[DURATION OF WORK]

Travel time is not working time, but it is not rest either.

Cass. Soc. January 25, 2017, 15-21950

As an exception to the general rule that the duration of work is computed on an hourly basis and overtime worked above 35 hours a week must be paid, employer and employee may agree on a number of days worked per year (so called *forfait jours* agreements). The conditions and modalities of such agreements are provided in the collective bargaining agreement entered into at industry or at company level. In that case the duration of work is not subject to the limitations provided by the labour code, in particular the daily and weekly limits (10 hours a day, and 48 hours a week, 44 in average over 12 weeks). However the employee must benefit from the daily rest for at least 11 hours.

The decision of the Supreme Court of January 25, 2017 illustrates the necessity for the employer to make sure that the employee benefits from the daily 11-hour rest, including where the employee makes long distance travels.

In this case the employee was a marketing engineer and was travelling a lot. After being dismissed she had claimed for overtime payment, on the grounds that the way her working time was monitored was not compliant with the rules of the labour code and with the principle that the working time organization must guarantee employee's safety and health. She had kept the evidence of her working time day per day, including the travel time when she was sent outside France.

The court of appeal, considering that the travel time was not rest, had judged that she did not benefit from the 11-hour rest when she was travelling. The court also noted that the employer had not organized one of the annual required meeting (a meeting during which employer and employee must discuss the work load, the organization of the working time, the combination between private and professional life, and the remuneration) and that after one other meeting the employer failed to remedy the excessive workload the employee had complained about.

For these reasons the court of appeal judged that the agreement on *forfait jours* was null and void, and condemned the employer to pay the hours worked in excess of the 35 hours weekly legal threshold, for a total amount of more than 66,000 €.

Before the Supreme court, the employer argued that the travel time is not working time, as provided by law, and had been compensated as provided by the labour code. Hence the employer argued that it could not be taken into account to check whether the employee had benefited from the 11-hour rest. The Supreme Court rejected this contestation and confirmed the decision of the court of appeal.

Employers must make sure that the travels of their executives are organized properly and that the employee actually benefits from 11 hours rest on destination. Otherwise this may entail nullification of the agreement on *forfait jours*.

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