Randls HR News

AUGUST 2020, issue no. 5/2020

Another issue of hand-picked news from the labour law world is dedicated to three important rulings. First, the Supreme Administrative Court has ruled that unequal treatment of temporary agency workers and permanent employees is permissible – only the future will show what the impacts of this decision will be. The employers, however, might be more worried by another recent decision adopted by the Supreme Court addressing the unequal remuneration of employees in different regions of the Czech Republic. On the other hand, the conclusions reached by the Supreme Court in the third ruling will not please the employees, as the Supreme Court seems to ignore the nature and purpose of meal and rest breaks.

Your Randls employment law team wishes you a pleasant read!

COMPARABILITY OF TEMPORARY AGENCY AND PERMANENT WORKERS

Reasons for less favourable treatment of agency workers – decision of the Supreme Administrative Court file no. 2 Ads 335/2018

According to Section 309(5) of the Labour Code, temporary work agencies and user undertakings have the obligation to ensure that the working conditions and remuneration of temporary agency workers assigned to perform work for the user undertaking are no worse than the working conditions and remuneration of permanent workers employed by the user undertaking.

The Labour Code, however, does not specify the criteria that need to be taken into account when assessing the comparability of temporary agency workers and permanent workers of the user undertaking. Recently, for the first time ever, this issue was taken up by the Supreme Administrative Court.

The Court ruled that **differential treatment of temporary agency workers and permanent employees of the user undertaking is permissible – given that there are economically rational and generally understandable reasons for such differential treatment** consisting in varying value that distinct categories of workers bring to their employer (user undertaking). Such reasons may include e.g. proficiency in machine operation, performance, reliability, degree of connection with and loyalty to the user undertakings, as well as experience and capacity to deal with non-standard situations.

The Court also expressed the opinion that temporary agency workers who are rotated often within a user undertaking will generally have lower value and pose higher risk for the user undertaking compared to permanent employees working in the same positions – unequal remuneration in such cases would therefore generally be justified.

The ruling of Supreme Administrative Court provides for quite a broad justification of unequal treatment of temporary agency workers and permanent employees of the user undertaking. Furthermore, the Court seems to imply that the temporariness of the performance of work by agency workers itself may be a reason that could justify unequal treatment (which would effectively void the principle of equal treatment of agency workers). Should the subsequent decision-making practice interpret legitimate reasons justifying unequal treatment too broadly, such might significantly undermine the status and protection of agency workers.

UNEQUAL REMUNERATION ACROSS REGIONS

To each according to the costs of his or her living – decision of the Supreme Court file no. 21 Cdo 3955/2018

A Czech Post driver working in Olomouc demanded that he be paid the same salary as is paid to drivers working in Prague who perform the same work – Czech Post pays drivers in Prague more than drivers elsewhere in the Czech Republic (by up to several thousand Czech crowns). The case was recently considered by the Supreme Court.

In the proceedings before the Court, the Czech Post argued that the unequal remuneration of employees is justified by the differences in costs of living across the regions where Czech Post operates (as regards prices of accommodation, transportation, goods and services, etc.) – therefore, if costs of living in Olomouc are cheaper than in Prague, the employees working there do not need that high a salary.

The Supreme Court, however, did not identify with the argument made by the Czech Post and by its ruling affirmed the principle that **employees are entitled to**

equal pay for work of equal value performed for the same employer. If employees perform work of the same nature that brings their employer the same economic value, there is no reason why such employees should be remunerated differently solely based on the socio-economic dissimilarities existing across the country – the fact that costs of living of a particular employee are lower cannot lead to the conclusion that he or she should be provided lower salary by the employer. Any contrary interpretation would lead to negation of the above-stated principle.

Furthermore, the statement that the costs of living of employees working in Olomouc are lower than costs of living of the same employees working in Prague is based on a premise that is not necessarily correct, i.e. that employees purchase the goods and services they need in the place where they work.

Although the conclusions reached by the Supreme Court are not very favourable for employers, the ruling should not cause undue panic – **if the employer succeeds in meeting the burden of proof that employees perform objectively different work, different remuneration of such employees will usually be permissible.**

MEAL AND REST BREAKS

Firefighter robbed of rest – decision of the Supreme Court file no. 21 Cdo 3521/2019

The Supreme Court recently again considered under what circumstances is the employer obliged to provide the employee with a standard meal and rest break and when is it sufficient to provide the employee only with so-called adequate time for rest and meal.

Pursuant to Section 88 of the Labour Code, the employer is, as a rule, obliged to provide employee with a meal and rest break of 30 minutes after 6 hours of uninterrupted work at the latest. However, if the employee performs „work that cannot be interrupted" and cannot therefore take the standard meal and rest break, the employer must provide such employee at least with an adequate time for rest and meal. The difference between the two is that **standard meal and rest breaks are not part of working hours and the employee is not entitled to salary for their duration, whereas adequate time for rest and meal is part of working hours for which employee must be paid**.

In the present case, the employee worked as an airport firefighter – uninterrupted operation was to be ensured, whilst the firefighters were afforded two meal and rest breaks in accordance with their daily schedule. However, at any point during the meal and rest break an emergency might have potentially arisen and the firefighters would have to respond anywhere within the area of the airport within 3 minutes.

The employee was of the view that the work performed by the firefighters under the above-described circumstances constituted work that could not be interrupted and that standard meal and rest breaks could not be properly enjoyed – he claimed that the relevant period should have been remunerated as adequate time for rest and meal. The employee himself then claimed compensation for unpaid salary in court.

The employer argued that the employee in reality could take meal and rest breaks and that during the relevant period there were no instances when it would be necessary to interrupt such breaks due to emergency.

The Supreme Court stated that **when assessing whether the employee should be provided with a standard meal and rest break or with an adequate time for rest and meal, the character of the work is the determining criterion. The sole fact that uninterrupted operation is concerned does not lead to the conclusion that the employee cannot be provided a standard meal and rest break**.

The Court added that work that cannot be interrupted is characterised by the fact that it cannot be interrupted due to objective reasons – such objective reasons can only be established by the nature of technology of production, work process, or work performance that requires continuous control or activity of the employee. **A specific way of organisation of work in the workplace alone cannot establish the objective impossibility of interruption of work and the need for provision of adequate time for rest and meal.**

With regard to the above, the Supreme Court concluded that if the employer was not assigning any concrete tasks to the employee, the employee could take meal and rest breaks without it interfering with the performance of his duties. **Stand-by duty alone – during which the firefighter is waiting whether emergency occurs or not – does not establish the existence of work that cannot be interrupted, as it does not have the nature of uninterrupted technological or work process that requires continuous control or activity of the employee.** Consequently, in the given case, the relevant period could not be considered adequate time for rest and meal and the employee was not entitled to salary.

The conclusions of the Supreme Court, however, seem to overlook the nature and purpose of meal and rest break. Meal and rest break (as opposed to adequate time for rest and meal) is a rest period – during this time, the employees should have the right to do whatever they want, be it exercising, lying on the grass and listening to music, etc. In our opinion, the employee in the present case was restricted in his capacity to decide what to do with his free time that the purpose of the meal and rest breaks could not be fulfilled.

The Supreme Court has also dispensed with the employee's argumentation based on the Matzak ruling of the Court of Justice of the EU (whereby stand-by duty requiring a firefighter to arrive in the workplace within 8 minutes was deemed to be part of working hours) by laconically stating that the present case concerns breaks, not stand-by duty.

The employee immediately filed a constitutional complaint that has been recorded under file no. II. ÚS 1854/20 – now we have to wait for the Constitutional Court to decide.

This issue of HR News was prepared for you by:
Nataša Randlová / David Smolař

e-mail: employment@randls.com

web: www.randls.com

Randl Partners
advokátní kancelář attorneys at law