ECLI:EU:C:2021:226

Provisional text

JUDGMENT OF THE COURT (Grand Chamber)

23 March 2021 (*)

(Reference for a preliminary ruling – Air transport – Regulation (EC) No 261/2004 – Article 5(3) – Common rules on compensation and assistance to passengers in the event of cancellation or long delay of flights – Exemption from the obligation to pay compensation – Concept of 'extraordinary circumstances' – Pilots' strike organised within a legal framework – Circumstances that are 'internal' and 'external' to the operating air carrier's activity – Articles 16, 17 and 28 of the Charter of Fundamental Rights of the European Union – No impairment of the air carrier's freedom to conduct a business, right to property and right of negotiation)

In Case C-28/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the Attunda tingsrätt (Attunda District Court, Sweden), made by decision of 16 January 2020, received at the Court on 21 January 2020, in the proceedings

Airhelp Ltd

v

Scandinavian Airlines System Denmark – Norway – Sweden,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, R. Silva de Lapuerta, Vice-President, J.-C. Bonichot, A. Arabadjiev, A. Prechal, L. Bay Larsen, A. Kumin and N. Wahl, Presidents of Chambers, T. von Danwitz, C. Toader, M. Safjan, D. Šváby (Rapporteur), I. Jarukaitis, N. Jääskinen and J. Passer, Judges,

Advocate General: P. Pikamäe,

Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 16 December 2020,

after considering the observations submitted on behalf of:

– Airhelp Ltd, by M. Bexelius, E. Arbrandt and S. Nilsson, advokater,

– Scandinavian Airlines System Denmark – Norway – Sweden, by F. Sjövall and J. Fermbäck, advokater,

– the Danish Government, by J. Nymann-Lindegren, M. Jespersen and M.S. Wolff, acting as Agents,

– the German Government, by U. Kühne, M. Hellmann and J. Möller, acting as Agents,

– the Spanish Government, by L. Aguilera Ruiz, acting as Agent,

– the French Government, by E. de Moustier and A. Ferrand, acting as Agents,

– the European Commission, by K. Simonsson, N. Yerrell and E. Ljung Rasmussen, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 16 March 2021,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 5(3) of Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 (OJ 2004 L 46, p. 1).

2 The request has been made in proceedings between Airhelp Ltd and Scandinavian Airlines System Denmark – Norway – Sweden (‘SAS’) concerning the latter’s refusal to compensate S., whose rights are now held by Airhelp, for the cancellation of his flight.

Legal context

EU law

3 Recitals 1, 14 and 15 of Regulation No 261/2004 state:

‘(1) Action by the [European Union] in the field of air transport should aim, among other things, at ensuring a high level of protection for passengers. Moreover, full account should be taken of the requirements of consumer protection in general.

…

(14) As under the [Convention for the Unification of Certain Rules for International Carriage by Air, concluded in Montreal on 28 May 1999 and approved on behalf of the European Community by Council Decision 2001/539/EC of 5 April 2001 (OJ 2001 L 194, p. 38)], obligations on operating air carriers should be limited or excluded in cases where an event has been caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken. Such circumstances may, in particular, occur in cases of political instability, meteorological conditions incompatible with the operation of the flight concerned, security risks, unexpected flight safety shortcomings and strikes that affect the operation of an operating air carrier.

(15) Extraordinary circumstances should be deemed to exist where the impact of an air traffic management decision in relation to a particular aircraft on a particular day gives rise to a long delay, an overnight delay, or the cancellation of one or more flights by that aircraft, even though all reasonable measures had been taken by the air carrier concerned to avoid the delays or cancellations.'

4 Article 2 of that regulation, headed 'Definitions', provides:

'For the purposes of this Regulation:

…

(b) "operating air carrier" means an air carrier that performs or intends to perform a flight under a contract with a passenger or on behalf of another person, legal or natural, having a contract with that passenger;

…

(l) "cancellation" means the non-operation of a flight which was previously planned and on which at least one place was reserved.'

5 As set out in Article 5 of the regulation, which is headed 'Cancellation':

'1. In case of cancellation of a flight, the passengers concerned shall:

…

(c) have the right to compensation by the operating air carrier in accordance with Article 7, unless:

(i) they are informed of the cancellation at least two weeks before the scheduled time of departure; or

(ii) they are informed of the cancellation between two weeks and seven days before the scheduled time of departure and are offered re-routing, allowing them to depart no more than two hours before the scheduled time of departure and to reach their final destination less than four hours after the scheduled time of arrival; or

(iii) they are informed of the cancellation less than seven days before the scheduled time of departure and are offered re-routing, allowing them to depart no more than one hour before the

scheduled time of departure and to reach their final destination less than two hours after the scheduled time of arrival.

…

3. An operating air carrier shall not be obliged to pay compensation in accordance with Article 7, if it can prove that the cancellation is caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken.

…'

6 Article 7 of the regulation, headed 'Right to compensation', provides in paragraph 1:

'Where reference is made to this Article, passengers shall receive compensation amounting to:

(a) EUR 250 for all flights of 1 500 kilometres or less;

(b) EUR 400 for all intra-Community flights of more than 1 500 kilometres, and for all other flights between 1 500 and 3 500 kilometres;

(c) EUR 600 for all flights not falling under (a) or (b).

…'

Swedish law

7 Paragraph 45 of the lagen (1976:580) om medbestämmande i arbetslivet (Law on workers' participation in decisions (1976:580)) provides, inter alia:

'Where an employers' organisation, employer or workers' organisation is considering taking industrial action or extending ongoing industrial action, it shall notify in writing the opposing party and the Medlingsinstitutet [(National Mediation Office, Sweden)] at least seven working days in advance. Every day except Saturday, Sunday, any other public holiday, Midsummer Eve, Christmas Eve and New Year's Eve is regarded as a working day. The time limit shall be calculated from the same time of day as that at which the industrial action commences.'

The dispute in the main proceedings and the questions referred for a preliminary ruling

8 S. had booked a seat on an internal flight from Malmö to Stockholm (Sweden). That flight, which was to be operated by SAS on 29 April 2019, was cancelled on the day of the flight because of a strike by its pilots in Denmark, Sweden and Norway ('the strike at issue').

9 It is apparent from the documents before the Court that in the summer of 2018 the workers' organisations representing SAS pilots in Denmark, Sweden and Norway ('the pilots' trade unions') decided to terminate the collective agreement concluded with SAS, which was, in the normal course of events, to cover the period 2017-2020. Negotiations with a view to concluding a new collective agreement began in March 2019.

10 Since the pilots' trade unions took the view that those negotiations had failed or, at the very least, had not progressed sufficiently, they called on their members to strike. The strike at issue thus began on 26 April 2019 and continued until 2 May 2019. It therefore lasted seven days, and resulted

in SAS cancelling more than 4 000 flights. The strike thus affected approximately 380 000 passengers, including S., who assigned to Airhelp any rights that he had vis-à-vis SAS relating to his claim for compensation for the cancellation of his flight.

11 On 2 May 2019 a new three-year collective agreement was concluded, which is therefore intended to apply until 2022.

12 Airhelp brought proceedings before the referring court, the Attunda tingsrätt (Attunda District Court, Sweden), claiming that it should order SAS to pay it the compensation of EUR 250 provided for in Article 5(1)(c) of Regulation No 261/2004, read in conjunction with Article 7(1)(a) thereof, together with default interest from 10 September 2019 until the date of payment.

13 SAS submits that it was not required to pay the compensation claimed as the strike at issue constitutes an extraordinary circumstance which could not have been avoided even if all reasonable measures had been taken, having regard to the exorbitant nature of the demands for a salary increase made by the pilots' trade unions.

14 It contends that the strike at issue is an 'extraordinary circumstance' within the meaning of Article 5(3) of Regulation No 261/2004, since it is not inherent in the normal exercise of its activity and is beyond its actual control. A decision by four trade unions to hold a simultaneous strike does not fall within the normal exercise of SAS's activity, which consists in providing air transport services. Furthermore, strikes are very uncommon in the Swedish labour market and the strike at issue, which in principle involved every SAS pilot, was one of the biggest strikes ever recorded in the air transport industry. SAS could not therefore reorganise its activity so as to be able to operate the planned flights. Moreover, as the strike at issue was lawful, SAS could not order the employees to return to work.

15 SAS further submits that the answer provided by the Court in the judgment of 17 April 2018, *Krüsemann and Others* (C-195/17, C-197/17 to C-203/17, C-226/17, C-228/17, C-254/17, C-274/17, C-275/17, C-278/17 to C-286/17 and C-290/17 to C-292/17, '*Krüsemann*', EU:C:2018:258), which states that a 'wildcat strike' is inherent in the normal exercise of the activity of an operating air carrier, cannot be applied to the case in the main proceedings. The strike at issue was not prompted by a measure taken by SAS, nor was it a spontaneous response by SAS's staff to a measure taken by SAS as part of its normal management.

16 Finally, since, under Swedish law, notice of a strike does not have to be lodged until one week before the strike begins, SAS was, in any event, unable to avoid the obligation to pay compensation imposed in Article 5(1)(c)(i) of Regulation No 261/2004, read in conjunction with Article 7(1)(a) thereof.

17 Airhelp disputes the fact that the strike at issue constitutes an 'extraordinary circumstance' within the meaning of Article 5(3) of Regulation No 261/2004. The conclusion of collective agreements falls within the ordinary course of business of an airline and labour disputes may arise at that time. Furthermore, in the course of negotiations for the purpose of concluding such an agreement, it is open to the parties to have recourse to industrial action such as a strike or lockout. In any event, in the light of the evolution of SAS pilots' salaries in the preceding years, this labour dispute could have been foreseen by SAS.

18 The referring court is therefore uncertain whether the concept of 'extraordinary circumstances' within the meaning of Article 5(3) of Regulation No 261/2004 encompasses a strike

which has been announced by workers' organisations following the giving of notice and has been lawfully initiated.

19 In those circumstances, the Attunda tingsrätt (Attunda District Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Does a strike by airline pilots who are employed by an air carrier and who are needed to carry out a flight constitute an "extraordinary circumstance" within the meaning of Article 5(3) of Regulation No 261/2004, when the strike is not implemented in connection with a measure decided upon or announced by the air carrier but of which notice is given and which is lawfully initiated by workers' organisations as industrial action intended to induce the air carrier to increase wages, provide benefits or amend employment conditions in order to meet the organisations' demands?

(2) What significance, if any, is to be attached to the fairness of the workers' organisations' demands and, in particular, to the fact that the wage increase demanded is significantly higher than the wage increases which generally apply to the national labour markets in question?

(3) What significance, if any, is to be attached to the fact that the air carrier, in order to avoid a strike, accepts a proposal for settlement from a national body responsible for mediating labour disputes but the workers' organisations do not?'

Consideration of the questions referred

20 By its three questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 5(3) of Regulation No 261/2004 must be interpreted as meaning that strike action which is entered into upon a call by a trade union of the staff of an operating air carrier, in compliance with the conditions laid down by national legislation, in particular the notice period imposed by it, which is intended to assert the demands of that carrier's workers and which is followed by one or more categories of staff whose presence is necessary to operate a flight constitutes an 'extraordinary circumstance' within the meaning of that provision.

21 First of all, it should be recalled that, where a flight is cancelled, Article 5 of Regulation No 261/2004 provides that the passengers concerned have the right to compensation from the operating air carrier, in accordance with Article 7(1) of the regulation, unless they have been informed of the cancellation beforehand within the deadlines laid down in Article 5(1)(c)(i) to (iii).

22 However, Article 5(3) of Regulation No 261/2004, read in the light of recitals 14 and 15 thereof, releases the operating air carrier from that obligation to pay compensation if it can prove that the cancellation is caused by 'extraordinary circumstances' which could not have been avoided even if all reasonable measures had been taken. Moreover, where such circumstances do arise, it is also incumbent on the operating air carrier to demonstrate that it adopted measures appropriate to the situation, deploying all its resources in terms of staff or equipment and the financial means at its disposal, in order to prevent that situation from resulting in the cancellation of the flight in question. It cannot, however, be required to make sacrifices that are intolerable in the light of the capacities of its undertaking at the relevant time (see, to that effect, judgment of 11 June 2020, *Transportes Aéros Portugueses*, C-74/19, EU:C:2020:460, paragraph 36 and the case-law cited).

23 According to the Court's settled case-law, the concept of 'extraordinary circumstances' within the meaning of Article 5(3) of Regulation No 261/2004 refers to events which, by their nature or origin, are not inherent in the normal exercise of the activity of the air carrier concerned and are beyond that carrier's actual control; those two conditions are cumulative and their fulfilment

must be assessed on a case-by-case basis (see, to that effect, judgments of 22 December 2008, *Wallentin-Hermann*, C-549/07, EU:C:2008:771, paragraph 23; of 17 September 2015, *van der Lans*, C-257/14, EU:C:2015:618, paragraph 36; of 17 April 2018, *Krüsemann*, paragraphs 32 and 34; and of 11 June 2020, *Transportes Aéros Portugueses*, C-74/19, EU:C:2020:460, paragraph 37).

24 That said, in view of, first, the objective of Regulation No 261/2004, set out in recital 1, of ensuring a high level of protection for passengers and, second, the fact that Article 5(3) of the regulation derogates from the principle that passengers have the right to compensation if their flight is cancelled, the concept of 'extraordinary circumstances' within the meaning of that provision must be interpreted strictly (judgment of 17 April 2018, *Krüsemann*, paragraph 36 and the case-law cited).

25 It is in that context that it should be determined whether strike action which is entered into upon a call by a trade union of the staff of an operating air carrier, in compliance with the conditions laid down by national legislation, in particular the notice period imposed by it, which is intended to assert the demands of that carrier's workers and which is followed by one or more categories of staff whose presence is necessary to operate a flight is capable of constituting an 'extraordinary circumstance' within the meaning of Article 5(3) of Regulation No 261/2004, as interpreted by the Court in its case-law recalled in paragraph 23 of the present judgment.

26 In the first place, it must be determined whether a strike displaying the characteristics referred to in the preceding paragraph is capable of constituting, by its nature or origin, an event which is not inherent in the normal exercise of the activity of the air carrier concerned.

27 The right to take collective action, including strike action, is a fundamental right laid down in Article 28 of the Charter of Fundamental Rights of the European Union ('the Charter'), and that right is protected in accordance with EU law and national laws and practices (see, to that effect, judgment of 11 December 2007, *International Transport Workers' Federation and Finnish Seamen's Union*, C-438/05, EU:C:2007:772, paragraph 44).

28 Despite embodying a moment of conflict in relations between the workers and the employer, whose activity it is intended to paralyse, a strike nevertheless remains one of the ways in which collective bargaining may manifest itself and, therefore, must be regarded as an event inherent in the normal exercise of the activity of the employer concerned, irrespective of the particular features of the labour market concerned or of the national legislation applicable as regards implementation of that fundamental right.

29 That interpretation must also apply where, as here, the employer is an operating air carrier. The Court indeed held, in paragraphs 40 to 42 of the judgment of 17 April 2018, *Krüsemann*, that operating air carriers may, as a matter of course, when carrying out their activity, be faced with disagreements or conflicts with all or part of their staff. Like the restructuring measures and measures of reorganisation at issue in the case which gave rise to that judgment and the labour disputes to which they were liable to lead, measures relating to the working and remuneration conditions of an operating air carrier's staff fall within the normal management of that carrier's activities.

30 Thus, a strike whose objective is limited to obtaining from an air transport undertaking an increase in the pilots' salary, a change in their work schedules and greater predictability as regards working hours constitutes an event that is inherent in the normal exercise of that undertaking's activity, in particular where such a strike is organised within a legal framework.

31 In the second place, it must be determined whether a strike displaying the characteristics referred to in paragraph 25 of the present judgment is to be regarded as an event entirely beyond the actual control of the air carrier concerned.

32 In that regard, it should be pointed out, first, that, since the right to strike is, for workers, a right guaranteed by Article 28 of the Charter, the fact that they invoke that right and consequently launch strike action must be regarded as foreseeable for any employer, in particular where notice of the strike is given.

33 The Court has indeed already held that a strike which has been preceded by the notice required by the applicable national legislation and in respect of which it has been announced that it could spread to sectors affecting the activities of an undertaking initially not concerned by the strike does not constitute an abnormal and unforeseeable event (judgment of 7 May 1991, *Organisationen Danske Slagterier*, C-338/89, EU:C:1991:192, paragraph 18).

34 So far as concerns the main proceedings, it appears to be the case that the strike at issue was foreseeable since it is apparent from the order for reference that in the summer of 2018 the pilots' trade unions had terminated the collective agreement that was supposed to cover the period 2017-2020, with the result that SAS could not be unaware that the pilots intended to put forward demands. Furthermore, the documents before the Court do not show that the strike at issue began without the notice prescribed by law being given.

35 Second, since the occurrence of a strike constitutes an event that is foreseeable for the employer, the latter has, in principle, the means to prepare for it and, as the case may be, mitigate its consequences, with the result that the employer retains control over events to a certain extent.

36 As follows from paragraph 24 of the present judgment, since the concept of 'extraordinary circumstances' within the meaning of Article 5(3) of Regulation No 261/2004 must be interpreted strictly, it must be held that the choice of the word 'extraordinary' attests to the EU legislature's intention to include in the concept of 'extraordinary circumstances' only circumstances over which the operating air carrier does not have any control. Like any employer, an operating air carrier faced with a strike by its staff that is founded on demands relating to working and remuneration conditions cannot claim that it does not have any control over that action.

37 Accordingly, in order to ensure the effectiveness of the obligation laid down in Article 7(1) of Regulation No 261/2004 to pay compensation, a strike by the staff of an operating air carrier cannot be categorised as an 'extraordinary circumstance' within the meaning of Article 5(3) of the regulation where that strike is connected to demands relating to the employment relationship between the carrier and its staff that are capable of being dealt with through management-labour dialogue within the undertaking. That is precisely the situation in the case of pay negotiations.

38 Nor can that finding be called into question by the fact that the strikers' demands might be unreasonable or disproportionate or by the strikers' rejection of a proposal for settlement since, in any event, the determination of pay levels falls within the scope of the employment relationship between the employer and its workers.

39 Third, it is apparent from the Court's case-law relating to the concept of 'extraordinary circumstances' within the meaning of Article 5(3) of Regulation No 261/2004 that events whose origin is 'internal' must be distinguished from those whose origin is 'external' to the operating air carrier.

40 That concept thus encompasses, by way of the occurrence of such ‘external’ events, a collision between an aircraft and a bird (see, to that effect, judgment of 4 May 2017, *Pešková and Peška*, C-315/15, EU:C:2017:342, paragraph 26), damage to an aircraft tyre caused by a foreign object, such as loose debris lying on an airport runway (see, to that effect, judgment of 4 April 2019, *Germanwings*, C-501/17, EU:C:2019:288, paragraph 34), the presence of petrol on an airport runway which has led to the closure of the runway (see, to that effect, judgment of 26 June 2019, *Moens*, C-159/18, EU:C:2019:535, paragraph 29) and a collision between the elevator of an aircraft in a parking position and the winglet of another airline’s aircraft, caused by the movement of the latter aircraft (see, to that effect, order of 14 January 2021, *Airhelp*, C-264/20, not published, EU:C:2021:26, paragraph 26), but also a hidden manufacturing defect or acts of sabotage or terrorism (see, to that effect, judgments of 22 December 2008, *Wallentin-Hermann*, C-549/07, EU:C:2008:771, paragraph 26, and of 17 September 2015, *van der Lans*, C-257/14, EU:C:2015:618, paragraph 38).

41 The feature shared by all those events is that they result from the activity of the air carrier and from external circumstances which are more or less frequent in practice but which the air carrier does not control because they arise from a natural event or an act of a third party, such as another air carrier or a public or private operator interfering with flight or airport activity.

42 Thus, in stating, in recital 14 of Regulation No 261/2004, that extraordinary circumstances may, in particular, occur in the case of strikes that affect the operation of an operating air carrier, the EU legislature intended to refer to strikes that are external to the activity of the air carrier concerned. It follows that strike action taken by air traffic controllers or airport staff may in particular constitute an ‘extraordinary circumstance’ within the meaning of Article 5(3) of that regulation (see, to that effect, judgment of 4 October 2012, *Finnair*, C-22/11, EU:C:2012:604).

43 Since such strike action does not moreover fall within the exercise of that carrier’s activity and is thus beyond its actual control, it constitutes an ‘extraordinary circumstance’ within the meaning of Article 5(3) of Regulation No 261/2004.

44 On the other hand, a strike set in motion and observed by members of the relevant air transport undertaking’s own staff is an event ‘internal’ to that undertaking, including in the case of a strike set in motion upon a call by trade unions, since they are acting in the interest of that undertaking’s workers.

45 If, however, such a strike originates from demands which only the public authorities can satisfy and which, accordingly, are beyond the actual control of the air carrier concerned, it is capable of constituting an ‘extraordinary circumstance’ within the meaning of the case-law recalled in paragraph 23 of the present judgment.

46 Fourth, to hold that a strike which is organised within a legal framework and as described in paragraph 25 of the present judgment does not fall within the concept of ‘extraordinary circumstances’ within the meaning of Article 5(3) of Regulation No 261/2004 cannot affect the fundamental rights of the air carrier concerned.

47 The existence of strike action, and the risk of having to pay the compensation laid down in Article 5(1) and Article 7(1) of Regulation No 261/2004 to passengers whose flight has been cancelled, cannot be regarded as affecting the essence of the employer’s right of negotiation referred to in Article 28 of the Charter.

48 In that regard, it need only be stated that the fact that an air carrier is faced with the risk of having to pay such compensation because of a strike by members of its staff that is organised within a legal framework does not compel it to accept, without discussion, the strikers' demands in their entirety. The air carrier remains able to assert the undertaking's interests, so as to reach a compromise that is satisfactory for all the social partners. The air carrier cannot therefore be regarded as being denied its freedom to negotiate protected by EU law and as being consigned from the outset to the role of losing party in the labour dispute.

49 So far as concerns the infringement invoked by SAS of both its freedom to conduct a business and its right to property, which are guaranteed by Articles 16 and 17 of the Charter respectively, it should be pointed out that freedom to conduct a business and the right to property are not absolute rights and that they must, in a context such as that at issue in the main proceedings, be reconciled with Article 38 of the Charter which, like Article 169 TFEU, seeks to ensure a high level of protection for consumers, including air passengers, in EU policies (see, to that effect, judgment of 31 January 2013, *McDonagh*, C-12/11, EU:C:2013:43, paragraphs 60, 62 and 63).

50 The importance of the objective of consumer protection, including the protection of air passengers, may justify even substantial negative economic consequences for certain economic operators (judgment of 31 January 2013, *McDonagh*, C-12/11, EU:C:2013:43, paragraph 48 and the case-law cited).

51 In the light of the foregoing considerations, the fundamental rights which the operating air carrier is guaranteed by Articles 16, 17 and 28 of the Charter cannot be impaired by not categorising a strike organised within a legal framework and displaying the characteristics referred to in paragraph 25 of the present judgment as an 'extraordinary circumstance' within the meaning of Article 5(3) of Regulation No 261/2004.

52 Accordingly, the answer to the questions referred is that Article 5(3) of Regulation No 261/2004 must be interpreted as meaning that strike action which is entered into upon a call by a trade union of the staff of an operating air carrier, in compliance with the conditions laid down by national legislation, in particular the notice period imposed by it, which is intended to assert the demands of that carrier's workers and which is followed by a category of staff essential for operating a flight does not fall within the concept of an 'extraordinary circumstance' within the meaning of that provision.

Costs

53 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

Article 5(3) of Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91, must be interpreted as meaning that strike action which is entered into upon a call by a trade union of the staff of an operating air carrier, in compliance with the conditions laid down by national legislation, in particular the notice period imposed by it, which is intended to assert the demands of that carrier's workers and which is followed

by a category of staff essential for operating a flight does not fall within the concept of an 'extraordinary circumstance' within the meaning of that provision.

[Signatures]

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* Language of the case: Swedish.