

Federal Social Court

Judgment of 7 May 2019 - B 11 AL 11/18 R

Seasonal-short-time work benefit is not to be paid for a loss of work that occurred overseas.

The Plaintiff is a construction company that is based in Germany, which carries out work based on contract work on construction sites of contractors. In February 2012, it had its posted workers carry out formwork, concrete and shell construction work on one construction site in Germany and Luxembourg and five construction sites in Austria, and in March 2012 on one construction site in Germany and Luxembourg. Following corresponding applications of the Plaintiff, the Defendant approved for seasonal –short-time work benefits for February 2012 and March 2012 as well as additional expenses winter benefit and reimbursed social insurance contributions owing to loss of work with the employees deployed in Germany. The Defendant rejected the further applications for corresponding benefits for the employees employed on foreign construction sites. For substantiation it stated that loss of work on foreign construction sites owing to the territorial principle do not substantiate any claims for seasonal-short-time work benefits and supplementary benefits. Action and appeal remained unsuccessful.

The Federal Social Court dismissed the appeal. The claim for seasonal-short-time work benefits is opposed by the fact that this is not to be paid for a loss of work, which has occurred overseas. A restriction to the granting of seasonal-short-time work benefit to loss of work that has occurred in Germany can be derived from an interpretation of Section 175 Third Book German Social Insurance Code [*Drittes Buch Sozialgesetzbuch - SGB III*] old version according to the history of how it occurred by taking the meaning and purpose of the regulation and systematic connections into consideration. Section 175 SGB III old version as well as the successor regulation Section 101 SGB III pursue the economic policy purpose to counteract an increase in unemployment in the winter months, thus to stabilise employment relationships and therefore relate to the German domestic market. The stipulation of the period of subsidisation corresponds with the German weather conditions and the extensive control and examination activity of the welfare authority requires a restriction to the domestic country. With the abolishment of on Section 216 Para. 1 SGB III, the legislator particularly intended to exclude workers for the duration of the overseas restriction from receiving substitute remuneration payments due to weather conditions. The special interlinking between benefits of the work promotion in the form of the seasonal-short-time work benefit with industry-own, supplementary payments financed by re-allocation constitutes a closed system of supplementary individual benefits, which does not allow any supplementary interpretation.

This result in particular is not opposed by the European Community law. The requirement for equal treatment from Article 4 Regulation (EC) 883/2004 is not breached. All employees of the building industry with an employment relationship in Germany are subjected to the exclusion of seasonal-short-time work benefit overseas, irrespective of whether they are a national or an EU foreigner. The secondment of employees to a foreign country is no case of

the freedom of movement of workers, Article 45 Treaty on the Functioning of the European Union (TFEU), but the freedom to provide services of the employer, Article 56 TFEU. This is however not breached, because the access to the market of participants in business from other member states is not impaired. Claims of the employees of the Plaintiff to a subsidy-winter benefit and additional expenses-winter benefit are therefore excluded, as well as own claims of the Plaintiff for reimbursement of the contributions to the social insurance that are to be borne by it alone. The territorial principle according to Section 30 First Book German Social Insurance Code [*Erstes Buch Sozialgesetzbuch - SGB I*] is not applicable. As opposed to intervening state behaviour overseas, the field of application of the right to benefits is oriented to the interpretation of the respective factual standard.