

Case C-167/18 Transfer, Collective agreement

Unión Insular de CC.OO. de Lanzarote – v – Swissport Spain Aviation Services Lanzarote, S.L., reference lodged by the Tribunal Superior de Justicia de Canarias (Spain) on 2 March 2018

1. Does Article 1(1) of Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses apply when an undertaking ceases to hold the contract for the service it is engaged to provide for a client as a result of termination of the contract for the provision of the service, in a labour-intensive business (cleaning of facilities), and the new holder of the contract for the services takes over the majority of the employees assigned to the performance of that service, when those employment contracts are taken over in accordance with the terms of the collective agreement on employment in the cleaning sector?
2. Is the interpretation of the Tribunal Supremo (Supreme Court, Spain), to the effect that a transfer of staff pursuant to the terms of the collective agreement does not constitute a transfer of an undertaking, since it does not satisfy the requirement of voluntary transfer, and that, consequently, Directive 2001/23 does not apply, compatible with that directive (as interpreted by the Court of Justice of the European Union)?
3. May the rules laid down in Directive 2001/23 be considered to mean that, where, in cases involving undertakings in the services sector, the collective agreement for that sector lays down an obligation to take over the employees, this constitutes a transfer of staff and, therefore, a transfer of undertakings within the meaning of the aforementioned directive?
4. Is Article 14 of the *Convenio Colectivo de Limpieza de Edificios y Locales de la Provincia de Las Palmas 2012/2014* (Collective Agreement applicable to the Cleaning of Buildings and Premises in the Province of Las Palmas 2012/2014) – which provides, in cases in which employees are taken over by another undertaking pursuant to the collective agreement, that the employees taken over do not retain either the rights and obligations which they held with the transferor undertaking or the working conditions established by collective agreement – compatible with Article 3 of Directive 2001/23?

Case C-168/18, Insolvency, Pension

Pensions-Sicherungs-Verein VVaG – v – Günther Bauer, reference lodged by the Bundesarbeitsgericht (Germany) on 5 March 2018

1. Is Article 8 of Directive 2008/94/EC of the European Parliament and of the Council of 22 October 2008 on the protection of employees in the event of the insolvency of their employer applicable if occupational old-age pension benefits are provided via an inter-occupational pension institution subject to State supervision of financial services, and, for financial reasons, that institution legitimately reduces its benefits with the consent of the supervisory authority, and, although the employer must assume liability for the reductions vis-à-vis the former employees under national law, its insolvency means that it is unable to discharge its obligation to offset those benefit reductions?
2. If the first question referred is answered in the affirmative: Under what circumstances can a former employee's losses suffered in respect of occupational old-age pension benefits as a result of the insolvency of the employee be regarded as manifestly disproportionate and therefore oblige the Member States to ensure a minimum degree of protection against such losses, even though the former employee receives at least half of the benefits arising from his acquired pension rights?
3. If the first question referred is answered in the affirmative: Does Article 8 of Directive 2008/94/EC have direct effect and, if a Member State has failed to transpose the Directive into national law or has failed to transpose it correctly, does that provision confer rights on the individual that he can assert against the Member State before a national court?
4. If the third question referred is answered in the affirmative: Is an institution organised under private law that the Member State has designated – in a manner that is binding on employers – as an insolvency insurance institution for occupational pensions that is subject to State supervision of financial services and levies the contributions required for insolvency insurance from employers under public law, and, like an authority, can establish the conditions for enforcement by way of an administrative act, a public body of the Member State?