

## **Thompsons Solicitors' reaction to ECJ decision in the Laval case**

A European Court of Justice ruling that the right to take industrial action is restricted because of an employer's freedom to provide services in other member states rides roughshod over the trade union rights which have been recognised across the European Community for decades.

Thompsons Solicitors, the UK's leading trade union law firm, say the decision in Laval is absurd.

As in the ruling in the Viking case, the ECJ emphasises the "fundamental" nature of the right to take industrial action. But it then balances that right against the employer's competing EU law rights. In Laval this is specifically the right to freedom of provision of services.

The court said an objective of protecting workers is justified, and industrial action taken to prevent "social dumping" can also be justified. But industrial action in support of union demands in member states to which workers are posted will not be justified where the demand exceeds the extent of the protections provided to workers under the Posted Workers Directive and clearly defined national legal requirements.

In other words, a union can only take industrial action to achieve minimum terms and conditions which are prescribed by law.

Richard Arthur, Head of Trade Union Law at Thompsons Solicitors, the largest firm of personal injury and trade union lawyers in the UK said:

"The ECJ's ruling runs roughshod over trade union rights which have been almost universally recognised throughout the European Community, and in numerous international treaties and instruments, for many decades.

"It is absurd for the ECJ to say that the right to take industrial action is a "fundamental" right forming an integral part of the general principles of Community law, and then to rule that that right is superceded where an employer complains that the union is seeking terms and conditions in excess of the minimum provided by the Posted Workers Directive. The Posted Workers Directive is intended to set a minimum level of protection for workers posted to separate states. It is ludicrous to suggest that a union is not entitled to take industrial action in support of demands in excess of that minimum level.

"In the Viking and Laval rulings, trade unions have seen their internationally recognised rights to take industrial action relegated in priority by the ECJ below the business

interests of employers. The rulings are poorly reasoned and inconsistent, and completely fail to recognise the dual purpose of promotion of social policy as well the optimisation of business conditions, which the ECJ says lies at the heart of the European Community."

A Latvian company, Laval, posted workers from Latvia to work on building sites in Sweden. It was unable to reach agreement with the Swedish building and public works union, which began a blockade of Laval's sites in Sweden. The Swedish Electrician's Union, none of whose members were employed by Laval, joined in with sympathy action.

Laval brought proceedings to declare the industrial action unlawful, arguing that its freedom to provide services in another member state was infringed in circumstances where the pay rates sought by the Swedish unions exceeded those protected by the Posted Workers Directive.

The European Court of Justice, in a judgment delivered on 18 December, ruled:

1. The right to take industrial action is a "fundamental right";
2. Businesses have freedom to provide services across the EU;
3. Industrial action represents a restriction on that right;
4. Industrial action to prevent social dumping may amount to an overriding reason of public interest, which falls within the scope of protecting workers;
5. In the context of posted workers, industrial action can not be justified where the pay levels sought exceed any prescribed by national or European law;  
and
6. Rules on industrial action in member states to which workers are posted which fail to take into account collective agreements in the original state of establishment of the business discriminate against that business.

Courtesy of RMT.