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### **The ECJ and anxiety free holidays**

Lately, the European Court of Justice (ECJ) decided on two cases, 'Williams et vs British Airways' and 'Lock vs British Gas', that concern payments, other than basic wages, considered due to employees when they would be availing themselves of their vacation leave entitlement. Basically what these rulings want to establish is the concept that allowances, paid to employees for particular features prevailing in the normal delivery of duties, (eg. flying allowances for pilots and commissions for salespersons), should somehow remain payable during non-work days, that is during vacation days.

As is to be expected the ECJ has come up with a sort of legal argumentation to justify these rulings. It seems that the inspiration for this argumentation has been sourced from a particular aspect of the Organisation of Working Time Directive.

This Directive, among its many ramifications, goes into the aspect of ease of utilisation of vacation leave by employees. This Directive hints that employees should in no way be discouraged from making use of their vacation leave entitlement, this since vacation leave is an essential benefit that allows an employee due rest and recreation, which is required for a balanced and healthy life that in turn impacts on safety at the place of work. So far so good. The ECJ then proceeds to argue that pilots on vacation, as they will not be flying, will not earn a flying allowance and salespersons on vacation, as they will not be selling, will not be earning any commissions. According to the ECJ these pilots and salespersons, at the thought of losing such payments will feel disincentivised to go out on vacation leave. By omitting to go out on leave, pilots and salespeople will prejudice and harm themselves.

The ECJ concluded that this amounts to an infringement of the Working Time Directive. Therefore to solve this so declared infringement the ECJ established that pilots and salespersons, much as they will not be flying or selling, should anyway be paid their allowances and commissions, in whole or in part, to be able to serenely accede to their vacation leave. The ECJ has conceded to the different EU Members the task of establishing the actual quantum that should respectively be paid, and it need not be the 'full' amount that might have been earned had the vacation days been worked. Local Employers earnestly hope that, if and when, it is decided that these rulings will apply in Malta, caution and moderation will prevail.

Needless to say employers are somehow at a loss to understand and appreciate these ECJ rulings.

The payment of a 'flying allowance' to employees whose primary task is to fly, is already an absurd way of computing the remuneration of pilots. To add on to this absurdity by paying such an allowance to grounded pilots on vacation is beyond explanation.

The payment of a commission to salespersons out on vacation leave, when they would not be effecting sales, also cannot be considered logical. The payment of a commission is deemed to be an incentivising tool to encourage a good effort to achieve sales. How can I, or why should I, incentivise you to sell, through the payment of a commission, when simultaneously I am telling you not to work at selling but go out on vacation leave !

This seems to be a classic example of a European Union very long on dubious and costly rights of employees and very short on their duties and obligations. A European Union seemingly oblivious to a recession that is laying to waste European employment levels.

It does not take much to understand that gratuitously raising the cost of labour, even marginally, is not the recipe for economic recovery.

At the moment we should be focusing on the injustice of unemployment and we should be doing everything possible to create jobs for the unemployed. Under these circumstances there is an element of immorality in cushioning further the gainfully employed at the expense of the unemployed.

It seems that the European Union can afford the luxury of Judges, remote from the day to day reality of life, engaging in airy fairy intellectual debates that result in measures that carry a significant negative economic impact.

Well if it has to be this way so be it, but then we should stop being surprised that the EU is losing out on competitiveness, on growth and on the creation of long term gainful jobs.

The Lisbon Agenda proved, and now the 2020 objectives might also prove, to be nothing but empty talk. In face of the global economic threats and challenges, coming from the likes of China and India, the EU responds with more 'social' Europe.

In conclusion nothing much can be done to undo the aforementioned ECJ rulings. It is however earnestly hoped that these ECJ decisions are not pushed to further absurd lengths. The ECJ inspired holiday pay enhancements must be circumscribed. They must not be allowed to overspill to other absolutely no go areas like overtime and shift allowances. As argued the ECJ rulings are manifestly flawed and if they cannot be overturned at least the damage must be contained.

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