Employment Remark

# Transport and clothing allowances in part-time contracts

17th July 2018

In relation to STS 22nd March 2018

It seems obvious that part-time and reduced-hours workers who work fewer days than comparable full-time workers are entitled to transport or distance bonus in proportion to the ratio of the days actually worked. But the question that arises is, if these workers provide services on the same days as full-time workers, will the amount of the transport allowance be independent of the agreed duration of the working day, and what happens to the clothing allowance?

If a Collective Agreement does not specify in terms of the extent to which certain rights are available, this means that the principle of equality in absolute terms must be applied, or that absence of this must not prevent the rule of proportionality in terms of wages, bonuses and other rights which by their nature are measurable from being applied.

It is well known that the first rule to be applied is the provisions of the Collective Agreement itself. However, when the conventional text does not contain specific criteria in order to differentiate between the benefits to which full recognition corresponds and the benefits for which proportional recognition is appropriate, the provisions of Article 12(4)(d) of the ET, which it provides, can only be invoked:

> " *Part-time workers shall have the same rights as full-time workers. Where appropriate by virtue of their nature, such rights shall be recognised in the legal and regulatory provisions and in the Collective Agreements on a proportional basis, according to the time worked".*

Resolving the questions raised at the outset, the **Social Chamber of the Supreme Court** recently handed down a ruling on **22nd March 2018** (RCUD 1334/2016) on transport and clothing allowances in the private security sector (BOE 25-4-2013). This was a dispute in which two female workers claimed the full amount of the 'distance and transport bonus' and the 'clothing maintenance bonus', on the ground that the conduct of the company paying them was not in accordance with the law in proportion to the reduced working day they worked.

The summary of the conventional principle was as follows:

*"a) Distance and Transport Benefits. It is established as compensation for travel expenses and means of transport within the locality, as well as from home to work and back. This amount, in annual calculation, will be €1,166.28 for 2012, €1,278.00 for 2013 and €1,246.55 for 2014, and redistributed in fifteen payments in 2012 and 2014 and in twelve monthly instalments in 2013, as set out in the corresponding column of the Wage Schedule.*

*b) Uniform Maintenance Benefits. It is established as compensation for expenses that must be borne by the worker, for cleaning and conservation of clothing, footwear, belts, and other garments that make up his uniforms, considered for these purposes, as compensation for maintenance of clothing. This amount, by category, in annual calculation, and redistributed in fifteen payments in 2012 and 2014 and in twelve monthly payments in 2013, is established in the corresponding column in the Wage Annexes for 2012, 2013 and 2014, which are part of this agreement.".*

The Social Court No. 24 of Madrid upheld the claims filed and ordered the company to pay the plaintiffs the two bonuses, both the distance and the costume bonus, in full, to the amounts of 318.84 euros to one of them (despite having a working day equivalent to 80.25% of the ordinary working day) and to the other plaintiff, the amount of 827.2 euros (despite having provided services of a working day equivalent to 61.70%). The Supreme Court of Justice of Madrid upheld the decision of the Court of First Instance when it dismissed the company's appeal.

However, with the STS analyzed, the appeal for unification of doctrine formalized by the company and, revoking the previous SJS and STSJ, absolves the company of the economic differences claimed, since it is understood that both the clothing and transportation bonus must be paid in accordance with the necessary correspondence with the duration of the day.

The Supreme Court's line of argument is that the factor of reduction of workers' rights, in a proportional manner, according to the time worked, is present not only in article 12.4.d) of the ET but also in article 4 of Council Directive 97/81 of 15 December 1997 : on access to particular conditions of employment, to a period of seniority, to a duration of work or to wage conditions, and with regard to wages, ILO Convention No. 175 follows the same line.

In addition, the STS, with regard to the possibility of measuring certain rights in proportion to the time spent providing services, transcribes a previous ruling issued on 10 June 2014 (RCUD 209/2013), recalling that it has applied the criterion of proportionality in relation to working time in the following areas: a) seniority bonus (for workers with reduced working hours: sentences 25-5-04, 21-1-05 and 15-3-05; b) leave for own matters: sentence 5-9-06; c) social assistance: sentence 5-5-06; d) bonus for work on Sundays: sentence 24-7-07 and annual salary supplement: sentence 29-3-11.

In summary, and always except for express provision in a collective agreement that includes the payment in full of the extra-wage bonuses, regardless of the workday worked.

A.- That the extra cost of clothing should be paid in proportion to the working day is not a new statement, since the jurisprudential doctrine (STS 10-6-2014), in a peaceful manner, has been stating that it is in the nature of this bonus, that it should be paid proportionally, since the deterioration of a garment is necessarily connected to the time it is worn.

B.- However, it is a very important judicial change that the extra transport or distance must be paid in proportion to the length of the day. In fact, the majority of judicial doctrine (SSTSJ Madrid 24-2-2016 (RS 968/2015), Andalusia (Seville), 23-11-2017 (RS 3370/2017) and Catalonia 26-9-2017 (3783/2017)) is based on the premise that it was not appropriate to apply proportionality to the time partially worked to the aforementioned plus, since the posting is the same for those working full time and those working part time.This being the reason for the payment of compensation, it was clear that part-time workers bear the same costs for their attendance at work as full-time workers, so that in this case the ratio between part-time and full-time work could not be invoked as a logical rule of proportionality to establish a difference in treatment for this reason, an argument which was unreasonable and constituted an infringement of the principle of non-discrimination safeguarded by Community and national rules.

Consequently, the Supreme Court ruling analyzed here could have important consequences on the future of labor relations. We simply outlined two:

1st.- If the companies paid in full the above bonuses, without taking into account the working day worked by the employees, they can now pay the bonuses in proportion to the working day worked.

2nd.- There is no doubt that in the forthcoming negotiations on collective agreements (whether sectoral or company agreements), the social partners will urge employers to charge the full amount of the extra pay bonuses, regardless of whether the contract is full-time or part-time.

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