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Press and Information

Opinion of the Advocate General in Joined Cases C-168/16 and C-169/16
Sandra Nogueira and Others v Crewlink Ltd and Miguel José Moreno Osacar v Ryanair

According to Advocate General Saugmandsgaard Øe, disputes relating to contracts of employment of air hostesses and stewards come within the jurisdiction of the courts of the place 'where or from which' those employees principally carry out their obligations vis-à-vis their employer

The national court must determine that place in the light of all the relevant circumstances, including the place where the worker starts and ends his working days

Ryanair and Crewlink are companies established under Irish law and have their registered offices in Ireland. Ryanair is active in the international passenger air transport sector. Crewlink specialises in the recruitment and training of cabin crews for airlines. Between 2009 and 2011, Portuguese, Spanish and Belgian employees were recruited by Ryanair or by Crewlink, before being assigned to Ryanair, as members of cabin crews (air hostesses and stewards).

The contracts of employment designated Charleroi Airport as the employees' home base. The employees were contractually required to reside less than one hour from their home base. They started and ended their day's work at Charleroi Airport.

Taking the view that Crewlink and Ryanair were required to comply with and apply the provisions of Belgian law, and being of the opinion that the Belgian courts have jurisdiction to deal with their claims, six employees brought actions before the Belgian courts in 2011. The Cour du travail de Mons (Higher Labour Court, Mons) (Belgium) considers that there is some doubt as to its jurisdiction to deal with this dispute. It therefore decided to refer a question to the Court of Justice on the interpretation of the EU Regulation on jurisdiction in civil and commercial matters, with particular regard to the interpretation of the concept of 'place where the employee habitually carries out his work', in the specific context of the air navigation sector [1].

In his Opinion delivered today, Advocate General Henrik Saugmandsgaard Øe proposes that the Court should apply its settled case-law relating to contracts of employment performed on the territory of more than one Member State and rule that the court having jurisdiction is the court of **the place where or from which the employee principally carries out his obligations vis-à-vis his employer**.

According to the Advocate General, that place must be identified by the national court in the light of all the relevant circumstances, in particular by taking into account the place (1) where the worker starts and ends his working days; (2) where the aircraft on board which he carries out his work are habitually based; (3) where he is made aware of the instructions communicated by his employer and where he organises his working day; (4) where he is contractually required to reside; (5) where an office made available by the employer is situated; and (6) which he must attend when he is unfit for work or in the event of disciplinary problems.

[1] Article 19(2) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1).

While stressing that it is for the Cour du travail de Mons to apply those criteria to the particular facts of the case before it, the Advocate General is of the view, as an indication, that those six criteria unequivocally point to the courts of the place where Charleroi Airport is situated.

He further states that the fact that the worker is directly employed by Ryanair or is assigned to Ryanair by Crewlink is not a relevant criterion in the circumstances.

By contrast, the home base is an indirectly relevant factor in so far as that place overlaps with, inter alia, the criterion of the place where the workers start and end their working day.

With regard to the nationality of the aircraft on board which air hostesses and stewards provide their services, the Advocate General considers that this cannot be taken into account by the national court for the purposes of determining the place where those employees habitually perform their work.

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