



24 March 2010

PRESS SUMMARY

British Airways plc (Respondent) v Ms Sally Williams and others (Appellants) [2010] UKSC 16; on appeal from [2009] EWCA Civ 281

JUSTICES: Lord Walker, Lady Hale, Lord Brown, Lord Mance and Lord Clarke

BACKGROUND TO THE APPEAL

Pilots working for British Airways plc are entitled to at least four weeks “paid annual leave”. While on leave, a pilot is paid his or her basic fixed pay. A pilot on leave is not paid two types of supplement (the ‘Flying Pay Supplement’ and the ‘Time Away from Base Allowance’) which he or she would receive if at work as additional pay for hours spent flying and being away from base. The two types of allowance are subject to limits (because of limits to the permissible hours spent flying or on duty) which limits pilots might already have reached.

The requirement that civil aviation workers receive “paid annual leave” is implemented in the UK by the Civil Aviation (Working Time) Regulations 2004, which enforces domestically the UK’s obligations under Council Directive 2000/79/EC of 27 November 2000 (the Aviation Directive). The term “paid annual leave” is found in the Working Time Directive (Council Directive 93/104/EC) as well as the Aviation Directive.

The pilots brought claims against British Airways arguing that they were entitled to both types of supplement, in addition to basic fixed pay, as part of their “paid annual leave”. The Employment Tribunal and the Employment Appeal Tribunal both agreed the pilots were entitled to the supplements. The Court of Appeal allowed the appeal of British Airways, finding that “paid annual leave” encompassed basic fixed pay only.

JUDGMENT

In a judgment delivered by Lord Mance, the Supreme Court unanimously holds that the appeal raises an issue of general principle and that the answer is not obvious. It raises a number of questions relating to the definition of “paid annual leave” under European Union law. Consequently, the Supreme Court is under a duty to refer the questions in issue in the appeal to the European Court of Justice (paras [18], [30]).

REASONS FOR THE JUDGMENT

- The questions referred to the Court of Justice under Article 267 of the Treaty on the Functioning of the European Union are:
 - (i) Under (a) articles 7 of Council Directives 93/104/EC and 2003/88/EC and (b) clause 3 of the European Agreement annexed to the Council Directive 2000/79/EC: (1) to what, if any, extent does European law define or lay down the any requirements as to the nature and/or level of the payments required to be made in respect of periods of paid annual leave; and (2) to what, if any, extent may Member States determine how such payments are to be calculated?

- (ii) In particular, is it sufficient that, under national law and/or practice and/or under the collective agreements and/or contractual arrangements negotiated between employers and, the payment made enables and encourages the worker to take and to enjoy, in the fullest sense of these words, his or her annual leave; and does not involve any sensible risk that the worker will not do so?
- (iii) Or is it required that the pay should either (a) correspond precisely with or (b) be broadly comparable to the worker's "normal" pay?

Further, in the event of an affirmative answer to question (iii)(a) or (b):

- (iv) Is the relevant measure or comparison (a) pay that the worker would have earned during the particular leave period if he or she had been working, instead of on leave, or (b) pay which he or she was earning during some other, and if so what, period when he or she was working?
 - (v) How should "normal" or "comparable" pay be assessed in circumstances where (a) a worker's remuneration while working is supplemented if and to the extent that he or she engages in a particular activity; (b) where there is an annual or other limit on the extent to which, or time during which, the worker may engage in that activity, and that limit has been already exceeded or almost exceeded at the time(s) when annual leave is taken, so that the worker would not in fact have been permitted to engage in that activity had he been working, instead of on leave? (para [30])
- The Court notes that the legal basis of the relevant Directives was to protect health and safety. The present leave arrangements for pilots with British Airways do not pose a risk to health and safety, and pilots do in fact take their leave. It is not clear from the case law of the Court of Justice whether "paid annual leave" has a closely defined autonomous European meaning or whether individual Member States retain a discretion to define the term and its application (paras [19]-[20], [25]-[26]).
 - Previous cases in which the Court of Justice has considered the term "paid annual leave" were in a different context to the present case. It is not clear to the Court what was intended by previous cases requiring that holiday pay should be "comparable" to the employee's "normal remuneration", or what that would involve in the present circumstances (paras [27]-[29]).

NOTE

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for that decision. The full opinion of the Court is the only authoritative document. Judgments are public documents and are available at: www.supremecourt.gov.uk/decided-cases/index.html