged.

The Supreme Court noted that each period of work begins at a time arranged with the children's village parent who was being replaced by the substitute, and continues for the days marked in the work schedule, after which the responsibility for the children returns to the children's village parent. The Supreme Court held that in these circumstances the employer had a real opportunity to monitor the beginning and the end of the working periods.

The Supreme Court held that the daily needs and activities of the children directed the way in which substitutes used their time so extensively that these substitutes could not be deemed to have the full freedom and possibility of deciding on working and rest periods even within the periods of work. Since in addition a necessary element of a substitute's work was to remain for most of the day in the children's village or otherwise to accompany the children, and since the opportunity to have fully free time was in general possible only within the limits set by the children's needs, this work did not constitute the derogation referred to in article 17(1) of the Directive, as interpreted by the Court of Justice.

The Supreme Court held as its conclusion that the work of a substitute could not be deemed such that it was not the duty of the employer to arrange for the monitoring of the time spent on the work. The work of substitutes therefore fell within the scope of the application of the Working Time Act. The employer was ordered to pay the compensation for working time that had be claimed, to the extent that these claims were not to be dismissed as time-barred.

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