



German Federal Labour Court decides: The place of work for seamen is the vessel

by Rechtsanwalt Gregor Harbs, LL.M.*

This rather obvious statement needed to be given by the Federal Labour Court after a series of decisions handed down by the Higher Labour Court in Rostock, according to which the habitual place of work for seamen on ferries in international trade was found to be the port from which the employees regularly started their journeys on board the vessel and to which they returned after 14 days on duty.

The Federal Labour Court overruled these decisions and made it clear that the place where a seaman usually carries out his work in terms of Art. 19 No. 2 a) of the Council Regulation (EC) No. 44/2001 ("Jurisdiction Regulation") is on board the vessel and that the courts of the flag state have international jurisdiction to decide on disputes relating to individual employment contracts, if the seaman habitually carried out his work on board a specific vessel.

Since in the disputes at hand the defendants were not situated in Germany and since the vessels flew the flag of Greece, German labour courts were found not to have jurisdiction in terms of Art. 19 of the Jurisdiction Regulation.

The Federal Labour Court expressly stated in the oral hearing that German labour courts should not consider themselves the only courts which can administer justice to German seafarers.

1. Background

In 2006 three Greek owners sold their respective vessels and consequently terminated the employment contracts with the personnel on board these vessels for lack of further employment. The personnel consisted of Greek, Finnish and German nationals. While the Finnish and Greek employees accepted the termination and payment according to the agreed Finnish law, the German employees sought to invoke the German legislation on transfer of business which - unlike the respective EU directive - is also applicable to seagoing vessels.

The German seafarers thus filed suit for wrongful dismissal before the German Labour Courts in Rostock against the old and the new owners of the vessels, arguing that due to sec. 613 a of the German Civil Code (BGB) the purchasers of the vessels succeeded to the rights and duties under the employment relationships existing at the time of transfer.

Defendants challenged the international jurisdiction of the German Labour Courts, arguing that the employees habitually carried out their work on board a specific vessel and that the courts in the flag state of the respective vessel had jurisdiction following Art. 19 No. 2 a) of the Jurisdiction Regulation as read with Art. 91 of the UN Convention on the Law of the Sea (UNCLOS). Nothing in Art. 19 of the Regulation gave jurisdiction to German labour courts.

2. Proceedings and decisions by the lower courts

Art. 19 of the Council Regulation No. 44/2001 reads as follows:

"An employer domiciled in a Member State [of the EU, the author] may be sued:

1. *in the courts of the Member State where he is domiciled; or*
2. *in another Member State:*
 - (a) *in the courts for the place where the employee habitually carries out his work or in the courts for the last place where he did so, or*
 - (b) *if the employee does not or did not habitually carry out his work in any one country, in the courts for the place where the business which engaged the employee is or was situated.*

The local Labour Courts in Rostock considered themselves competent upon application of Art. 19 No. 2 b). They decided that no habitual place of work could be



found in terms of No. 2 a) since the vessel traded between different countries but that - even though all employment contracts were signed by the respective masters on board the vessels - the employment relationship was "lived" in the terminal in Rostock and thus there existed a business of the employers in Rostock which engaged the employees.

Upon appeal, the Higher Labour Court withdrew the notion of a "lived employment relationship" and decided that the place where the employees habitually carried out their work was Rostock, because this was the place from which the employees habitually started their journeys on board the respective vessels and to which they returned after their 14 days on board the vessels, because the employer granted them free transport back to Rostock in cases where their duty ended in another port or during the voyage, and because the employer provided free parking at the terminal in Rostock. The Higher Labour Court based these findings on its understanding of three decisions given by the European Court of Justice (ECJ) on Art. 5 of the Brussels Convention 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (*Mulox IBC Ltd. vs. Hendrick Geels C-125/92*; *Rutten vs. Cross Medical Ltd. C-383/95*; *Weber vs. Universal Ogden Services Ltd. C-37/00*). However, the Higher Labour Court thereby departed from the prerequisite set up by the ECJ that even though an employee goes on business trips to other countries, he still needs to spend most of his time working in a specific place which the court would then consider the habitual place of work.

3. Federal Labour Court decision and its impact

The German Federal Labour Court now finally acknowledged that a seaman carries out his work on board the vessel, even in cases where this vessel is a ferry on determined routes in international trade. The connection between this place of work and the flag state is drawn by Art. 91 of the UN Convention on the Law of the Sea (UNCLOS), which provides that each vessel has the nationality of the State whose flag it is entitled to fly.

This decision re-establishes legal security for European ship owners who employ German seafarers, thereby sending a clear signal to the shipping community. With this decision the Federal Labour Court has done the German labour market a much bigger favour than the German unions by supporting the individual claims.

But this decision has an impact even beyond European shipping circles. Germany has recently adopted the wording of Art. 19 of the Jurisdiction Regulation into its national procedural law (cf. sec. 48 (1a) of the German Labour Court Law, *Arbeitsgerichtsgesetz, ArbGG*), thereby extending the scope of application to employers even without domicile in the European Union.

The decision of the Federal Labour Court has not been published so far. For further information please contact the author of this *jusletter* or Mr Philipp Landers.

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