

German Federal Labour Court Rules on Jurisdiction in Posted Workers Case

In a judgement of 15 February 2012, the German Federal Labour Court (*Bundesarbeitsgericht*) had to deal with the question of whether German courts have jurisdiction concerning contribution claims of a specialised social security fund against a company domiciled abroad. Referring to Articles 1 (1) Sentence 1, 76, 67 of the Brussels I-Regulation as well as Section 8 Sentence 2 of the Posted Workers Act (now: Section 15 of the Revised Posted Workers Act) the court answered the question in the affirmative.

The facts of the case were as follows: The defendant, a Lithuanian company had been responsible for the building of the Lithuanian pavilion at the EXPO 2000 in Hannover. To build the pavilion it had sent at least 42 Lithuanian workers to Germany in January and February 2000. Therefore, the German Holiday and Wage Adjustment Fund for the Building and Construction Industry (*Urlaubs- und Lohnausgleichskasse für die Bauwirtschaft*), a specialised social security fund responsible, among others, for securing workers' holiday benefits including workers' minimum holiday compensation, required the company to pay contributions. The Lithuanian company, however, refused. It argued that it had fulfilled all its obligations under Lithuanian law. The Holiday and Wage Adjustment Fund, therefore, filed a lawsuit for the outstanding contributions that eventually ended up in the German Federal Labour Court

In answering the question whether German courts had jurisdiction the German Federal Labour Court first discussed whether the suit was within the scope of the Brussels I-Regulation. It held that the claim did not fall within the

social security exception of Article 1 (2) lit. c) of the Brussels I-Regulation. The notion of social security had to be interpreted in accordance with Council Regulation(EC) No. 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community (now: Article 3 (1) of Regulation (EC) No. 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security system). Article (4) (1) of this Regulation defined social security matters as matters relating to sickness and maternity benefits, invalidity benefits, old-age benefits, survivors' benefits, benefits in respect of accidents at work and occupational diseases, death grants, unemployment benefits and family benefits. The notion of social security, therefore, did not cover holiday benefits as the ones in dispute in the case at hand.

The court then went on to discuss whether it had jurisdiction under the Brussels I-Regulation. It found that Article 2 (1) of the Brussels I-Regulation, requiring claimants to bring a lawsuit in the courts of the Member States of the defendant's domicile, did not apply because the defendant was not domiciled in Germany. It was not even domiciled in a Member State at the time because Lithuania joined the European Union as late as 2004. However, since Article 2 (1) was subject to the remaining provisions of the Brussels I-Regulation, including Article 67, which provides that the Brussels I-Regulation does not prejudice the application of provisions governing jurisdiction in specific matters, which are to be found in Community instruments or in national legislation implementing such instruments the court relied on Section 8 of the Posted Workers Act (now: Section 15 of the Revised Posted Workers Act) to find that German courts had jurisdiction: implementing Article 6 of the Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services, Section 8 of the Posted Workers Act

allowed judicial proceedings to be brought in the Member State in whose territory the worker is or was posted in order to enforce the right to the terms and conditions of employment guaranteed in Article 3 of the Directive. An employee who is or was posted in Germany could, therefore, file a suit in Germany to enforce the minimum conditions of employment outlined in Article 3 of the Directive including holiday benefits. The court found that the same held true for a specialised social security fund such as the Holiday and Wage Adjustment Fund regarding claims against posting companies for outstanding contributions relating to holiday benefits. Furthermore, the court held that interpretation of Section 8 of the Posted Workers Act made clear that it did not matter whether the posting company was domiciled in a EU member state.

The full decision can be downloaded [here](#) (in German).

Many thanks to Thomas Pfeiffer for the tip-off.