

Please note the following text is an unofficial translation from the original document drafted in flamish language. This translation can only be provided thanks to the great support of Thomas W. Morrissey, EWC delegate of Air France-KLM for the Netherlands.

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COURT OF LABOUR LAW OF BRUSSELS

(ARBEIDSRECHTBANK VAN BRUSSEL)

**Interim injunction proceedings – extraordinary public court sitting held on
6 December 2006**

ORDER OF THE COURT

No. proceedings 73/06

Employment contracts - employees

Rep. No. 06/

IN THE MATTER OF

1° Ms Antje ORENTAT, living in Germany, 40477 Düsseldorf, Nordstrasse 85, in her capacity of chairperson of the European Works Council of defending parties and representative in the European Works Council for Germany, present for the sitting,

2° Ms Jeannine MATREUS, living in Belgium, 3210 Linden, Burchtlaan 13, in her capacity of member of the European Works Council of the defending parties and representative in the European Works Council for Belgium, present for the sitting,

3° Mr Meivin LIN, living in the Netherlands, 2515 MA Den Haag, Bocht van Guinea 45, in his capacity of member of the European Works Council of defending parties and representative in the European Works Council for The Netherlands, present for the sitting,

4° Mr Paul WESTCOTT-BRADBURY, living in the United Kingdom, Datchet-Berkshire SL3SQ, Cobb Close 35, in his capacity of member of the European Works Council of defending parties and representative in the European Works Council for the United Kingdom,

5° Ms Sara LANDEIRA, living in Portugal, 2700-2777 Amadora, Rua Dr. Azevedo Neves 18, in her capacity of member of the European Works Council of defending parties and representative in the European Works Council for Portugal,

6° Mr Patrice SENTEIN, living in Italy, 00415 Rome, Via S. Nemesie 3, in his capacity of member of the European Works Council of defending parties and representative in the European Works Council for Italy,

all places of residence choosing as their legal counsel Mter Jan Buelens, Broederminstraat 38 at 2018 Antwerp

plaintiffs, represented by master Jan Buelens, lawyer at 2018 Antwerp.

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AGAINST

1° **BRITISH AIRWAYS GROUP**, with offices established in Belgium, at 1050 Elsene, Troonstraat 98,

2° **BRITISH AIRWAYS IN BELGIUM, department of BRITISH AIRWAYS PLC**, company operating under United Kingdom law, of which has established the seat in the United Kingdom at Harmondsworth OB7 OGB, Waterside PO box 365, with offices at 1050 Elsene, Troonstraat 98,

3° **The company with right of the United Kingdom BRITISH AIRWAYS PLC**, of which has established the seat in the United Kingdom, Harmondsworth UB7 OGB, Waterside PO box 365, with its registered business office responsible for Belgium located at 1050 Elsene, Troonstraat 98,

defending parties, being neither present nor represented.

Having regard for the law of 15 June 1935 on the language use in Court matters.

Having regard for Article 584 of the judicial statute book (*Gerechtig Wetboek*)

Having regard for the summons announcing the legal proceedings served on 1 December 2006 by Laurent Leleux, deputy Court bailiff, replacing Patrick OVART, Court bailiff with place of residence at 1070 Anderlecht, Edmond Rostandstraat 76.

The legal attempt to settle the lawsuit amicably in accordance with Article 734, paragraph 1 of the judicial statute book remained fruitless due to the absence of defending parties.

Having heard plaintiffs in their resources and statements for the public court sitting of 4 December 2006, whereupon the debates were concluded and the matter was taken under consideration.

REQUESTED ACTION

The requested action commands that:

- within the 24 hours after pronouncement of the terms of judgement the defendants start the correct and complete information and consultation procedure with respect to the European Works Council concerning the transfer of undertaking of the customer service of defendants in the airport of Vienna; and at the same time fulfill their legal obligations to staff in compliance with the agreement of 16 June 2005, Collective Agreement [*CAO orig.text*] no. 62, and the European directive 94/45.
- no decision is taken and/or every decision is suspended concerning the announced transfer of undertaking on 7 December 2006 as long as the information and consultation procedure has not been concluded in accordance with the EWC agreement of 16 June 2005.

Plaintiff demand that the court impose a penalty payment on defendants of 25.000 € per day if they should fail to satisfy the requirements imposed by the court as listed above.

Plaintiffs demand that the judgement be declared for provisional enforcement notwithstanding all recourse and without the possibility placing a bail bond or an option to pay.

THE FACTS

Applicants form the executive committee of the European Works Council (EWC) of defending parties.

On the basis of Article 13 of the directive 94/45 of 22 September 1994, defendants and the employee representatives finalized an EWC agreement on 18 September 1996.

On 16 June 2005 a renewed agreement was established.

Article 3.2 of the renewed EWC agreement stipulates that in the case of transfer of undertaking the European Works Council must be timely informed both orally and in writing; that relevant documentation must be supplied and that the European Works Council must be involved during the different phases.

Article 13.3 of the agreement stipulates that disputes exclusively by Belgian courts must be regulated,

In early November 2006 the European Works Council informally learned that within the framework of a transnational restructuring operation that on 7 December 2006 a transfer of undertaking of the customer service of defendants in the airport of Vienna where 17 persons are involved will take place

Ms ORENTAT in her quality of chairperson of the European Works Council contacted the defendants whom agreed on 6 November 2006 to allow her to visit the airport of Vienna.

On 9 November 2006 Ms ORENTAT traveled to Vienna. Access to the site was refused so that she was unable to communicate with the employees concerned.

On 24 November 2006 the plaintiffs communicated to the defendants the subjects to be placed on the agenda of the annual meeting of the European Works Council planned for 30 November 2006.

The chairperson of the European Works Council, Ms ORENTAT requests by e-mail on 27 November 2006 that the transfer of undertaking of the Vienna customer service be placed on the agenda of the meeting of the European Works Council to be held on 30 November 2006.

The European Works Council refuses to place this point on the agenda of the meeting of 30 November 2006 because according to them the transfer of undertaking of the customer services in the airport of Vienna of the applicants was not a transnational matter.

During the meeting of 30 November 2006 of the European Works Council the information and consultation procedure was not started up concerning the transfer of undertaking in Vienna.

On 1 December 2006 the plaintiffs summoned defendants to interim injunction proceedings after requesting and being granted permission by the court on 1 December 2006 for accelerated civil proceedings.

JURISDICTION OF THE COURT (ARBEIDSRECHTBANK)

Article 578, 3° of the judicial statute book stipulate that the labor court acquaint itself with the individual disputes concerning the application of the collective labor agreements.

The term individual is related to both the normative and the obligatory provisions of the collective labor agreement, both for the lawsuits initiated by an individual as well as those which are initiated by a professional organization.

The object of the lawsuit is the application of directive 94/45/EG of the Council of 22 September 1994 concerning the establishment of a European Works Council or of a procedure in ventures or concerns with a Community dimension for information and consultation of the employees, which is transposed into the Belgian legislation by means of the Collective Agreement [*CAOorig.txt*] no. 62 of 6 February 1996 and the law of 23 April 1998 regarding accompanying measures concerning the institution of a European Works Council.

The preceding information and consultations or consultation procedures in case of transfer of undertaking have in the first place a collective normative character (Prof. RIGAUX, *Werknemersinspraak en ontslagaangelegenheden: een beperking aan de individuele ontslagmogelijkheid in hoofde van de werkgever*, in *Actuele Problemen van het Arbeidsrecht*, 11, Kluwer, 1987, 194).

The labor court is authorized to acquaint itself with the facts regarding disputes concerning obligatory provisions of the collective labor agreements (J. PETIT, *De Collectieve Arbeidsovereenkomsten en de Paritaire Comit es*, Brussels 1969, 306, nr.477; Arbh. Brussels, 16 May 1997, Soc. Kron., 1997, p. 328; Arrondissementsrechtbank, 5 June 1986, Soc.Kron., 1986, 313),

THE POWERS OF THE PRESIDENT IN INTERIM INJUNCTION PROCEEDINGS

In accordance with Article 584, paragraph 2 of the judicial statute book can the President of the labor court pronounce sentence in the cases that he considers urgent when the subject resorts under the competence of the labor court.

The judge is solely responsible for assessing the urgency of the case and this forms the basis of his authority.

The urgent character of the case can be based upon the necessity to act to prevent damage or serious inconvenience or violation of a legal right. (Cass.11 May 1990, R.W. 1990-91, 987; Arbrb. Brussels, 8 March 1995, JTT, 1995, 273).

According to Article 584 *Gerechtelijk Wetboek* a matter is to be deemed urgent when the fear for the damage with a certain scope makes an immediate decision desirable, so that the urgency will not be assessed in demonstrable damage, but must be accepted when damage is possible (see Clesse and F. Baert, "Les proc d s d'urgence en cas de concurrence illicite par le salari ", in V. Vannes, "Clauses sp ciales du contrat travail-utilit -validit -sanction", Brussels, Bruylant 2003, 284).

At the sitting the plaintiffs present documents from which appear that the transfer of undertaking in Vienna will take place on Thursday 7 December 2006 so that urgency is consequently justified.

In casu the requested measures are provisional since they do not have as goal to question the transfer of undertaking in itself, but are aimed at insuring that the information and consultation procedure is started up and/or that no decision is taken before this procedure is started up.

The urgency of the matter is evident and the President of the labor court as established in summary proceedings is consequently deemed competent.

THE MERITS OF THE CASE

The relevant legislation is the directive 94/45/EG of the Council of 22 September 1994 concerning the institution of a European Works Council or of a procedure in ventures or concerns with a Community dimension for information and consultation of the employees, which is transposed into the Belgian legislation by means of the Collective Agreement [*CAO orig.text*] no. 62 of 6 February 1996 and the law of 23 April 1998 concerning measures accompanying concerning institution of a European Works Council.

A European Works Council or a procedure for the information and consultation of the employees must be established in each venture or in each concern with a Community dimension.

On the basis of Article 13 of the directive 94/45/EG of 22 September 1994 the defendants and the employee representatives agreed upon an EWC agreement on 18 September 1996.

On 16 June 2005 a renewed agreement was agreed upon.

In accordance with the EWC agreement of 16 June 2005, the European Works Council is to be informed and consulted regarding and preceding cross-border transfers of undertakings which can have an influence on the interests of the employees.

Article 1 of the EWC agreement describes transnational as a cross-border project that can have an important impact on the interests of employees.

Article 3.2 of the renewed EWC agreement stipulates that the European Works Council be timely informed both orally and in writing and that relevant documentation must be provided to them with regards to a transfer of undertaking and that the European Works Council must be involved during the different phases.

At the sitting the advisor of the plaintiffs shows a powerpoint presentation from Mr. Glover, responsible for the the defendants' restructuring programme, wherein the European ground handling of defendants in several phases is reconsidered and with a detailed planning.

From the presentation can be determined that the transfer of undertaking of the customer services in Prague and Geneva was already carried out.

The transfer of undertaking in Vienna was announced on 2 November 2006 to the local employees that it and would be initiated on 7 December 2006.

Applicants point out that the decisions to transfer undertakings in several places in Europe were taken in the United Kingdom and that all documents concerning the transfer of undertaking were signed by European management.

Not informing and consulting the European Works Council is in contravention of the provisions of the EWC agreement of 16 June 2005, collective labor agreement number 62 and the European directive 94/45/EG.

The right to information and the right to consultation are fundamental rights.

Plaintiffs rightly quote legal doctrine and jurisprudence from which can be inferred that a restructuring in one country can possess a transnational character if the decision was taken in another Member State and where it is stated that the EWC agreement must be interpreted in the light of the Collective Agreement [*CAO orig.text*] number 62 and European directive 94/45/EG (M., Rigaux and F. DORSSEMONT, *De afdwingbaarheid van het grondrecht op informatie en raadpleging*, Soc.Kron. 1997, 321; Beschikking Versailles (14 ème ch.), 7 May 1997, Soc. Kron. 1997, 7, 336).

In this case the cross-border character of the transfer of undertaking project in the airport of Vienna with impact on the interests of the employees is certain. The European Works Council must therefore be informed and must be consulted regarding this decision preceding its implementation.

The claims of applicants is consequently valid.

Applicants demand that the defendants be ordered to pay a penalty to the amount of 25,000€ for every day that the informations and consultation procedure is not initiated; as well as in the case a decision is taken which has an impact before the before-mentioned information and consultation procedure has been correctly concluded, particularly in the case of the planned transfer of undertaking on 7 December 2006.

Applicants demand this penalty due to the fact that their demand does not concern compliance with an individual employment contract.

In light of the rejected request of the chairperson of the European Works Council to place the transfer of undertaking of the Vienna customer service on the agenda of the meeting of the European Works Council of 30 November 2006 and that on the meeting of 30 November 2006 the European Works Council the information and consultation procedure concerning the transfer of undertaking in Vienna was not started up, the court judges that there in this case a penalty payment reduced to 2,500 € per day can be granted.

FOR THESE REASONS

Marie-Charlotte VANTOMME, Deputy-chairman, on duty as President of the labor court in Brussels, presiding at interim lawsuit, assisted by Sophie De Rijst, clerk of the court.

Judges the case in abstencia of the defendants as being immediately enforceable

Declares that the **claims of the applicants to be admissible and legitimate.**

Orders that within the 24 hours after pronouncement of the judgement that defendants must provide the correct and complete information required and start consultation procedure with respect to the European Works Council concerning the transfer of undertaking of the customer services of defendants at the airport of Vienna; and to comply with their obligations contained in the EWC agreement of 16 June 2005, collective labor agreement no. 62 and the European directive 94/45/EG,

States that says each decision concerning the announced transfer of undertaking on 7 December 2006 is suspended as long as informatie-en the consultation procedure, in accordance with the EOR agreement of 16 June 2005, is not terminated.

Condemns the defendants should they fail to comply to the measures described above to a penalty payment of 2,500 € per day as from the first day after pronouncement of those measures.

Condemns defending parties to pay the costs made by plaintiffs estimated at 212.19 € bailiff costs, 109.32 € judicial proceedings and 3.75 € costs for the petition for accelerated civil proceedings.

Declare that the measures are to be immediately effectuated notwithstanding all recourse.

Thus judged and pronounced for the extraordinary court sitting of 6 December 2006 of the chamber of interim injunction proceedings of the labor court of Brussels.

De griffier,

Deputy-chairman



S. DE RIJST



M.-Ch. VANTOMME