



## Gerhard Schultz-Hoff v. Deutsche Rentenversicherung Bund; Stringer and Others v. Her Majesty's Revenue and Customs

Joined Cases C-350/06 and C-520/06

**Country:** Germany, United Kingdom

**Region:** Europe

**Year:** 2009

**Court:** European Court of Justice European Court of Justice

**Health Topics:** Disabilities, Occupational health

**Human Rights:** Right to work

### Facts

Mr. Schultz-Hoff, an employee of Deutsche Rentenversicherung Bund (DRB) with a recognized disability, became unfit to work in September 2004 and was on continuous sick leave until the termination of his employment on September 30, 2005. On May 13, 2005, during his sick leave, Mr. Schultz-Hoff requested that he take his remaining paid annual leave from the year 2004 beginning on June 1, 2005. DRB refused the request, stating that an employee had to be deemed fit to work to take paid annual leave.

Mr. Schultz-Hoff brought an action in the German Labor Court (Arbeitsgericht Dusseldorf) seeking reimbursement from the paid annual leave he did not take. DRB argued that, according to German law, the right to paid annual leave is extinguished for an employee who is not fit to work. The Labor Court dismissed the action, and Schultz-Hoff appealed to the Higher Labor Court (Landesarbeitsgericht Dusseldorf). The Higher Labor Court noted possible incompatibility between German case-law and Article 7, specifically if 7(1) and 7(2), of Directive 2003/88, which preclude the enactment of national law setting limits on paid annual leave for employees on long-term sick leave.

The Court did not develop the facts of Mrs. Stringer and Others, noting only that the relevant question to both is whether a worker who is absent on sick leave is entitled to take paid annual leave during that period of sick leave and whether, and if so to what extent, a worker absent on sick leave for the whole or part of the leave year and/or of a carryover period is entitled to an allowance in lieu of paid annual leave not taken by the time the employment relationship is terminated.

### Decision and Reasoning

The Court held that Article 7 of Directive 2003/88 does not preclude national legislation regarding situations in which a worker on sick leave is not entitled to take paid annual leave during that sick leave. However, the member nations cannot enact legislature that says that the right to paid annual leave is extinguished at the end of the leave year, even when the worker has been on sick leave for all or part of the year, or the sick leave has continued to the end of his employment. Workers are still entitled to their paid annual leave for a year even if they are on long-term sick leave for part or the entirety of that year. The purpose of the paid annual leave requirement is to give workers a period of rest, which is not served while an employee is recovering from illness. The worker in question is allowed to take his paid leave upon return to work. If the worker is unable to take paid leave during the whole year, such as because it was the end of his or her employment, the worker must receive an allowance in lieu at his or her normal remuneration.

### Decision Excerpts

25. It is common ground that the purpose of the entitlement to paid annual leave is to enable the worker to rest and to enjoy a period of relaxation and leisure. The purpose of the entitlement to sick leave is different. It is given to the worker so that he can recover from being ill.

41. The right to paid annual leave conferred by Directive 2003/88 itself on all workers (BECTU, paragraphs 52 and 53) cannot be made subject by a Member State to a condition concerning the obligation actually to have worked during the leave year laid down by that State.

55. The right to paid annual leave is not extinguished at the end of the leave year and/or of a carry-over

period laid down by national law where the worker was on sick leave for the whole or part of the leave year and has not actually had the opportunity to exercise the right conferred on him by Directive 2003/88.â€•

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