

Court assessment of posted worker's pay components 3/2/24



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Court ruling No. SKC-165/2023 was published last November. While it does not address any fresh legal issues, the subject of worker postings combined with the significant amount of this claim creates the need to analyse this ruling in more detail. The pay components assessed in the ruling allow us to summarise and evaluate pay issues relevant to any worker posting.

A worker sued his employer to recover more than EUR 55,000 in pay arising from a posting to Germany. The large claim included components such as a fair hourly rate, overtime pay, daily allowance, and payment for on-the-job travel. The court had to examine the broad question of pay in detail, which makes the ruling relevant to other similar disputes.

A fair hourly rate

The worker asked the court to recognise that the employer had failed to pay him a fair hourly rate, as his pay fell short of the two-thirds of what is paid for this occupation in the relevant economic region. So the worker sought the difference of over EUR 35,000 from the employer.

Since the worker's calculation was based on the German Civil Code and not the German legislation on minimum pay, this part of the worker's claim was dismissed. Yet the possibility of such a claim being made should not be ignored. When posting workers, the employer needs to be aware of the generally binding terms of payment in the relevant country. If the worker's claim were based on an Act of Parliament, the employer could be liable to pay the difference.

Overtime pay

There was no dispute over the worker having worked 430 hours overtime, but the employer paid 25% extra for these hours. Even though German law does not require the employer to pay overtime, the court ruled that this question should be examined in the light of section 68(1) of the Latvian Employment Act.

Once it was found that German law does not provide for overtime pay but the Latvian Employment Act does, the court had to apply the legislation that favours the worker – the Latvian Employment Act. That's what the court did, and the employer had to pay the difference so that the overtime pay reaches the Latvian 100% rate.

Daily allowance

Under his employment contract, the worker was paid a daily allowance of EUR 5,960. His travel expenses were paid and he was given a place to live in Germany. Yet the worker pointed to the Latvian Cabinet of Ministers' Rule No. 969, which prescribes a daily allowance of EUR 46 for Germany, so a daily allowance of EUR 14,234 was still outstanding according to the worker's calculation.

The court stated that if the employer had in fact paid the worker's posting-related expenses (accommodation, transport and meals), the worker would be considered to have no entitlement to a daily allowance. An extra daily allowance would not be necessary because the purpose of a daily allowance to make up for the worker's inconveniences would have been met. Yet the court attached decisive importance to the fact that the employer had issued orders prescribing a daily allowance pursuant to Rule No. 969, which entitles the worker to the daily allowance set by those orders. In calculating the final amount due, the court took account of the daily allowance already paid. So the employer, having paid some of the posting-related expenses, was still required to meet the obligations assumed under the orders (to pay a daily allowance of EUR 46).

Payment for on-the-job travel

The employer stated that the time the worker had spent travelling from Latvia to the destination in Germany is not treated as working hours. The court disagreed with this and ruled that the time spent travelling is not resting time (the worker could not use it for a rest at his discretion) and the travel time was spent for the employer's benefit, while performing a task and driving the employer's vehicle carrying tools and materials to the site in Germany.

In addition, the court examined holiday pay and an unpaid compensation for vacation, yet these components do not require a detailed analysis in the context of the total amount claimed. The ruling reflects the main principles – the employer should know in detail the rules of countries to which workers are posted and, if Latvian rules are favourable to them, then those should be applied. For example, the ruling implies that if an order prescribes a daily allowance, the employer could be liable to pay it even after paying the worker's expenses, and the time spent travelling under Latvian rules may be treated as working hours. Anyway, the ruling serves to remind us that employment often has the devil in the details and this idiom may equally apply to preparing documents and navigating complex rules.