AUD. NACIONAL SALA DE LO SOCIAL

(NATIONAL HIGH COURT, EMPLOYMENT DIV.)

MADRID

AUDIENCIA NACIONAL

(NATIONAL HIGH COURT)

Sala de lo Social

(Employment Division)

Court Clerk:
MARTA JAUREGUIZAR SERRANO

JUDGEMENT No.: 33/20

Trial Date: 10/3/2020 **Sentence**

Date of Judgment:17-4-20

Date of Clarification of Judgment:

Type and no. of Proceedings: COLLECTIVE REDUNDANCY 0000288 /2019

Reporting (Associate) Judge: RAMÓN GALLO LLANOS

Claimant(s): AIDA TROITIÑO, JOSE LUIS ACOSTA, PALOMA LOZANO, LIDIA ARASANZ, JAIRO GONZALO, JOHN FAESSEL, ALEXANDRA SAIS, FERNANDO DIAZ DE AGUILAR, JACOB BREURE, NICOLAS RODRIGUEZ, LUCIANA GACELA SIDI, ABDELSALAM MOHAMED, USO, SINDICATO ESPAÑOL DE PILOTOS DE LINEAS AEREAS SEPLA, SINDICATO INDEPENDIENTE DE TRIPULANTES DE CABINA DE PASAJEROS DE LINEAS AEREAS.

Defendant(s): RYANAIR DAC

Judgment Ruling: FOR THE CLAIMANT(S)

John Woodger
Traductor-Intérprete Jurado de Inglés
N.º 4651
13/5/20

Signed by: EMILIA RUIZ-JARABO QUEMADA 21/04/2020 18:25 Audiencia Nacional

Signed by: RAMON GALLO LLANOS 21/04/2020 20:12 Audiencia Nacional

Signed by: MARIA CAROLINA SAN MARTIN MAZZUCCONI 24/04/2020 09:21 Audiencia Nacional

Signed by: MARTA JAUREGUIZAR SERRANO 24/04/2020 09:25 Audiencia Nacional

Brief Summary of the Judgment: Contesting of collective redundancy. The claimants succeed and the collective redundancy instigated by the company RYANAIR DAC is held unlawful. The exception of absence of required joinder of parties is rejected. Neither the Public Prosecutor's Office - since no violation of any fundamental right is expressly claimed - nor the companies called Agencies - since nothing is claimed from them - are required to be joined. Unlawfulness is held due to absence of a consultation period. The company did not wish to undertake a consultation period as per Art. 51(2) ET. Bad faith, fraud, coercion and abuse of rights are found in the employer's actions.

John Woodger

Traductor-Intérprete Jurado de Inglés

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GOYA 14 (MADRID)
Tel.: 914007258
E-mail:

Team/user: JGH

NIG: 28079 24 4 2019 0000303
Template: ANS105 JUDGMENT

DCO COLLECTIVE REDUNDANCY 0000288 /2019
Initial proceedings: /
On the matter of: COLLECTIVE REDUNDANCY

Reporting (Associate) Judge: The Hon. RAMÓN GALLO LLANOS

JUDGMENT 33/20

THE HON. PRESIDING JUDGE:
EMILIA RUIZ-JARABO QUEMADA

THE HON. JUDGES:
RAMÓN GALLO LLANOS
MARIA CAROLINA SAN MARTIN MAZUCCONNI

MADRID, 17 April 2020.

The Employment Division of the National High Court is composed of the Judges cited on the margin and

ON BEHALF OF THE KING

They have given the following

JUDGMENT

In the COLLECTIVE REDUNDANCY 0000288 /2019 proceedings carried on by reason of claim by AIDA TROITIÑO, JOSE LUIS ACOSTA, PALOMA LOZANO, LIDIA ARASANZ, JAIRO GONZALO, JOHN FAESSEL, ALEXANDRA SAIS, FERNANDO DIAZ DE AGUILAR, JACOB BREURE, NICOLAS RODRIGUEZ, LUCIANA GACELA SIDI, ABDELSALAM MOHAMED, members of the ad hoc committee, all represented by counsel Antonio Bartolomé Martín and Araceli Barroso, as well as by reason of claim by USO, represented by Araceli Barroso, by SINDICATO ESPAÑOL DE PILOTOS DE LINEAS AEREAS SEPLA, represented by Teresa Perea, and by SINDICATO INDEPENDENTE DE TRIPULANTES DE CABINA DE PASAJEROS DE LINEAS AEREAS, represented by Guillermo Peña Salsamendi, against

John Woodger
Traductor-Intérprete Jurado de Inglés
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RYANAIR, represented by Juan José Hita Fernández. The Reporting (Associate) Judge was RAMÓN GALLO LLANOS.

BACKGROUND FACTS

First.- According to the records, on 23 December 2019, a claim was filed concerning a collective redundancy. Said claim was entered under number 288/2019.

Second.- By Decree of 10 January 2020, the reporting judge was appointed and the date for the conciliation and trial was set for 10 March 2020.

Third.- The conciliation and trial took place on the day scheduled for them to be held, and as a result of the conciliation without compromise, the trial began whereat:

- Counsel for USCA and the ad hoc Committee affirmed and ratified their claim, requesting a judgment holding RYANIAR DAC's the decision to terminate UNLAWFUL or, in the alternative, INCONSISTENT WITH THE LAW.

In support of the claim, it was stated that on 23 August 2019, the defendant company addressed the workers at the bases in Tenerife, Las Palmas, Lanzarote and Girona, informing them in English of its intention to instigate a collective redundancy, and ordering them to designate ad hoc committees to represent them, since there was no statutory body of worker representatives at those bases, and, at the same time, the next day, 24-8-2019, stating that before any consultation period that might be mandatory, they were asking the pilots at the bases concerned to indicate whether they were interested in a long-term unpaid leave (up to 12 months) or in one of the very limited number of alternative posts available in the network, notwithstanding which on 7.9.2019 the ad hoc Committee was designated.

It was stated that the intention to instigate collective redundancy had already been expressed by the company, in the press on 23.7.2019, and to the pilot and cabin crew unions on 7 and 8 August 2019 on the occasion of mediation before the SIMA in view of the company's unwillingness to call two collective agreements by staff category - for pilots and cabin crew -, although it was stated that this would only affect the bases in the Canary Islands and, potentially, Girona, as well as in a subsequent mediation before the Directorate-General for Labour on 30.8.2019 and in view of the strike called because the company refused to negotiate collective agreements by staff category, the mediator proposed to leave the communications without effect as a measure to avoid the strike, which the company rejected.

It was stated that due to the company's delay in convening the ad hoc joint consultative committee [*comisión negociadora*], the trade union organisations addressed themselves to it on 26.9.2019, informing it of the facts, and finally the company sent a letter in English - one to the pilots who were members of the ad hoc committee and another to the cabin crew - summoning them separately to negotiate a procedure for collective redundancy that would potentially affect all the workers at the bases/worksites in Las Palmas de Gran Canaria, Santa Cruz de Tenerife, Lanzarote and Girona, calling on them to start the consultation period process on 15 October 2019, which was answered by the Committee indicating that it was the only committee and indicating that henceforth communications should be made in Spanish.

It was stated that the consultations took place on 15, 25 and 30 October and on 7, 8 and 14 November, although a schedule of meetings was never agreed upon, with each meeting being fixed at the previous meeting, and that the minutes of all meetings were signed by the parties, except for the one on 30 October when the company refused to sign, and that in the course thereof the following occurred:

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- In the first of the meetings, the ad hoc joint consultative committee for the collective redundancy procedure was set up, with a total of 12 members on the employee side, and the lawyers from the SEPLA, SITCPLA and USO unions as advisors to such. In the documentation provided, the company justified the collective redundancy of 326 employees of the company at the bases in Tenerife, Las Palmas de Gran Canarias, Lanzarote and Girona on productive and organisational grounds, with the employee side calling attention to points that, in its opinion, revealed the bad faith of the company in advance, namely: the company's appearance at that meeting without a translator and its intention that all the meetings should be held in English; the manner chosen by the company to deal with the procedure, since, having announced on 23 August its intention to begin a collective redundancy procedure, this had not begun until 15 October; that prior to the formal commencement of the collective redundancy procedure the company had sent communications to pilots referred to above and with the existence of transfers of cabin crew from the affected bases operated once the procedure was announced by the company, which did not legally begin, the imposition of "unpaid leaves" and a succession of unjustifiable dismissals, requesting diverse documentation: letters sent to pilots regarding unpaid leave, change of base or transfer to other companies in the group, replies from them, how many of these measures had actually been implemented since August and the number of dismissals and transfers to other bases since 23 August; also at this meeting, having knowledge of the existence of collective redundancies initiated by the company in relation to other companies in the group for which there were 8 Labour Inspectorate reports concluding that there had been an illegal transfer of workers, it was agreed to hold a single meeting but with 3 different ad hoc joint consultative committees; finally, and in relation to this meeting, it was stated that the company did not communicate the start of the consultation period to the Directorate-General for Labour until 17 October;

- At the meeting of 25 October, the employee side complained that it had not been asked for the report provided for in Art. 3(3) of Royal Decree (abbrev. 'RD') 14/2012, to which the company responded that such a report was not appropriate as it was an ad hoc committee, and with regard to the documentation that had been delivered by the company at the initial meeting, the employee side stated that once this had been examined it did not comply with the minimum legal requirements, neither with regard to the justification of the causes included in the technical report, nor with regard to legally required documentation such as the external outplacement plan in respect of which the company merely mentioned this legal requirement but did not provide it, without the documentation required at the previous meeting being provided;

- At the meeting of 30 October, although the company provided certain documentation, the employee side considered it to be insufficient and disorderly, emphasizing certain points, and that the company suggested that the workers, in order to alleviate the terminations, apply for a series of vacancies that the company is offering in bases outside Spain, requesting that these vacancies be offered in writing and that they be blocked, denouncing the absence of a redundancy scheme [*plan social*], as well as the fact that through the individual offer of vacancies collective negotiation is left without content, and denouncing the transfer to Spanish bases of personnel not affected by the redundancy who had been working abroad, it is noted that the minutes thereof were not signed by the employer side since it intended to introduce changes after it had been agreed;

- in view of the company's position, the employee side requested attendance from the Labour Authority, being aware that on 24 October the company had already been requested to inform the ad hoc representation, and the Labour Authority agreed to be present at the meetings of 7 and 8 November 2019;

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- At the meeting on 7 November, the employee side requested the company to hand over the rectification delivered to the labour authority, which was ignored, the author of the report said that she was unaware of the content of the Spanish translation of the report, which was not done by a certified translator, was done only with the information provided by Ryanair, and was prepared on the 18 September although it was not signed until 24 October; representatives of the firm Lee Hecth Harrisson also attended, explaining how their company operates and the type of services they offer in response to this type of order, and were questioned as to whether they had drawn up a specific outplacement plan appearers pointing out that they had not signed any contract, the company clarifying that it would only apply to Ryanair and Workforce workers and not to the rest of the personnel of the so-called "agencies", and the employee side denounced the insecurity of the documentation of the consultation period being simply uploaded to Google drive - a method imposed by the company - without making a reliable delivery of the same;

- In the meeting of 8 November, the employee side proposed to hold meetings on 12, 13 and 14 November and to extend the period of consultation until 18 November, the company stating that it could only make it on 14 November, the company proposes as a redundancy scheme 20 days' pay per year and to block a series of vacancies for 14 days so that they can be requested by those affected, but subject to an eventual agreement and taking as parameters to access them, the absences, delays and sales of the workers, whereas, since the delay in the delivery of the MAX planes is invoked as reasons for the redundancy, the employee side proposes to the company to desist from the collective redundancy and to instigate a temporary collective redundancy procedure (abbrev. 'ERTE'), which is rejected by the company;

- In the meeting of 14 November, the company stated that the possible meeting on the 18th would be subject to the proceedings of the previous day's meeting, and that the required documentation would be delivered on paper - although it would differ from the documentation uploaded to Google drive - and proposed a new redundancy scheme consisting of 22 days' pay per year, the possibility of assessing seniority in the awarding of vacancies and the possible unattachment of Girona subject to the employees agreeing individually to novate their contracts, becoming TTP [sic] or seasonal contracts, without specifying, to an agreement and to approval by the commercial department outside the procedure, in view of which the employee side proposes the unattachment of Girona, the application of an ERTE in the Canary Islands facilitating transfers within Spain, sufficient pay and objective selection criteria based on seniority, which the company did not agree to.

It was claimed that after the consultation period the company communicated its final decision to the employee side in English and in a different way to that communicated to the Labour Authority, without conformity to the statutory and regulatory provisions; that likewise its attitude was obstructive throughout the consultation period, even acting in a coercive manner, attaching the Girona base when its intention was not to suppress it but to convert it into a seasonal base, and that the preferences of permanence of the statutory body of worker representatives had not been respected.

It was considered that the collective redundancy should be considered unlawful because there was no good faith on the part of the company during the consultation period, as evidenced by the formal irregularities and the clearly obstructive corporate attitude aimed at emptying the negotiations of their content, and because the communication of the final decision did not comply with the provisions of Art. 12 of RD 1483/2012.

The ad hoc committee's counsel, after affirming and accepting the joined claim, stressed the absence of grounds for the business decision and the company's unwillingness to negotiate in good faith.

Remaining counsel signing the claim made a pronouncement in identical terms.

The company's counsel in the claim objected to the same and requested a judgment against the claimants.

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In procedural terms, such counsel raised the exception of absence of required joinder of parties. It considered that the companies known as Agencies should have been joined, since the claim refers to the fact that there is an illegal transfer of workers between the defendant and these entities, as well as the Public Prosecutor's Office, since the claim suggests that the defendant infringed constitutional provisions such as Arts. 3 and 28(1) of the Spanish Constitution (abbrev. 'CE').

As regards the merits of the case, counsel for the defendant admitted that Ryanair had informed the staff of the bases in the Canary Islands, [sic] Girona of its intention to instigate a collective redundancy, and that at the same time it had made an offer to some of those concerned of unpaid leave, transfers and outplacements in companies belonging to the group, although it justified this decision in the interests of transparency, explained that no agreement could be reached at SIMA because of the company's management firm decision to close the bases for organisational and productive reasons, and explained the delay in the start of the consultation period because of the existence of a strike call by the crew cabin unions that lasted until 29 September 2019.

Counsel for the defendant argued that the company had acted in good faith from the outset of the consultation period and had tried to reach an agreement. Thus:

-although it was admitted that two communications had been sent to initiate the consultation period, one to the pilots and the other to the cabin crew part of the ad hoc committee, counsel specified that they were summoned to the same meeting;

-similarly, it was admitted that the company showed flexibility by simultaneously negotiating collective redundancies for itself and its agencies but with three ad hoc committees, which meant a statutory body of 25 worker representatives;

-it was pointed out that English is the language of regular communication in the company and that it is the language of daily use in the workplace by all members of the statutory body of worker representatives, and that all meetings, except the first one in which the counsel for the company acted as interpreter;

-reference was made to the fact that the failure to request a report from the statutory body of worker representatives was corrected in time, that the collective redundancy procedure had a redundancy scheme - 20 days' pay and the possibility for those affected to apply for vacancies - which was improved in the agreement proposals during the consultation period;

-it was indicated that the reasons for the redundancy are perfectly specified in the report issued and that the company in any case had its author explain the reasons for the redundancy, as well as to representatives of the company that was going to undertake the outplacements - a total of 14 workers affected by the collective redundancy having relied on these reasons;

-it was argued that the company maintained an attitude aimed at reaching an agreement with the statutory body of worker representatives to the point of proposing to unattach the Girona base and convert it into a seasonal base, by converting the employment contracts into seasonal ones, and even proposing to increase the pay to 22 days per year of service;

-it was claimed that sufficient documentation had been delivered in the prescribed manner and within the prescribed time limit, and that although there were differences between the documentation delivered by hand and the one uploaded to Google drive, they were negligible;

-finally, the company's refusal to sign the third of the minutes of the consultation period ware justified on the basis that, once the minutes had been translated into English, the worker representatives wanted to record a series of circumstances that had taken place, which the employee side refused.

As regards the final communication, counsel for the defendant considered it to be in line with the regulatory provisions, the differences between the one provided to the ad hoc committee and the one given to the statutory body of worker representatives, which was ultimately corrected, being insignificant.

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Counsel for the defendant contended that the number of affected workers from the beginning until the communication was practically the same, varying only on the reasons for discharge and voluntary leaves, and finally because of the partial unattachment of the Girona workers, a decision that was not taken by the company until 6 December 2019, that is, once the final decision was communicated.

Said counsel pointed out that those affected by the collective redundancy had received homogeneous remuneration throughout the year prior to the redundancy, and that no decrease in remuneration was caused to the statutory body of worker representatives, defending the redundancy of the union delegates on the grounds that their bases were going to be closed.

Finally, counsel for the defendant noted that the report provided during the consultation period clearly explains the organisational and productive reasons that justify the closure of the bases.

Next, requests for taking of evidence and the taking itself were made, with the documentary, expert and witness evidence being requested and taken, after which the parties, assessing the evidence taken, made their conclusions final.

Fourth. – In accordance with Art. 85(6) of the Employment Jurisdiction Act (abbrev. 'LRJS'), the undisputed and disputed facts are as follows:

Disputed facts: - On 23/8 there were 329 workers in the bases, of these, 222 cabin crew members, 107 pilots. -In the minutes of the third meeting they reached an agreement on the text, the company representatives did not see the total text, the employer side said it was essential to translate the content of the minutes from Spanish to English. At that time the company refused to sign the untranslated version of the minutes. -The company asked to distribute the third minutes with introduced changes and the employee side refused. -RYANAIR's usual and main language is English. -The members of the Committee did not all know English. - In the second meeting, the three commercial companies accepted that the consultation period be carried out with the three ad hoc committees in a single meeting. -The will of the parties was to have only one negotiating board. -The company requested a report on Art. 64 from the ad hoc committee on 8/11. -The company agreed to the request of the employee side on 7/11 regarding the report on Art. 64 of the Workers' Statute Act (abbrev. 'ET'). - The employee side refused to acknowledge receipt of this request. -A commitment to block vacancies for 14 days was offered. -At the commencement of the consultation period, the company offered an outplacement plan that complied with the requirements of Art. 9 of the RD. -The documents that were missing according to AL's warnings were delivered on 8/11 by email and at the next physical meeting. -The company sent a communication on 12/11 asking the committees to extend the consultation period to 18/11. -Differences between documents submitted on Google Drive and submitted in relation to vacancies are insignificant. -The number of affected workers on 23/8 was 329, on 15/10 it was 325, on 30/10 it was 313, on 28/11 it was 224. -Since the third meeting, all the documents requested were delivered physically and by way of Google Drive. -14 employees have expressed their intention to avail themselves of the outplacement plan. -The closure of Girona was a decision taken beforehand, there is only one aircraft.

Undisputed facts: -The mediation proposal, the company could not accept it because it meant leaving the redundancies without effect. -The strikes lasted until 29 September. - On 3/10, the company sent out a notice of the beginning of the collective redundancy procedure (abbrev. 'ERE') and on 15/10 they met for the first time. -The first thing the company did was to summon the members of the Committee by way of 2 different letters, one to pilots and the other to cabin crew, for a meeting on the same date and at the same time and place. -The translation was revised and the company introduced several changes. -Finally, they agreed to sign the minutes 3,4,5,6, arranging to sigh them on 22/11. -In the first meeting there was no English translator, but the company's lawyer acted as translator. -The mother tongue of some members of the ad hoc committee is English. -A translator was present at all but the first

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meeting of the consultation period. -Two representatives of the outplacement company were present at the fourth meeting to explain its contents. -The intervention of AL was requested by both the employee and employer sides. -The letters sent by the company to LOLS delegates stated their status and reasons for termination.

Fifth: All legal formalities have been observed in the conduct of these proceedings.

FACTS AS FOUND

FIRST.- On 23 August 2019, Ryanair DAC, in the absence of unitary representatives in the company, sent all the workers who provide services at the airbases operated by the company at the airports of Las Palmas de Gran Canaria, Tenerife, Lanzarote and Girona to select ad hoc committees in order to negotiate a period of collective redundancy, those communications were sent in English, and all of them are contained in the descriptors 64 to 69, where, save for any error or omission in the calculation, a total of 583 communications were made.

The translation of part of the same is contained in the descriptor 284 and its text was worded as follows:

"As you are aware Ryanair issued a stock exchange notice on 16 Jul last, with an update on the delivery delays of the Max aircraft which will impact the aircraft allocations for this Winter and for Summer '20. The Max deliveries which were planned to be 58 aircraft over the winter are now reduced to approx. 30 aircraft, however this may reduce further if there are further delays at Boeing.

In addition to the Max delays, Ryanair has announced 2 profit warnings in the last 10 months, with our most recent Q1 results showing a 41% drop in profits over the previous two years. There is significant overcapacity in the European short hall market, with fares continuing to fall while costs, including oil and pay, continue to rise. Our Commercial Department have undertaken a review of aircraft allocations and following this review a decision has been made that a number of bases including Tenerife, Lanzarote, Gran Canaria and Girona will close effective from 08 Jan '20. Our main focus will be on minimising job losses with transfers. There is currently a surplus of cabin crew across the network and it will be a process of matching vacancies with transfer requests. However, redundancy is a likely outcome, but we will do everything we can to minimize job losses.

It is with regret that I must inform you, in accordance with Article 41.4 and Article 51 of the Spanish Workers Statue, of our decision to commence collective dismissal proceedings for all Ryanair DAC employed cabin crew and pilots based in Tenerife, Lanzarote, Gran Canaria and Girona. In accordance with the provisions of Article 51 and Article 41.4 of the Spanish Workers Statute there is a period of 15 days from today to appoint a commission to represent you during the consultation process for collective redundancies.

Once the negotiating commission [sic] has been appointed, i.e by Sunday 08 Sept '19, we will commence the collective dismissal consultation process in accordance with Article 41.4 and Article 51 of the Spanish Workers Statute.

I am very sorry to bring you this news and we very much regret that the Max aircraft delays have put us in this position. Our focus now will be working with the commission to minimise job losses."

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SECOND.- On 24.8.2019 the company sent to the pilots of the bases referred to in the previous section and to those who had been issued the communication referred to in the same, a document in English, the translation of which is as follows:

"As you know, our ACE base is one of the bases closing or reducing this winter as a result of the Boeing MAX delivery delays.

During previous base closures/reductions, we were growing and hiring pilots, so we were able accommodate displaced pilots from closing bases with transfers in other bases.
Regrettably, as pilot resignations have dwindled in recent months, we have a surplus of over 500 pilots across our network. This means job cuts are inevitable, but we are working hard to re-accommodate as many pilots as possible.

In advance of any required redundancy consultations, we are asking pilots in affected bases to indicate if they are interested in either extended unpaid leave (up to 12 months) or one of the very limited number of alternative positions available around the network. Those potential positions are in:

Captain Slot Availability		
Base	*Slot Available*	
FEZ	*Full-time*	-
BUD	*Full-time*	-
SEN	*Full-time*	-
MRS	*Full-time*	-
OTP	*Full-time*	-
RAK	*Full-time*	-
PIK		*75 %*
AGP	-	*75 %*
LAC	-	*75 %*
EMA	-	*75 %*
PMI	-	*75 %*

There are also limited vacancies available (below) in both Buzz and Laudamotion also and applications can be made directly to the other airlines within the group:

- *Buzz:* *pilotrecruitment@warsawaviation.com*
- *Lauda:* *recruitment@laudamotion.com*

Other Airlines		
Base	*Slot Available*	
BUZZ (Poland)	*Full-time*	
BUZZ (PRG)	*Full-time*	
Lauda (VIE)	*Full-time*	

If you are interested in either unpaid leave for 12 months or one of the base positions, please let us know via Zendesk by Monday 30 Sep. Since Belfast is closing, if you opt for

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unpaid leave you would have to be stationed at another base at the end of the unpaid leave. We can work through these details with you if you are interested this option.

Please understand that we have over three times as many surplus pilots to accommodate as transfer positions available, so it is vital that you let us know immediately if you are interested before the positions are taken" - descriptor 62, in English, and descriptors 278, 280, 283 and 284 translated into Spanish.

THIRD.– On 7-9-2019 the appropriate assemblies were held at each of the bases affected by the collective redundancy procedure which is now being contested, each of the bases having appointed to the ad hoc committees the following workers:

- Fernando Diaz, Nicolas Mendez and Luciana Gacela, by the worksite of Las Palmas de Gran Canaria;
- Jairo Gonzalo, Paloma Lozano and Jacob Pieter Breure, by the Santa Cruz de Tenerife worksite (Tenerife South Airport);
- José Luis Acosta, Abdelasam Mohamed and Aida Trotiño, by the Lanzarote worksite;
- Lidia Arasanz, Alexandra Sais and John Fitzgerald Faessel, by the Girona worksite.

On the same day, the workers designated to form part of each of the "ad hoc committees" in the bases affected by the collective redundancy, notified the company of said designation in the prescribed manner and within the prescribed time limit. -agreed-.

FOURTH.- Prior to these communications, the company had already communicated to the pilot and cabin crew unions with representation in the company (USO, SEPLA and SITCLA) on 7 and 8 August 2019 its intention to instigate a collective redundancy, although limited to the bases in the Canary Islands. Said communication was made at the SIMA headquarters on the occasion of mediation proceedings arising from questions concerning the negotiation of collective agreements by staff category – agreed-.

FIFTH.- On 30 August 2010, an attempt at mediation was conducted before the Directorate-General for Labour as a result of a strike called by the cabin crew unions – USO and SITCLA - in which the following proposal for an agreement was proposed but rejected by the company:

"In response to the request by Ryanair for mediation before the Directorate-General for Labour to put an end to the strikes called for in September, the Directorate-General for Labour made the following proposed Agreement:

The formation of a working group between the public authorities involved and the company, informing the unions calling for the strike after each meeting of any matters affecting the employment and labour aspects.

The company, without prejudice to its right to initiate a collective redundancy procedure, and in accordance with the proposal made by the Directorate-General for Labour. [sic]
The company, without prejudice to its right to initiate a collective redundancy procedure, and in accordance with the proposal made by the Directorate-General for Labour, leaves without effect the letters sent to the workers on 23 August 2019.
Both parties undertake to immediately commence negotiations on the Collective Agreement for Ryanair DAC, which will be supported and advised by the Directorate-General for Labour throughout the process. Such commencement must take place before 20 September 2019. If the negotiations do not start by this date, the unions that have signed this agreement will not cancel the strikes already planned for the days following that date.

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With this proposed Agreement, the strikes of 1, 2, 6, 8, 13 and 15 September 2019 are not called, and the suspension of the strikes of 20, 22, 27 and 29 September is conditional on the start of negotiations on the Collective Agreement".

The strikes took place on the scheduled dates - agreed -.

SIXTH.- On 26 September 2019, the unions USO, SITCPLA and SEPLA addressed the Directorate-General for Labour on 26 September 2019 by means of an e-mail in which they informed the labour authority of Ryanair and its agencies' delay in initiating the consultation period. This e-mail was answered by the Directorate-General for Labour in the terms recorded in the written communication contained in descriptor 207, incorporated by reference.

SEVENTH.- On 3 October 2019, the company sent two written documents in English, one to the four pilots who had been designated as members of the ad hoc committees and the other to the also designated eight cabin crew workers, informing them of Ryanair Dac's intention to initiate a collective redundancy procedure potentially affecting all the workers at the bases/worksites in Las Palmas de Gran Canaria, Santa Cruz de Tenerife, Lanzarote and Gerona, convening them for the start of the consultation period process on 15 October 2019.

The members of the "ad hoc committees" elected by the workers of the four bases concerned responded to this notification in writing, sending it to the Company on 4 October with the following considerations:

- That they understood that the communications had serious defects in that the ad hoc committees were indistinctly made up of pilots and cabin crew members, since the call had been made by differentiating the different professional groups, when all the members designated by the workers to form part of the ad hoc committees, a total of 12 workers, would be the employee side members of the ad hoc joint consultative committee of the enjoined collective procedure.

- Likewise, they were required to make communications in Spanish on future occasions and these should be addressed to the 12 members on the employee side of the negotiating board of the collective redundancy procedure".

Both the pilots and the cabin crew had been summoned by the management of the company at the same site – agreed -.

EIGHTH.- On 15.10.2019, the Ryanair DAC Management handed over to the ad hoc Committee the documentation listed in descriptor 40, which consisted of:

- Communication of the commencement of the consultation period;
- Technical report.
- Explanatory report of the organisational and productive grounds;
- Number and classification of workers affected by the redundancy;
- Number and classification of workers usually employed in Spain in the last year;
- Number and classification of workers employed by the Company in Spain;
- Redundancy Measures Plan.
- A copy of the communications addressed to the workers communicating the intention to initiate a collective redundancy, attaching a sample of the communications, bearing in mind the high number of employees to whom the communication was sent;

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- Communications informing of the workers designated to form part of the negotiating committee.
- Call for the first formal meeting of the consultation period.

As for the criteria for the designation of those affected, it is indicated that since the four bases will be closed, there is no other criterion than the attachment to the bases that are being closed and that the terminations would be effective from 8.1.2020.

Of the documentation provided, the following should be highlighted:

A. Regarding the technical report.

It consists of 18 pages, although the name of the issuing entity is indicated ("Oxera") it is unsigned, and it is dated 19.9.2019.

It refers to the delay in the delivery by Boing of 30 737 MAX aircraft that Ryanair had acquired, making it necessary for the company to reorganise the 'winter 2018-2019 and summer 2020' campaign (sic), closing inefficient bases or reducing the number of aircraft based at those airports.

It justifies the closure of the three bases in the Canary Islands on the basis of the following factors:

- Lower fares due to poor demand and base flight schedules do not match the preferences of passengers with very early departures and very late arrivals;
- High cost of operations at each base as a result of Ryanair having to operate longer routes but fewer daily flights. To and from the Canary Islands.
- Low aircraft utilization as a result of fewer daily flights per aircraft at the Canary Islands bases.
- Uncertainty generated by Brexit and the impact it will have on Ryanair's business, particularly in the Canary Islands.

The decision to close Girona is justified due to the significant decrease in demand during the winter season.

It is noted that the report is based on data provided by Ryanair.

The following ratios are used to demonstrate the reasons given in respect of the Canary Islands airports:

- Check-in per passenger per block of hours and comparative graphs are provided for each of the bases with the average of the entity in the months of October 2018 to March 2019;
- Average number of sectors covered per aircraft and day for each of the Canary Islands bases during the summer of 2019 compared to the average for bases with a comparable number of aircraft.
- The impact of the Brexit is that 39 percent of the departures from Canary Islands bases are to the United Kingdom compared to 24 percent on average in the rest of the Spanish bases.

To prove the temporality of the Girona airport, there are graphics related to the capacity of scheduling flights from the airport in comparison with the network of bases of the company between April 2016 and August 2019.

B.- The explanatory report bases the termination of a total of 326 employment contracts on organisational and productive grounds, reproducing what is written in the technical report.

C.- The redundancy scheme provides for an individual plan for lay-offs with a pay of 20 days of salary per year worked, what is called an external outplacement plan for those affected, the cost of which is said to be assumed by the company, it is also said that the company will assume the cost of the special pay-in scheme that would be signed with the social security for

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those over 55; and that with the aim of mitigating the effects of lay-offs on the affected workers the company will consider implementing alternative measures such as geographical mobility of workers to other vacancies.

NINTH.- The minutes documenting the commencement of the consultation period are reproduced in descriptor 35, although we should highlight the following:

1.- That all but one of the representatives of the ad hoc committee elected by the workers appeared, and that persons designated by RYANAIR DAC equally appeared,

2.- That the parties consider that the collective redundancy procedure has been initiated.

3.- That the following reproaches are made to the company by the employee side, which, in its opinion, vitiated the consultation period from the beginning, since they prove the absence of good faith on the part of the company:

a.- The company's appearance at that meeting without a translator and its intention that all meetings should be held in English.

b.- The manner chosen by the company to address the procedure, since, having announced on 23 August its intention to commence a collective redundancy procedure, such did not commence until 15 October.

c- That prior to the formal commencement of the collective redundancy procedure, the company had sent communications to pilots, inviting them to express their interest in taking unpaid leaves for 12 months, and even offering them "posts" in other bases and additionally vacancies in other companies of the group such as Buzz Air and Laudamotion, all of this in addition leaving out the union organisations established in the pilot and cabin crew groups.

d- That the employee side is also aware that layoffs and transfers are taking place, imposing "unpaid leaves".

4.- That, in view of the aforementioned, the employee side requested the following documentation:

a.- All the letters sent to pilots inviting them to express their interest in unpaid leave, changes of base and filling of vacancies in companies of the group;

b.- replies received by the company from any pilot in relation to these invitations

c.- changes of base, unpaid leave or changes of company to others in the group that took place in the months of September to October;

d.- numbers of layoffs, transfers to other bases for any reason since 23 August and unpaid leaves imposed by the company and which it calls voluntary.

5.- Similarly, the employee side states that, there being five Labour Inspectorate reports finding a situation of illegal transfer of workers from the Workforce and Crewlink agencies to Ryanair, it considers that the personnel affected by the same should be included in the negotiating board.

6.- The company states that it objects to the statements of the employee side, proposing a practical approach in order to deal with the closure of the bases, minimising the loss of jobs. It also emphasizes that the company representatives do not speak Spanish, and that some of the members of the Committee are not native Spanish speakers, so it is convenient that the consultations are carried out in both languages, highlights the good faith that it has had in offering individually to pilots affected by the collective redundancy the existence of vacancies so that they can apply for them in time before they are filled by others, since they are in great demand among the company's personnel and will cease to be available.

7.- The parties are convened to hold the following meetings on 25.10.2019 and 30.10.2019.

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At this meeting, the company's statements were translated by the company's lawyer, Mr. Hita Fernandez – agreed-.

TENTH.- The company informed the Directorate-General for Labour of the commencement of the consultation period by means of a written document dated and signed on 16.10.2019 (descriptor 41), which was presented at the post office on the following day - administrative file - and entered into the Directorate-General on 22.10.2019. It was sent to the Labour Inspectorate and the SEPE on the following day - administrative file -.

On 24 October, the Directorate-General for Labour sent an e-mail in the following terms: *".it has been established that we do not have on file and the following documentation should be provided:*
- Evidence of Juan José Hita Fernández acting on behalf of the company RYANAIR, DAC (general power of attorney to act in any administrative act and before any public authority), in accordance with Article 5 of the Public Authorities (Common Administrative Procedure) Act 39/2015 of 1 October, since only a power of attorney for lawsuits of the year 2015 for the company RYANAIR LIMITED is provided.
- Evidence of the workers' representation: Record of the election of the representatives of the Las Palmas worksite duly signed by the three elected workers. In the case of the Lanzarote worksite, it is not known whether ad hoc representatives have been appointed or whether their representation has been delegated (Article 26 of the Regulations approved by Royal Decree 1483/2012 of 29 October) and Article
41(4) of the Workers' Statute Act.
- A copy of the communication addressed to all workers, informing them of the company's intention to initiate a collective redundancy procedure so that they can proceed to set up the ad hoc joint consultative committee in accordance with the rules set out in Article 41(4) of the Workers' Statute Act (Article 3(1)(f) of the Regulations approved by Royal Decree 1483/2012 of 29 October).
- Worker representatives who will be members of the ad hoc joint consultative committee (record of formation) or the indication of the lack of formation of such committee (Article 3(1)(g) of the Regulations approved by Royal Decree 1483/2012 of 29 October).
- Request for the issue of the report referred to in Article 64(5)(a) and b) of the Workers' Statute Act (Article 3(3) of the Regulations approved by Royal Decree 1483/2012 of 29 October).
The company must also provide proof that the documents referred to above have been handed over to the worker representatives who are members of the ad hoc joint consultative committee " - administrative file -.

This request for rectification was completed by the company on 6 November 2019, although it delayed the delivery of the report request to the ad hoc committee until a later date, which was not delivered until 19 November 2019.

ELEVENTH.- The second meeting took place on 25 October 2010 and was attended by representatives of Ryanair and of the companies Workforce and Crewlink and a worker representative committee made up of representatives designated by the affected workers (the 12 elected by Ryanair DAC workers and 13 more chosen by the so-called agencies), the content of the same is contained in the descriptor 36 that we incorporate by reference in its entirety, although we highlight the following:

1.- That the worker representatives reproach the company for not having requested the mandatory report, and the company replies that this report is not mandatory when it is negotiated with an "ad hoc committee";

2.- That the worker representatives also criticise the fact that the documentation requested at the previous meeting was not handed over to them, stating that they had requested new documentation the day before.

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3.- That the employee side, in addition to repeating the statements made at the previous meeting, values the documentation provided at the commencement of the consultation period, specifically considers that the accompanying redundancy scheme is not such, that there is no outplacement plan as there is no record even of a company being hired for this purpose, lacking also specific training content.

4.- That the companies propose to hold the meetings of the three registered EREs, in a unitary manner, with the worker representatives of the three companies.

5.- That the company considers that the outplacement plan is in accordance with the legal provisions, not being necessary to identify the company that is going to carry it out, although it indicates that the company that will carry it out is LEE HECHT HARRISSON, with respect to the redundancy scheme, it also considers the same to be sufficient, considering covering the workers transfers, and that it will contract the existing vacancies.

6.- The company delivers the signed technical report in English, the employee side states that the date of the signature is 24.10.2019, after the commencement of the consultation period and the date of the report is 18.9.2019, that is, a different date from the one initially delivered, dated 19.9.2019.

7.- The company explains the vacancies for pilots and cabin crew, both in the company and in the group companies, although it warns that these are the ones that exist at the moment and are susceptible to being covered by other employees, referring to a collective redundancy procedure that is followed at Hamburg airport. The company points out that in the event that these vacancies are taken up, it will assume as compensation the ticket of the transferred employee and the cost of luggage, and that the latter will have to assume the conditions of the vacancy for which he is applying.

8.- Finally, the employee side raises the question of flight scheduling and compensation for the members of the committee, stating the following:

"The employee side raises the fact that the members of the ad hoc joint consultative committee are losing earning because of their status as members of the ad hoc committee; the Company is required to compensate this type of lost earnings. The Company responds that it does not find that this is a matter for the board and that it will be discussed, if appropriate, with each group separately, cabin crew and pilots, which causes that the employee side considers that it is being financially harmed by participating in the ad hoc committee, having to negotiate the compensation so that it does not generate loss of remuneration to the workers who are part of this ad hoc joint consultative committee. The employee side argues that the ad hoc representatives are being harmed by the fact of participating in this negotiation, seeing their remuneration reduced by the fact of not flying when attending the meetings. They propose that these hours be compensated with the average value. The company does not answer whether it will bear the remuneration they are losing.2

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TWELFTH.- The next meeting took place on 30 October 2019, although the parties did not reach a consensus on the minutes of the meeting, as the company refused to sign them since, once they had been translated into English, the company's representatives wanted to introduce statements that were not agreed upon.

It is clear from the correspondence between the parties in descriptor 213 that at that meeting in relation to what is claimed in the eleventh fact in the claim, the following should be noted:

1. that the company provides some of the requested documentation, - as contained in documents 10 to 19 of its proof, - the employee side complaining about the untidy and unintelligible way in which it is provided, lacking a table of contents, to which the company replies that it is uploaded on Google Drive and that in any case the content of each document is referred to at the beginning;

2.- that the employee side puts forward several considerations related to: the importance of the delivery of the information of the MAX contract, the need to communicate the period in which the redundancies are going to be carried out, the recognition of the seniority of the workers, the incidence of the Thomas Cook collapse in the reasons given for the

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closure and the variety of failures to comply with formal requirements and to submit the necessary documentation since the beginning of the period.

3.- that the company emphasizes informing verbally regarding the workers who would be willing to apply for vacancies, referring verbally to those existing for each category, the employee side expressing that they differ from those offered in the previous meeting;

4.- that the employee side requires an outplacement plan, the employer side pointing out that Art. 9 of RD 1483/2012 allows this to be carried out during the consultation period;

5.- the author of the technical report is requested to appear.

THIRTEENTH.- On 6 November 2019, a written document was entered with the Directorate-General for Labour from the ad hoc committees - both Ryanair and the two agencies - dated 4 November 2019, stating that it had been impossible to send it by e-mail and describing the irregularities which, in their opinion, had taken place during the consultation period: With regard to the technical report, the so-called "Redundancy Scheme", and the absence of an outplacement plan, as well as the request for a report from the statutory body of worker representatives and the lack of delivery of the requested documentation and describing the lack of willingness to negotiate on the part of the company, since the only offer it had made to alleviate the consequences of the redundancy is to compete for ordinary vacancies, as well as the communications made to the pilots on 24.8.2019, once the collective redundancy was announced and before the designation of the ad hoc committee, they request the attendance of the Labour Inspectorate - descriptor 8 of the administrative file-.

This request was sent to the company - descriptor 9 of the file - and to Labour Inspectorate – descriptor 10, and was answered by written communication dated 7.11.2019 in the following terms:

"By virtue of Article 10 of the Regulations on procedures for collective redundancy and the suspension of contracts and reduction of working hours, approved by Royal Decree 1483/2012 of 29 October, and in order to ensure the effectiveness of the consultation period with regard to three collective redundancy procedures initiated by the companies RYANAIR, DAC, CREWLINK IRELAND LIMITED and WORKFORCE INTERNATIONAL LIMITED, LTD, this Directorate-General for Labour considers it appropriate and has decided to attend the meetings of 7 and 8 November, in the person of Fco. Javier Lara (Technical Advisor of this Directorate-General for Labour), accompanied by a Labour Inspector designated the written submission sent to this Labour Authority on 04.11.2019, although this action does not imply any incidence regarding the issue of the mandatory report that will be issued by the Labour Inspectorate".

FOURTEENTH. - We incorporate by reference the e-mails sent by the companies to the advisors of the ad hoc Committee, which are listed in descriptor 376 dated 31 October 2009, informing of the creation of a space on Google drive for the sending of documentation and its inclusion in the documentation provided on paper at the meeting the previous day, and on 5 and 6 November 2019, notifying the inclusion of further documents.

FIFTEENTH. - The following meeting of the consultation period was held on 7.11.2019 with the presence of the Technical Advisor of the Directorate-General for Labour, Mr. Lara, as well as the Labour Inspector, Roberto Rodríguez, documented in the minutes contained in descriptor 37, which we incorporate by reference, although we highlight the following:

1.- The employee side states at the beginning that on 6 November it was aware of the requirements of the Directorate-General for Labour, given that the labour authority itself had

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not communicated with it and states that it does not communicate either the requirements which will be delivered by email because its desire was to deliver the requirements along with all documents required by the Labour Authority, also noting that Google drive is not a channel agreed to deliver documentation;

2.- The employee side also asked the employers on what date they had received the aforementioned requests without obtaining a response;

3.- The signatory of the technical report appears, acknowledging that the data with which the report has been made has been provided by the company that has contracted its services, that is to say, Ryanair and RDC AVIATION, to questions of the employee side the signatory of the report indicated that she ignored the document in Spanish, the company undertaking to make delivery of a certified translation. The company was questioned about the date on which the report had been signed (24 October) and it replied that it did not know that it had to be signed, stating that the report had been drawn up on 18 September, although the documentation submitted was dated 19 September and signed on 24 October, and that Ryanair was being investigated by the European Union for subsidies received from governments and that it could be forced to return these subsidies so that these and their impact had not been taken into account when the report was drawn up, It also stresses that the report did not assess the favourable effects that the bankruptcy of Thomas Cook might have for Ryanair because it occurred on 23 September 23.09.2019, i.e. after the report was issued;

4.- The employee side, considering that the report is more than insufficient and does not prove any of the grounds it claims, requests taking part in a data room to verify the alleged data provided, and the company refuses;

5.- A technician appointed by Sepla appears to check the data in the report.

6- At the request of the companies, the heads of an outplacement company attend, namely of Lee Hecth Harrisson, and they explain the manner they operate and the type of services they offer for these assignments, the employee side asking if they had drawn up a specific outplacement plan for Ryanair and when they had signed the contract with the company, to which they pointed out that they had not signed any contract and the company announces that this protection would only apply to Ryanair and WorkForce workers;

7.- They are then asked which documents have been delivered by the company, which have been uploaded to Google drive and which are pending delivery, the employee side requesting new documents - specifically the age of the pilots affected, taking into account the previous commercial relationship with the defendant.

SIXTEENTH. - On 8 November 2019, the fifth meeting of the consultation period was held, with the presence of the Advisor to the DG FOR Labour and the above-mentioned Inspector, whose minutes are reproduced in full, although we highlight the following:

1.- That at the beginning the employee side is interested in holding new meetings on 12,13 and 14 November 2019, as well as extending the consultation period until 18 November, the company stating that the next meeting will be set when the one currently being held ends;

2.- The employee side recalls in the following terms that the problem of financial compensation for the ad hoc representatives who are members of the negotiating board has not been resolved:

"Going to meetings means they do not fly and therefore they lose their variable remuneration for flight hours. For this reason, they proposed at the time that they be compensated for this part with the average remuneration. And they make it clear that the solution proposed by the company, to make them fly more hours to ensure more compensation, is flagrantly illegal, recalling, in addition, remember that there are cabin crew members who do not have fixed remuneration The employer side confirms again that workers will receive the same remuneration as colleagues who are operating flights and that any mismatch will be

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compensated and solved as appropriate in each case. The employer side undertakes to send the members of the committee an example of how the employees of each of the bases will be compensated for the time spent on negotiation.

3.- The employee side refers to declarations to the CFO of Ryanair in which he admits that 20 aircraft will be received in March, as well as compensation from Boing [sic], which is denied by the company, pointing out that the contract between Boing [sic] and Ryanair is confidential;

4.- An updated redundancy scheme is presented by the employer side, in which

- vacancies are offered in the company and in other companies of the group, with the possibility of freezing for 14 days;

- performance appraisal is set as a criterion for eligibility for vacancies, taking into account the following parameters: unauthorised absences in the last 12 months, delays in starting work in the last 12 months; days of absence in the last 12 months and sales: average over the last 12 months in relation to the allocated budget, in the event of acceptance of the vacancy the following compensation is offered: EUR 500 gross as compensation for the outplacement, one week's paid leave to facilitate the outplacement with payment of all fixed items and a Ryanair Dac flight for the transfer including excess baggage (maximum 2 suitcases);

- the outplacement plan of the company LEE HECHT HARRISON is attached;

- it is provided that in the event that there are no vacancies or the transfer offered is not accepted, the cabin crew of the base concerned will be affected by the redundancies proposed, and that the severance pay will take into consideration the following aspects: 20 days' pay (gross) for each full year of service with a maximum of 12 monthly payments, daily salary based on the average gross salary during a period of 12 months divided by 365 days, years that are not complete will be pro-rated at the rate of 1/12 per month and for the purposes of 'years of service', such are defined as the time elapsed since the start of employment with Ryanair DCA (except for crew members to whom the 9.1.2019 Agreement applies);

- with regard to the Girona Base, the possibility is provided of maintaining it as a seasonal base in the event that the pilots and cabin crew accept the conversion of their contracts into 75 per cent or seasonal contracts, for which the personnel will be required to establish a seasonal contract on 1 December, so that those who do not sign it will be included in the collective redundancy and will be eligible to be made redundant under the conditions provided;

5.- The employee side criticizes the redundancy scheme, pointing out that it is a mere invitation to compete according to the ordinary system of covering vacancies in the company, the company commits itself to blocking vacancies for 15 days only if the envisaged agreement is accepted.

6.- The employee side requests a list of workers with seniority to which the 9.1 Agreement applies;

7.- The employee side requests the immediate unattachment of Girona airport, to which the company is opposed and conditions its conversion on a seasonal basis to the signing of the agreement, which is considered blackmail by the employee side.

8.- Likewise, the employee side considers that if the grounds for redundancy is the delay in the delivery of the Max aircraft, what would be appropriate, in any case, is an ERTE, to which the company objects by expressing its firm decision to close the less productive bases and that the new aircraft, in any case, will be sent when they reach other bases;

9.- The employee side considers that the absence of offers of positions for cabin crew in Spain is incompatible with the fact that recruitment campaigns are being carried out for personnel to work in Spain, and also denounces the fact that personnel have been transferred from the affected bases to other bases in Spain without objective criteria, to which the company replies that although personnel are being recruited for an employment exchange, they are not to provide services in Spain;

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10.- The employee side also denounces that the vacancies offered differ from one meeting to another, as well as the positions that are posted on Google drive, with the company modifying the documents it delivers;

11.- The provided outplacement plan is discussed, with the employee side refusing to consider it such, and the possibility of counting as service time that served under commercial contracts, to which the company objects;

12.- The employee side proposes new meetings on 11,12, 14 and 18 November, the company stating that it is only available to meet on 14 November.

SEVENTEENTH.- The last meeting of the consultation period was held on 14 November 2019 and its content was documented in the minutes contained in descriptor 39, which we incorporate by reference, although we highlight the following:

1.- The company delivers on paper various documents requested in previous meetings to the Ryanair ad hoc committee (including the request for a report from this side), which amounts to a total of 27 blocks of documents, indicating that they are available on Google drive in any case, and stating that those documents that have been modified in any way will be uploaded;

2.- After assessing the redundancy scheme, the company makes a new offer in which, maintaining the conditions of the previous one, it increases the pay to 22 days per year worked and takes into account the length of service in the company as a criterion for assigning vacancies;

3.- The employee side proposes an alternative offer consisting of: unattachment of Girona, application of an ERTE in the Canary Islands favouring the transfer to Spanish bases; compensation for lay-offs and suitable vacancies and the use of objective selection criteria;

4.- the consultation period is considered to have ended without agreement.

EIGHTEENTH: On 22 November the parties met to sign the minutes of the consultation period, but the minutes of the 30 October meeting were not signed because once the text agreed by the advisors had been translated into English, the representatives of the companies wanted to introduce nuances that were not accepted by the employee side - testimonies.

On 28 November 2019**,** the management of the three companies sent a communication to the members of the three committees in the following terms:

"Dear all,

I refer to our meeting of 14 Nov which concluded the consultation period for the Collective Dismissals [sic].

As you are aware, the consultation period commenced on 15 Oct and we held six meetings with the Commission [sic] in total. Throughout the consultation period the Company did everything to engage constructively with the Commission [sic] including arranging for an independent expert from Oxera (independent analysts that conducted a report on the reasons for the base closures) to attend a meeting to answer questions regarding the report, and took significant steps to compromise, negotiate and try to reach an agreement with the Commission [sic] by proposing a detailed Social Plan [sic] which included the following:

- A mechanism to rescue the Girona base and save 120 jobs

- A specific list of vacancies across the Ryanair network which would be held open far affected staff in the Canaries

- A contribution towards transfer expenses

- An enhanced redundancy package

- A detailed outplacement plan to assist our people find alternative employment

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This reasonable offer was rejected by the Commission and your advisors who refused to engage with us to negotiate, or put forward any proposals, on the Social Plan. Following this failure to reach an agreement, the Company has written to the Labour Authorities today confirming the final decision of the Collective Dismissal process which is as follows;
Tenerife, Lanzarote, Gran Canaria
Tenerife, Lanzarote and Gran Canaria will close on 08 Jan 2020. All crew and pilots in these bases will be made redundant as a result of the base closure and will be provided with the 15 days' notice required in accordance with Spanish legislation, unless they secure a transfer position. We currently have a very limited number of vacancies still available across the Ryanair network and whilst the commission rejected our offer during the consultation process to keep these vacancies open for crew in the Canaries, if our people in the Canaries wish to apply for these vacancies they should indicate their preferences by 05 Dec. All transfer requests will be processed by 13 Dec and the successful candidates will be notified by 16 Dec.
In accordance with Article 51.5 of the Workers Statute and Article 10.3 of the Organic Law of Trade Union freedom regarding Union Delegates and their potential preference to remain employed, since the Canaries bases are closing entirely, there is no employment available for the Union Delegates in these bases to remain employed there. As is the case with all staff in the Canaries, they can indicate their preferences for the limited vacancies available across the Ryanair network.
Girona
Our Commercial department have confirmed that the Girona base can remain open if it is converted into a seasonal base. This will require a sufficient number of cabin crew and pilots transitioning to a seasonal contract (fijo discontinuo). A meeting will be held in the Girona base on 28 Nov 19 to brief all crew and answer any questions regarding the seasonal contract, following which contracts will be issued to GRO cabin crew and pilots. A final decision will be made as to whether the Girona base will remain open by 06 Dec '19.
I am disappointed that we couldn't reach an agreement during the consultation process, which was not helped by the unprofessional and obstructive attitude of certain commission advisors which included repeated shouting and refusing to meaningfully engage, which made it impossible to conclude a Social Plan.
Yours sincerely,
Darrel Hughes."

TWENTY. - On the same day, Ryanair's representatives wrote to the Directorate-General for Labour in accordance with the terms of descriptor 20 of the administrative file, the contents of which we incorporate by reference, giving an account of the conclusion without agreement of the consultation period and of the final decision adopted, which differs from the notification made to the ad hoc Committee, since

1.- it is done in Spanish;

2.- the total number of people affected is quantified as 224 in the e [sic]

3.- the period to carry out the redundancies, from 8 to 23 January

4.- what the company calls an "accompanying redundancy scheme" is attached, referring to the possibility of applying for vacancies in the RYANAIR network (practically all of them outside Spain and with different contracts);

5.- it refers to the 20 days' pay for redundancy per year of service in the same terms as for its calculation was made to the ad hoc committee during the consultation period.

6.- reference is made to the Girona base, stating that employees must sign a seasonal or part-time contract at 75% or else they will be made redundant;

It states that the first to third paragraphs thereof shall be notified within 15 days to the ad hoc joint consultative committee.

John Woodger
Traductor-Intérprete Jurado de Inglés
N.º 4651
[signature] 13/5/20

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The following documentation was attached to said written submission: minutes of the consultation period, except for those of 30 October 2019, outplacement plan, Redundancy Scheme and list of affected workers.

TWENTY-FIRST.- On 28 November 2010, the ad hoc Committee issued a report on the collective redundancy instigated by Ryanair and the three agencies, to which was attached an expert's report, the contents of which are incorporated by reference - descriptor 18.

We incorporate by reference descriptors 21 and following with regard to the proceedings conducted by the Directorate-General and we emphasize that on 18 December 2019 the Labour Inspectorate issued the report that is in descriptor 34.

Likewise, SIPLA has reported to the Labour Inspectorate the fact that the contracts presented to the Girona workers for their conversion into seasonal ones include contractual modifications and loss of rights beyond the continuous or discontinuous nature of the activity - descriptor 235-.

TWENTY-SECOND.- On 10 January 2020 the company informed the labour authority of the number of workers affected by the collective redundancy, a total of 193 workers, of whom 87 were assigned to Tenerife Sur, 47 to Lanzarote, 48 to Las Palmas and 11 to Girona- descriptor 81-.

TWENTY-THIRD.- Among the workers made redundant are the union delegates designated by USO.

TWENTY-FOURTH.- We incorporate by reference the reports drawn up by Labour Inspectorate contained in descriptor 204 in which it can be seen that there is an illegal transfer of labour in relation to the personnel hired by the Workforce and Crewlink Agencies on Rayanair DAC aircraft.

TWENTY-FIFTH.- We incorporate by reference the claims made by members of the ad hoc joint consultative committee in relation to the compensation for their attendance to the same – documentary evidence provided by USO at the trial.

TWENTY-SIXTH.- We incorporate by reference the journalistic articles provided by USO at the hearing.

TWENTY-SEVENTH.- We incorporate by reference the lists of transferred workers in descriptor 205.

TWENTY-EIGHTH.- The Workforce and Crewlink Agencies have held OPEN DAYS for the recruitment of personnel in the bases and on the dates referred to in descriptor 208.

TWENTY-NINTH.- We incorporate by reference the report carried out by the Vice-Ministry of Economy and Economic Affairs with the European Union on the impact of Brexit - descriptor 237-.

LEGAL BASES

FIRST: The Employment Division of the National High Court is competent to hear the present case in accordance with the provisions of *Articles 9, 5* and *67 of the Judiciary Act 6/85 of 1 July 1,* in relation to the provisions of Articles 8(1) and (2)(g) of the Employment Jurisdiction Act 36/2011 of 10 October.

John Woodger
Traductor-Intérprete Jurado de Inglés
N.º 4651
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SECOND - In accordance with the provisions of Article 97(2) of Act 36/2011 of 10 October, the drafting of the findings of fact of this decision is based either on facts that conform, or on the sources of evidence expressed therein. Although we must point out in this regard:

- that we cannot give any credibility to what is contained in the technical report that was attached during the consultation period, nor to the supplementary expert's report that has been presented during the trial, since there is not even a record of the author's professional qualifications, nor is any objective documentation attached that could be used to verify the data, which in most cases are based on the information provided by the company that commissioned the report;

- that, likewise, we do not consider as proven the data related to the annual salaries of the workers affected by the collective redundancy, and by the members of the ad hoc joint consultative committees inasmuch as they are documents prepared by the defendant itself, not recognized nor verified by means of any evidence, without the witnesses requested by the company being able to be considered as such, as upon answering the general questions of the law, they expressed their personal interest in obtaining a judgment of favorable content.

- and that as regards the number of communications sent to the workers initially affected by the collective redundancy and sent on 23.8.2.019, we have simply limited ourselves to counting the number of those sent by the company.

On the other hand, it is considered that the call for additional testimonies requested by Ryanair regarding the testimony of the labour inspector FRANCISCO JAVIER LARA TORIBIO is unnecessary, since at the time of the hearing it was specified that it was to question him about the reason for the parties' failure to sign the minutes of the meeting held on 30 October 2019, a circumstance which is in any case irrelevant for the resolution of the dispute.

THIRD: The claimant union organisations, as well as the ad hoc Committee that intervened during the consultation period of Ryanair's collective redundancy, seek a ruling holding unlawful the decision to terminate or, in the alternative, an adjudication of inconsistency with the law, for the following reasons:

1.- Lack of grounds for the terminating decision;

2.- Absence of an authentic period of consultations: the insufficiency of the documentation delivered by the ad hoc joint consultative committee during the period of consultations, making express reference to the lack of a request for a report from the employee side, the absence of a Outplacement Plan, defects in the communication of the final decision to the employee side, the position of the company throughout the negotiation and especially the delivery of the documentation in English.

3.- Corporate bad faith, fraud, deceit, coercion and abuse of rights: evidenced from before the negotiations, since before the consultations began and having the company announced to the workers the collective redundancy, it makes an individual offer of transfers, outplacements and contractual suspensions that should have been the subject matter of negotiation during the consultation period; subsequent transfers of affected workers to other bases, different numbers of affected workers between those notified at the commencement of the consultation period, those referred to in the meeting of 30 October and those finally made redundant; the company's coercive position with regard to the Girona base, the survival of which is conditional on the ad hoc joint consultative committee reaching agreement on the

John Woodger
Traductor-Intérprete Jurado de Inglés
N.º 4651
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Canary Islands bases – fifth minutes of the consultation period - and subsequent actions when offering conditions to workers who convert their contracts into seasonal contracts that modify the ones they had previously.

The company has raised the exception of absence of required joinder of parties, as it considers it necessary to join both the Public Prosecutor's Office and the Workforce and Crewlink Agencies.

As for the merits, the existence of reasons for the redundancies is defended, as well as the strict compliance by the company with the information and documentation obligations during the consultation period, aimed at reaching an agreement with the statutory body of worker representatives.

FOURTH - It is therefore necessary to resolve the exception of absence of required joinder of parties.

I.- First of all, it is considered that the Public Prosecutor's Office should have been joined, since, on the basis of the claim, an alleged violation of the right to freedom of association can be inferred, there being a reference to the fact that the Union Delegates have been affected by the collective redundancy, as well as of constitutional provisions such as Art. 3 CE regarding the use of the Spanish language.

With regard to the intervention of the Public Prosecutor's Office in employment proceedings, Art. 17(4) LRJS limits it only to those cases provided for in the Act itself. Specifically, Art. 177(3) of the same law states that

". The Public Prosecutor's Office shall always be a party to these proceedings in defence of fundamental rights and public freedoms, paying particular attention to the integrity of the reparation of victims and taking the necessary measures to clear criminal behaviour, where appropriate".

Well then, in response to the plea-in-law of the filed claim, the truth is that the claimants are not asking for the protection of the freedom of association or any other fundamental right, actually, as has been stated in the previous legal basis, the grounds on which the unlawfulness of the collective redundancy is sought are of mere ordinary legality, without said unlawfulness being based on any injury to the right to freedom of association, for which reason it was unnecessary for the claimants to be summoned to court. The reference to the lay-off of the union delegates is only one more reference in the claim to attach to the defendant bad faith throughout the redundancy procedure.

Secondly, the defendant takes the view that the companies Workforce and Crewlink should have been joined, because the claim refers to an illegal transfer of workers for which it provides Labour Inspectorate reports, and therefore considers that those companies.

To resolve the exception, we must point out that the Judgment of the Supreme Court (abbrev. 'STS') of 30 January 2008, appeal 2543/2006, contains the following reasoning:

"With regard to the joinder of parties, this Division in two judgments dated 19 June 2007 (appeals no. 4562/2005 and 543/2006) has specified that "it is a matter of calling to trial all those who may be affected, in their rights and interests, by the court proceedings carried on, either because it is imposed by the Law or because they are linked to the subject matter of the dispute. The reason for the procedural exception in question is found in the constitutional principle of effective judicial protection and the avoidance of denial of defence, proclaimed by

John Woodger
Traductor-Intérprete Jurado de Inglés
N.º 4651
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Article 24 of the Spanish Constitution and, precisely for that reason, the possibility of assessing such a procedural defect sua sponte is established".

And the judgment of this Court of 16 July 2004 (Rec. no. 4165/2003) held that: a) "The required joinder of parties is already a judge-made concept (Art. 12(2) and 116(1)(3) LEC [Civil Procedure Act]) (judgments, among many others, of 26-984 [sic], 3.6.86 , 1.12.86 , 15,12,87, 17,2,00 , 31,1,01 and 29,7,01 of this Fourth Division and of 3.7.01 and 1.12.01 of the First Division) that responds to the need to integrate in the proceedings all those who have the juridical-material relation in dispute, either because their call is imposed by a statutory rule, or because this need arises from the juridical-material relation that supports the litigation"; b).- "The need for this sua sponte judicial action is justified by the fact that the required joinder of parties or, in other words, the correct configuration of the legal-procedural relationship, is a matter that, because it affects public policy (Judgment of the Constitutional Court (abbrev. 'STC') 165/1999), is under the supervision of the courts and obliges the judge to preserve the adversarial principle and the right to effective judicial protection without the denial of defence of those who should be called to the proceedings as parties"; c).- "The Constitutional Court recalls in its judgments 335/94 and 22/4/97 that "employment case law has generally held that the judge, at his request and through this channel, must ensure the correct constitution of the juridical-procedural relationship in situations of joinder of parties, in order to achieve, safeguarding the principle of bilateral hearing, that the material res judicata unfolds its effects and to avoid possible contradictory rulings on the same matter" (Judgments of the Supreme Court (abbrev. 'SSTS') of 15 December 1987; 14 March, 19 September and 22 December 1988; 24 February, 17 July and 1 and 11 December 1989 and 19 May 1992)". And also that "it is not a mere power, but a real legal obligation of the court" (SSTC 118/1987, 11/1988, 232/1988, 335/1994, 84/1997, 165/1999 and 87/2003).

On the other hand, the STS of 7 December 2015, cassation 352/2014, has the following reasoning:

"...In accordance with the established case law of this Division (among many others, STS 29/07/2001), the required joinder of parties responds to the need to integrate in the proceedings all those who have the juridical-material relation in dispute, either because their call is imposed by a statutory rule, or because this need arises from the juridical-material relation that supports the litigation; Thus, as the Constitutional Court has pointed out (STC 165/1999), the correct configuration of the legal-procedural relationship, because it affects public policy, is under the supervision of the courts and obliges the judge to preserve the adversarial principle and the right to effective judicial protection without the denial of defence of those who should be called to the proceedings as parties". On the basis of the above, the exception must be rejected inasmuch as

1.- No liability arising from the characterisation sought in the plea-in-law in respect of the collective redundancy instigated by Ryanair is claimed in respect of the claims.

And on the other hand, the alleged illegal transfer of labour referred to, does not serve at any time as a basis for the characterisation that is sought, indeed, even though the existence of Labour Inspectorate reports has been referred to, the truth is that the factual situation that allegedly gives rise to such illegal transfer of labour, has not even been claimed in the claim, nor discussed in the trial, nor as will be seen in any way affects the decision of this Division.

John Woodger

Traductor-Intérprete Jurado de Inglés

N.º 4651

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FIFTH.- Once the procedural objections that would prevent a pronouncement on the merits of the case have been cleared, we must first analyse the first of the reasons that can support the unlawfulness of the collective redundancy, which is the absence of a true period of consultation, as per Art. 124 LRJS.

In general, the STS of 14 January 2020 - rco 126/2.019 - summarises the doctrine of the Fourth Division in this regard:

" in accordance with the *provisions of Article 51(2) ET: " Collective redundancy shall be preceded by a period of consultation with the statutory body of worker representatives lasting not more than thirty calendar days, or fifteen in the case of companies with fewer than fifty workers. Consultation with the statutory body of worker representatives must cover at least the possibilities of avoiding or reducing collective redundancies and mitigating their consequences through recourse to accompanying redundancy measures, such as outplacement measures or training or retraining actions to improve employability. The consultation shall take place in a single ad hoc joint consultative committee, but if there are several worksites it shall be restricted to the ones affected by the procedure. The ad hoc joint consultative committee shall be composed of a maximum of 13 members representing each of the parties.*

(...) During the consultation period, the parties should negotiate in good faith, with a view to reaching an agreement.

As recalled in STS/IV of 18 July 2014 (rco.303/2013):

" (...) in relation to the purpose of the consultation period, it should be recalled that this Division, both in the collective procedure of challenging substantial changes in working conditions (STS/IV 30 June 2011 -rc 173/2010) and in collective redundancy procedures (STS/IV 26 March 2014 -rc 158/2013, Plenary, dissenting opinions), has interpreted that "the statutory rule neither imposes a minimum number of meetings nor a specific content of the meetings. There must be an effective possibility for the statutory body of worker representatives to be called for this purpose, to know the company's intention and reasons, and to participate in the formation of the same, contributing their proposals or showing their rejection. In any case, the essence of the procedure lies in the persistence of good faith and the initial intention to reach an agreement".

" (...) Regarding the requirement to negotiate in good faith within the framework of the prior consultation period, there is an established doctrine - as recalled by STS/IV 26 March 2014 (rco 158/2013, Plenary, dissenting opinions) -, having interpreted, in essence, that: a) "the legal expression offers undeniable generality, since no reference is made to the obligations that the duty entails and - even less so - to the conduct that could violate it. But in any case, in the configuration of the same, it should not be forgotten:

a) that the statutory rule seems to be no more than a mere specification of the general duty of good faith that is appropriate to the contract of employment [and to any contract: Art. 1258 CC] and that in the field of collective bargaining it specifies Art. 89(1) ET ["both parties shall be obliged to negotiate under the principle of good faith"];

b) From the moment that Art. 51 ET implements good faith to the objective of "reaching an agreement" and that the consultation period "must deal, as a minimum, with the possibilities of avoiding or reducing collective redundancies and of mitigating their consequences through the use of accompanying redundancy measures", it is clear that the good faith required by the rule is good faith in negotiations" (STS/IV 27-May-2013 -rc 78/2012, Plenary); and b) even referring

John Woodger
Traductor-Intérprete Jurado de Inglés
N.º 4651
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to a consultation period in proceedings for substantial modification of working conditions, it is stated that "it is evident that the legislator wants to give importance to the consultation period ... configuring it not as a mere mandatory procedure, but as a true collective negotiation, between the company and the statutory body of worker representatives, tending to achieve an agreement, which as far as possible, avoids or reduces the effects of the corporate decision, as well as on the measures needed to mitigate the consequences for the workers of such corporate decision, a negotiation that must be conducted by both parties in good faith" (STS/IV 16 November 2012 - rco 236/2011).

Examining the factual account of the present decision from the perspective of the transcribed doctrine, we must agree with the claimants in asserting that the collective redundancy procedure instigated by Ryanair DAC was presided over at all times not only by the absence of good faith on the part of the defendant company, but also by an obvious bad faith on the part of the employers, which is aimed at closing the air bases in the Canary Islands and converting the base it operates in Girona Airport into a seasonal base at the lowest possible cost, and this is for the reasons that we will now proceed to explain and which we will group into three sections:

I.- Conduct of the company prior to the formation of the ad hoc joint consultative committee

The intention to close the bases, which had already been informally announced by the company - although it excluded the Girona base which was intended to become a seasonal base, which had been announced in the press and made known to SEPLA - was formally communicated to the staff on 23 August 2019 and, at the same time, the following day the pilots are offered unpaid leave for one year, transfers and outplacements in group companies. Such an offer, far from being an act of corporate transparency, as has been pointed out by the company's counsel, means that the subsequent period of consultation, the start of which was deliberately delayed by the company, has been emptied of its content, partially detracting from its essential content, which is the adoption of measures to mitigate its consequences.

In fact, Art. 7(1) of RD 1483/2012, implementing Art. 51(2) ET, provides that *:*

.". The purpose of the consultation period shall be to reach an agreement between the undertaking and the workers' representatives. The consultation must at least cover the possibilities of avoiding or reducing collective redundancies and of mitigating their consequences through recourse to accompanying redundancy measures, such as outplacement measures or training or retraining actions to improve employability. To this end, the workers' representatives must have at their disposal, from the commencement of the consultation period, the documentation required under Articles 3, 4 and 5, and the parties must negotiate in good faith", Article 8 of the same Regulations stating that:

1. For the purposes of paragraph 1 of the previous Article, measures to prevent or reduce collective redundancies may include the following:

a) The internal outplacement of workers within the same company or, where appropriate, within another of the group of companies of which it forms part.

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c) Geographical mobility of workers, in accordance with Article 40 of the Workers' Statute Act.

John Woodger

Traductor-Intérprete Jurado de Inglés

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(g) Any other organisational, technical or production measures aimed at reducing the number of workers affected.

2. Measures to mitigate the consequences for the workers affected may include the following:

(a) Preferential reinstatement rights for vacancies in the same or a similar professional group in the company within the stipulated time limit."

In accordance with the transcribed provisions, we must agree that once the business intention to instigate a collective redundancy has been expressed, the duty of good faith proclaimed in Art. 51(2) requires that all the measures just referred to be negotiated within the ad hoc joint consultative committee complies collectively and in accordance with the legally established procedure.

In the present case, contrary to the legal provision, and with the obvious intention of emptying the consultation period of its content, the company has unilaterally decided to negotiate measures involving geographical mobility (transfers), outplacements to group companies and suspension of the employment contract directly with some of the affected workers, as a way of avoiding the best conditions for those workers that could have been obtained collectively, with the consequent union advice, which renders the entire collective redundancy procedure unlawful. This is how this Division understood it in the Judgment of the National High Court (abbrev. 'SAN') of 7.5.2018 (proc. 22/2018) and was ratified by the IV Division of the Supreme Court in the STS of 29.1.2019 (rec. 168/2018) which was affirmed by the latter, decisions these that consider direct negotiation with the affected workers of measures to avoid or alleviate the consequences of collective redundancies, by applying the doctrine of individual mass negotiations (Ss. TC 238/2005 of 26 September, 105/1992 of 1 July, 208/1993 of 28 June, 107/2000 of 5 May and 225/2001 of 26 November) violate the duty of negotiation imposed by Art. 51(2) and render the entire collective redundancy unlawful.

II. Conduct of the consultation period: Information, documentation and good faith negotiation.

We consider that the information and documentation provided by the company, at the commencement of the consultation period and subsequently prevented a debate from taking place within the consultation on the issues referred to in Art. 51(2) ET, is more of an obstructionist position of the entity in any case, which evidences that its only intention was to execute a predetermined decision - closing the bases in the Canary Islands and converting the one in Girona into a seasonal base - at the lowest possible employment-related cost, as we expand on below.

In general, we must remember, as does the STS of 8.11.2017 (rec. 40/2017), that the IV Division of the SC has built a complete doctrinal framework based on the criteria that perfectly summarise the SSTS 13.7.2017, rec. 25/2017 ; and 23.11.2016, rec. 94/2016:

"(1) As can be seen from Art. 51(2) ET, 4(2) of RD 1483/2012 and 2(3)(a) of Directive 98/59, information is an essential prerequisite for consultation in collective redundancies, in order to enable the workers' representatives to make constructive proposals to the employer, who must therefore provide them with all relevant information. This is, of course, a legally indeterminate expression that leaves in the air not only the understanding of what is relevant, but also the question of who should decide whether or not the information is relevant. Legal

John Woodger
Traductor-Intérprete Jurado de Inglés
N.º 4651
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logic prevails in these cases. Thus, in principle, the employer complies with providing the representatives with all the information required by the indicated statutory rule. Nothing prevents him from voluntarily providing any other information not required by statutory rules and regulations but which may contribute to the conduct of the consultations. If, in view of the documentation received, the workers' representatives consider that it is insufficient, they must request it from the company" (STS SG 20/07/16 -rco 323/14-, "Panrico" case), even though the burden of proof in order to prove the need for such documentation to be provided lies with - it is clear - to the statutory body of worker representatives.

2) But the list of documents provided by the statutory rule has no value "ad solemnitatem", and not every absence of documents by force must lead to the aforementioned ruling of unlawfulness, but rather from such drastic consequence we must – reasonably - exclude those documents that are "inconsequential" for the purposes pursued by the rule (providing information that allows for adequate negotiation in order to reach a possible agreement on the redundancies and/or mitigating measures: Art. 51(2) ET; with which we do nothing but follow the criterion that the legislator expressly adopts in matters of administrative procedure (Art. 63(2) LRJ and PAC) and even in procedural legislation (Art. 207(c) LRJS (EDL 2011/222121))" (SSTS -all Plenary- 27/05/13 -rco 78/12-, "Aserpal" case;... 16/06/15 -rc 273/14-, for PDC "Grupo Norte"; 23/09/15 -rc 64/15-, "Assor Spain, SA" case; 29/09/15 -rc 1/15-, "Montajes Elementos de Calderería, SL" case; and 20/10/15 -rc 181/14-, "GEA 21 SA" case).

3) This is so because, as the basic aim of the obligation is indeed that "the workers' representatives should have sufficiently expressive information to be able to understand the reasons of the redundancies and to be able to cope with the consultation period adequately" (SSTS SG 20/03/13 -rco 81/12-; SG 27/05/13 -rco 78/12-, "Aserpal" case;... SG 26/01/16 -rc 144/15-, "Unitono" case; SG 20/07/16 -rc 323/14-, "Panrico" case, with VP), the unlawfulness should only be associated with insufficient documentation that "prevents the achievement of the purpose of the provision, that is to say, that it does not provide the workers' representatives with sufficient information to enable them to negotiate in full knowledge of the situation of the undertaking and of the reasons claimed for proceeding with the collective redundancy" (in these or similar words, SSTS -Plenary- 17/07/14 -rco 32/14-, "SIC Lazaro, SL" case; 16/09/15 -rco 230/14-, "Recuperación Materiales Diversos, SA" case; 20/10/15 -rco 172/14-, "Tragsa" case; 20/10/15 -rco 181/14-,"GEA 21 SA" case; and 26/01/16 -rco 144/15-, "Unitono" case).

4) And if what is claimed are "formal defects related to the lack of requested documentation not provided legislatively, but which could have been considered pertinent to effectively satisfy the right to information inherent in the conduct of the consultations, once all the documentation required by the applicable rules and regulations has been delivered, the burden of proof of its pertinence will fall on the statutory body of worker representatives which must state the reasons that justify the request for more documentation". (SSTS 13.7.2017, rec. 25/2017 (EDJ 2017/151670) ; 18.5.2017, rec. 71/2016).

In the claim, and from the commencement of the consultation period by the ad hoc committee and by the claimants, it is claimed that breaches have been committed in the initial communication that prevented the consultation period from having the content set out in Art. 51(2) ET.

We must point out that Art. 3(1) of RD 1483/2012 states that:

"Whatever the claimed grounds for the collective redundancies, the communication initiating the consultation period shall contain the following points:

John Woodger
Traductor-Intérprete Jurado de Inglés
N.º 4651
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And we have to agree that this is as it is denounced by the employee side, for which we have to take into consideration the following:

1.- As stated in the explanatory report and the technical report, these are documents of an instrumental nature whose function is to enable the consultation period to be carried out in accordance with the purpose envisaged by the legislator, for which purpose the existence of a fact that makes a change in the organisation of the company's human resources or in its production necessary, justifying the proposed termination of employment contracts by the company, must be justified in a minimal and objective manner.

Such documentation must therefore serve as a basis for the employee side to have a more or less complete and credible knowledge of the business situation, so that a discussion can take place with the content expressed in Art. 51(2) ET aimed at reaching an agreement.

2.- In the case that concerns us, both the explanatory report and the technical report justify the initial business decision that implies the closure of the bases in the Canary Islands and Girona in the following way:

- The delay in the delivery of the Boing 737 Max aircraft and Brexit are claimed to be a cause of organisational and production problems;

- As a measure to alleviate the impact that this circumstance must have on the company's production cycle, the company has decided to close those bases that it considers to be most inefficient, which is justified in the case of the Canary Islands on the evolution of three indicators – without explaining if there are more - in a fairly short period of time in relation to the average of the company and in Girona with the marked seasonal nature of the Base.

And all this is based on a technical report for which no documentation other than that provided by the company has been considered, which appears unsigned, and in which any reference to the professional qualifications of the author is omitted.

In addition, when the author of the report appears on 7 November during the consultation period, he claims that he did not know the date, that he signed the report on 18 September 2019, and that he did not know that the signature was required and that the bankruptcy of the Thomas Cook company was not taken into account because it took place at the end of September 2019, once the report had been drawn up.

From this we must conclude that the only thing expressed in the report is that the employer has taken advantage of the appearance of a circumstance of a marked temporary or circumstantial nature, which is the delay in the delivery of aircraft to close four worksites that it considers inefficient, and all of this without even referring briefly to the following circumstances that we consider essential in order to justify the existence of a productive or organisational cause:

a.- What effect will the delay have on the company as a whole and how, in view of the delay, the means of production will be reorganised and a response will be given to the defendant, which will indicate the destination of the aircraft which, up to the date of the collective redundancy, had been operating from the bases which are to be closed, since it is logical that if the aircraft are to be sent to other bases from which the company operates, it is logical to assume that there will be a need for human resources;

b.- why some ratios have been taken to assess the efficiency of the bases and not others, and why has one time parameter reference been taken in relation to the company's average and not another - it is significant at this point that in the Canary Islands bases to

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Traductor-Intérprete Jurado de Inglés
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to value a key figure, a certain period of time is used and a different one is set for valuing another one;

c.- what is stated in such documents must be at least plausible and objective information, which is difficult to predict from a report in which the professional capacity of its author is omitted, his signature is omitted and it lacks the minimum verification with information other than that provided by the Company;

d.- Finally, the fact that the report does not refer to the impact of the bankruptcy of Thomas Cook, which is relevant to the development of Ryanair's production as this specific event took place before the start of the consultation period, makes it necessary for the report and the explanatory report to take this into account.

We must conclude, therefore, that the only clear and verified information contained in the report and the explanatory report is that the company has decided to close the Canary Islands and Girona bases, without expressing the slightest connection between this decision and the organisational and productive consequences the delay in the Max planes nor Brexit will have for the company, such circumstances being the crude alibi that the company intends to use to justify its decision.

Well, with this documentation, we must agree with the claimants that it was not possible to negotiate with the minimum content of Art. 51(2) ET, with clear evidence of this being the fact that the company at the time of the hearing, in order to try to convince the Division of the concurrence of the grounds invoked, made use of an expert report that was much more extensive and well-founded than the one it provided to the ad hoc Committee.

With regard to the Outplacement Plan, we must point out that paragraph 10 of Art. 51 ET points out that:

". A company which carries out a collective redundancy involving more than fifty workers must offer the affected workers an external outplacement plan through authorised outplacement companies. This plan, designed for a minimum period of six months, must include training and vocational guidance measures, personalised attention for the affected worker and active job searching. In any case, the above will not be applicable to companies that have been subject to insolvency proceedings. The cost of drawing up and implementing such a plan will in no case fall on the workers".

For its part, Art. 9 of RD 1483/2012 specifies that:

"In accordance with the provisions of Article 51 of the Workers' Statute Act, companies that carry out a collective redundancy of more than fifty workers must in any case include in the documentation that accompanies the communication at the beginning of the procedure, a plan for the external outplacement of the workers affected by the collective redundancy, through authorised outplacement companies.

2. The plan must ensure for workers affected by a collective redundancy, with particular emphasis on older workers, continuous care for a minimum period of six months, with a view to carrying out the actions referred to in the following paragraphs.

3. The outplacement plan presented by the company at the beginning of the procedure must contain effective measures appropriate to its purpose in the following areas:

a) Intermediation consisting of putting in contact existing job offers in other companies with the workers affected by the collective redundancy.

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b) Professional guidance aimed at identifying the professional profile of the workers for the coverage of jobs in the possible companies that are the target of the outplacement.

c) Vocational training aimed at training workers to perform work activities in these companies.

d) Personalized attention aimed at advising workers on all aspects related to their outplacement, especially with regard to their active search for employment.

4. The content of the outplacement plan may be specified or extended during the consultation period, although at the end of this period the final version must be submitted.

5. For the purposes of calculating the number of workers referred to in paragraph 1, account shall also be taken of workers whose employment contracts have been terminated on the initiative of the company or companies of the same group, by virtue of reasons not inherent in the person of the worker other than those provided for in Article 49(1)(c) of the Workers' Statute Act, provided that such terminations of contract have occurred within the ninety days immediately prior to the commencement of the collective redundancy.

While Division IV of the Supreme Court in STS of 26.3.2014- rec 58/2013 (Tele-Madrid) has considered that the lack of contribution or the defective contribution and subsequent implementation of the aforementioned plan is not sufficient cause to render the collective redundancy unlawful, such circumstance does not prevent the Division from assessing the plan initially adopted and its subsequent development during the consultation period in order to determine the existence of a true willingness to negotiate on the part of the company, in order to mitigate the consequences of the decision to terminate through the plan offered and, once again, our response must be negative, since:

a.- at the commencement of the consultations and within what the company euphemistically calls "accompanying redundancy measures", it is said that the company intends to contract the services of an outplacement company;

b.- it is not until the meeting of 7 November 2019 that the company provides any document regarding the outplacement actions to be adopted, which are nothing more than a generic catalogue or prospectus of the services offered by the company Lee Hecth Harrisson, which specifies to questions from the employment side that the defendant has not even contracted its services, so that there is no specific action for the time being for Ryanair's staff.

Once again, it is clear that the defendant faces the consultation period as a mere formality and that its willingness to negotiate measures that would alleviate the trauma to its employees of the termination of their employment contracts, thus promoting their future employability, was void.

The accompanying "redundancy measures" offered by the companies in the Redundancy Scheme, which includes the previous outplacement plan, deserve a special mention. The supposed redundancy measures represent the minimum legal compensation and later, during the consultations, they are extended to the possibility of accessing vacancies in the company or within the group through voluntary competition - in many cases abroad and in the case of pilots with reduced working hours in some of them, and with an allowance that does not in any case exceed that legally provided for forced geographical mobility - the most that is offered is the trip, with an allowance of EUR 500 and 7 days of leave with the right to fixed remuneration,

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which hardly meets the provisions of Art. 40(1) ET in many cases, offering as pay for redundancy in case of agreement of 22 days per year worked.

Well, if one takes into account that the reasons invoked are of an organisational and productive nature - in no case economic -, such a scant offer of measures is the lack of business will to reduce the consequences of the redundancy.

The same applies to the request for a report from the "ad hoc committee" on the collective redundancy:

- which is not requested at the initial meeting;
- having already been requested by the Labour Inspectorate, at the meeting on 25.10, this right is denied;
- and such a report is not requested until the last meeting of the consultation period.

Although the lack of a request for a report from the workers' representatives is not in itself grounds for invalidating the collective redundancy, as it is a non-essential procedure (as per Art. 51 ET), imposed by Art. 64(5)(a) and (b) ET, as indicated in Art. 5(3)(3) of RD 1483/2012, the truth is that it shows the importance that the company gave to the position of the r committee representing the affected workers, that is, none, being a new indication of the lack of will of the defendant to negotiate.

With regard to the management by the company of the documentation and information requested by the statutory body of worker representatives during the consultation period, we must once again conclude that the company had no intention of carrying out good faith negotiations with the content of Art. 5(2) ET, which is evidenced by the following facts:

A.- The delivery of a large part of the documentation in English: regardless of the fact that said language is the language commonly used by the company, it does not have to be known by the advisors of the ad hoc committee, whose presence in this negotiation is particularly relevant, as the statutory body of worker representatives is not made up of unitary or union representatives, which makes it difficult for the advisors to assess and interpret it.

B.- The use of the Google Drive application for documentation as a delivery channel, unilaterally by the company, without prior agreement with the employee side, and also the company unilaterally modifying the content of the documents that were incorporated.

C.- The delivery of a large part of the documentation requested in the last of the meetings, when there was no material way to examine it in detail, when such could be examined.

On the basis of these data, it is clear that the consultation period could not fulfil the legally provided purpose, and that consequently the position of the company was none other than to irrevocably impose a decision taken in advance, as will be examined in the previous legal basis, which is contrary to good faith.

III.- Communication of the decision to terminate to the statutory body of worker representatives-

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Finally, the claimants complain that the business decision of collective redundancy was not communicated in the prescribed manner to the designated ad hoc committee, which invalidates the entire consultation period.

In this regard, we must point out that Art. 51(2) ET, in its last two paragraphs, imposes on the employer, once the consultation period has ended without agreement, the obligation to notify the workers' representatives of its decision within fifteen days, in the following terms:

"After the consultation period, the employer shall inform the labour authority of the result of the consultation. If an agreement has been reached, a full copy shall be forwarded. Otherwise, he shall forward to the workers' representatives and the labour authority the final decision on the collective redundancy taken by him and the conditions thereof.

If, within 15 days of the date of the last meeting held during the consultation period, the employer has not informed the workers' representatives and the labour authority of his decision on the collective redundancy, the collective redundancy procedure shall lapse under the terms to be established by legislation".

With regard to the content of the final decision, Art. 12(1 of RD 1483/2012 states that:

"*At the end of the consultation period, the employer shall inform the competent labour of the outcome of the same. If an agreement has been reached, a full copy shall be forwarded to the labour authority. In any event, he shall inform the workers' representatives and the labour authority of the decision on the collective redundancy he is taking, updating, where necessary, the details of the communication referred to in Article 3(1). The appropriate communication shall be made at the latest 15 days after the date of the last meeting held during the consultation period.*

Legal doctrine has given special importance to the act of communication of the decision adopted, considering that its absence entails voidness of the entire consultation period. In this sense, it is appropriate to recall the doctrine expressed in the STS of 23.9.2015- rec. 64/2015-, reiterating the criterion that the same Division had already set forth in the STS of 19.11.2014- rec. 183/2014-:

"Based on the wording of these provisions, it is clear that there is no doubt that collective redundancy, as an act of the will of the employer, who after the period of consultation, with or without agreement, decides to terminate the employment contracts of the affected workers, requires, inescapably, that the final decision of redundancy be communicated or notified to the statutory body of worker representatives, or in other words, the employer's will cannot remain in a simple hypothesis or purpose expressed with the initiation and conduct of the consultation stage, but must materialize in an expressive and unequivocal decision to terminate employment (Fourth Legal Basis).

It is interesting to recall that in the case determined by the STS on 19 November 2014, the Works Council had received an e-mail containing a copy of the communication addressed to the labour authority, but sent by a company (CPEN) other than the defendant (GANASA). The Court of First Instance admitted that there was no communication to the workers' representatives in the terms established by law, but considered it to be irrelevant since the workers' representatives were aware of the end of the consultation period. Despite this, our judgment reasons the following:

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"The Division considers that the circumstances described cannot replace the notification required by the legislation, nor cure the formal defect incurred by the defendant in not communicating the final decision on the collective redundancy to the workers' representatives.

This communication or notification of the business decision becomes the factual requirement constituting the termination, so that if there is no communication there is no redundancy. As we have seen, the legal provisions in this respect are clear, both in terms of the need for the communication and the time limit for carrying it out, and in terms of its legal consequences.

Contrary to what is understood by the judgment of the Court of First Instance, what it calls actual knowledge by the workers' representatives of the practical ending of the consultation period, of the lack of agreement with which it could be terminated and of the communication itself addressed to the Labor Authority, in no way can it replace, in the opinion of the Division, the communication by the company to the workers' representatives of its final decision with respect to the collective redundancy that it carries out.

On the other hand, the purpose of the communication to the Labour Authority is different from that of the communication to the workers' representation.

There are also a number of other reasons that highlight the need for express and formal communication by the company to the workers' representatives regarding its final decision on the collective redundancy. That communication is not only the factual requirement for the decision to terminate, but is also the factual requirement for other actions, to which it provides legal certainty. This is the case with the regulation of individual redundancy in Article 51(4) ET, "Once the agreement has been reached or the decision has been communicated to the workers' representatives, the employer may notify the redundancies individually to the workers affected,....", as legislation insists, "After the communication of the business decision of collective redundancy referred to in Article 12, the employer may begin to notify the redundancies individually to the workers affected,...." (Article 14(1) of Royal Decree 1483/2012). The need, due to its importance, of the mentioned express and formal communication, is also shown in the regulation of collective redundancy carried out by the LRJS, not only in terms of establishing that "The application must be presented within the expiration period of twenty days from the date of the agreement reached in the consultation period or the notification to the workers' representatives of the business decision of collective redundancy" (Article 124(6)), but also and in particular, when in paragraph 3 of the same article, it provides that, "Where the decision to terminate the employment relationship has not been contested by the persons referred to in paragraph 1 (the statutory body of worker representatives) or by the labour authority in accordance with Article 14(.)b) of this law, once the twenty-day time limit for the exercise of the action by the workers' representatives has expired, the employer may, within twenty days of the expiry of the previous time limit, bring an action to have his decision to terminate declared lawful".

In short, if the communication or notification to the workers' representatives of the business decision of collective redundancy is precisely the determinant of the beginning of the time limits to carry out the above actions, it cannot be denied its transcendence as an essential requirement for the enforceability of the same, nor can it be understood fulfilled in any way, since in this respect the very rule indicates - Article 51(2) ET - that it must be carried out in an imperative way (he shall send) and the content of the same (the final decision of the collective redundancy that the employer has adopted and the conditions of the same). The omission of the requirement to communicate the decision of collective redundancy to the workers' representatives is not a mere breach of a duty of information, but an essential requirement

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for the enforceability first of the collective redundancy, after of the individual redundancies, and if it is the case, of the possible business claim with the purpose of holding the decision to terminate consistent with the law, providing the procedural regulation of the collective redundancy, as for the carrying out of the aforementioned actions, both for the workers and for the company, with the necessary and indispensable legal certainty, at the same time that it facilitates the judicial control of the same".

In view of the above, and in the case under consideration, we must highlight the following data contained in the facts as found of this decision:

1.- that the consultation period ended on 14.11.2019 without having reached an agreement, the management of the company sends the following communication to the Committee in English on 28.11.019:

"*Dear all,*
I refer to our meeting of 14 Nov which concluded the consultation period for the Collective Dismissals [sic].
As you are aware, the consultation period commenced on 15 Oct and we held six meetings with the Commission [sic] in total. Throughout the consultation period the Company did everything to engage constructively with the Commission [sic] including arranging for an independent expert from Oxera (independent analysts that conducted a report on the reasons for the base closures) to attend a meeting to answer questions regarding the report, and took significant steps to compromise, negotiate and try to reach an agreement with the Commission [sic] by proposing a detailed Social Plan [sic] which included the following:
- A mechanism to rescue the Girona base and save 120 jobs
- A specific list of vacancies across the Ryanair network which would be held open far affected staff in the Canaries
- A contribution towards transfer expenses
- An enhanced redundancy package
- A detailed outplacement plan to assist our people find alternative employment

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This reasonable offer was rejected by the Commission and your advisors who refused to engage with us to negotiate, or put forward any proposals, on the Social Plan. Following this failure to reach an agreement, the Company has written to the Labour Authorities today confirming the final decision of the Collective Dismissal process which is as follows;
Tenerife, Lanzarote, Gran Canaria
Tenerife, Lanzarote and Gran Canaria will close on 08 Jan 2020. All crew and pilots in these bases will be made redundant as a result of the base closure and will be provided with the 15 days' notice required in accordance with Spanish legislation, unless they secure a transfer position. We currently have a very limited number of vacancies still available across the Ryanair network and whilst the commission rejected our offer during the consultation process to keep these vacancies open for crew in the Canaries, if our people in the Canaries wish to apply for these vacancies they should indicate their preferences by 05 Dec. All transfer requests will be processed by 13 Dec and the successful candidates will be notified by 16 Dec. In accordance with Article 51.5 of the Workers Statute and Article 10.3 of the Organic Law of Trade Union freedom regarding Union Delegates and their potential preference to remain employed, since the Canaries bases are closing entirely, there is no employment available for the Union Delegates in these bases to remain employed there. As is the case with all staff in the Canaries, they can indicate their preferences for the limited vacancies available across the Ryanair network.
Girona
Our Commercial department have confirmed that the Girona base can remain open if it is converted into a seasonal base. This will require a sufficient number of cabin crew and pilots

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transitioning to a seasonal contract (fijo discontinuo). A meeting will be held in the Girona base on 28 Nov 19 to brief all crew and answer any questions regarding the seasonal contract, following which contracts will be issued to GRO cabin crew and pilots. A final decision will be made as to whether the Girona base will remain open by 06 Dec '19.
I am disappointed that we couldn't reach an agreement during the consultation process, which was not helped by the unprofessional and obstructive attitude of certain commission advisors which included repeated shouting and refusing to meaningfully engage, which made it impossible to conclude a Social Plan."

On the same day, Ryanair's representatives wrote to the Directorate-General for Labour in accordance with the terms of descriptor 20 of the administrative file, the contents of which we incorporate by reference, giving an account of the conclusion without agreement of the consultation period and of the final decision adopted, which differs from the notification made to the ad hoc Committee, since

1.- it is done in Spanish;

2.- the total number of people affected is quantified as 224 in the e [sic]

3.- the period to carry out the redundancies, from 8 to 23 January

4.- what the company calls an "accompanying redundancy scheme" is attached, referring to the possibility of applying for vacancies in the RYANAIR network (practically all of them outside Spain and with different contracts);

5.- it refers to the 20 days' pay for redundancy per year of service in the same terms as for its calculation was made to the ad hoc committee during the consultation period.

6.- reference is made to the Girona base, stating that employees must sign a seasonal or part-time contract at 75% or else they will be made redundant;

It states that the first to third paragraphs thereof shall be notified within 15 days to the ad hoc joint consultative committee.

The following documentation was attached to said written submission: minutes of the consultation period, except for those of 30 October 2019, outplacement plan, Redundancy Scheme and list of affected workers.

In view of this information, we cannot consider the business decision validly communicated to the "ad hoc committee", since, far from fulfilling the content of Article 12(1) of RD 1483/2.012, is no less than a mere reproach to the workers' representatives for not having reached the proposed agreement prepared, making them jointly responsible for the business decision adopted, which in no way appears in detail in the terms of the legislative provision, not even expressing in generic terms the personal scope of the decision adopted, since the effects on all or some of the workers at the Gerona base are subject to whatever may be arbitrarily adopted by the company in the future,

Although what has already been said is sufficient not to consider the company's decision as validly communicated, the Division considers it necessary to highlight the total lack of consideration given by the company's representatives to the workers' representatives, which is evident in the different terms in which the company's decision is communicated to the Labour Authority, and which only ratifies the conclusion that the Division has been drawing throughout this legal basis, that is, that the company went into the consultation period with a predetermined and irrevocable decision, and that at no time did it intend to engage in negotiation under the terms of Art. 51(2) ET.

SIXTH.- Although the above is sufficient reason for the claim to succeed, we will succinctly respond to the second grounds for unlawfulness invoked, in which bad faith, fraud, coercion and abuse of rights are attached to the defendant.

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The STS of 13 May 2019 - rec 246/2018 - states that the lack of good faith in the negotiation, the abuse of law and the abuse of rights must be taken into account:

"Abuse of law, as provided for in Art. 6(4) of the Civil Code, is an intentional conduct of using a rule of the legal system to cover an anti-legal result which should not be confused with the mere infringement or failure to comply with a rule (SSTS of 04/07/94 -rcud 2513/1993 -, 16/01/1996 -rec. 693/1995 -, and 31/05/07 -rcud 401/2006 -), the existence of objective data that show the intention of using the text of a rule to achieve a result that is prohibited or contrary to the law being sufficient (STS 23/12/2014 -rec. 109/2014 -). Abuse of law, like abuse of rights, is not presumed and must be proven by the person who invokes it, which can be done through direct or indirect evidence, such as presumptions (SSTS of 17-02- 2014 - rec. 142/2013 -, and 26-03-2014 - rec. 158/2013).

On the other hand, the abuse of rights, as set out in Article 7(2) CC [Civil Code], which involves an action that exceeds the normal limit of the exercise of a right with the exclusive purpose of harming a third party, means that its assessment requires proven facts that highlight both objective circumstances (abnormality in the exercise) and subjective ones (willingness to harm or lack of legitimate interest)".

On the other hand, the first meaning of the term coercion in the RAE dictionary is "physical or psychological force or violence exerted on a person to force him to say or do something against his will".

On the basis of the foregoing, this Division considers that in view of the facts as found of this judgment, the redundancy has been carried out with evident bad faith and abuse of law by the company.

With respect to bad faith, or what is the same, the absence of good faith in the negotiation, it is sufficient to refer to all that we have reasoned in the previous legal basis to conclude that the negotiating process was at all times presided over by the violation of the most basic elements of good faith on the part of the company, without the need to put forward any further considerations, In addition, the lack of willingness to negotiate, the total rejection of the proposals made by the employee side that agreed to negotiate an ERTE to alleviate a possible drop in activity due to the delay of the Boings [sic], the evasive responses given when it came to setting the compensation of the representative committee.

And we also consider that the collective redundancy procedure carried out in its entirety is the result of a manifest abuse of law, the most evident demonstrations of which are the following:

1.- The one already referred to in the previous legal basis, by virtue of which, once the intention of the company to proceed with the closure of the Canarian and Girona bases has been announced, delaying without any reason the commencement of the consultation period, that is, taking advantage of the non-existence of a rule that obliges to begin the consultations on a specific date, makes a mass offer on an individual basis to the potential affected parties so that they may avail themselves of suspensions of contract, or voluntarily apply for a place in other bases or accept to be hired by other companies in the same group, thereby removing such matters from the collective bargaining imposed by Art.. 51(2) ET in relation to Art. 8 of RD 1483/2012, so as to avoid the economic cost of considering such geographical movements or contractual suspensions as obligatory.

2.- The fact of continuing to offer vacancies and outplacements to those affected during the negotiation process with the same purpose.

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3.- The position maintained in relation to the Girona base. It is evident from the facts as found that the intention of the company in relation to this base was not its total closure, but to maintain it as a seasonal base and this was announced prior to the period of consultation with the unions USO, SEPLA and SITCLA in meetings held with them on 7 and 8 August 2019, however, later in the communication dated 23.8.2019 it is stated that this base is going to be closed, and surprisingly the company raises as a possibility the maintenance of such base as a seasonal base, in the event that it is agreed by the employee side at the closure of the bases in the Canary Islands under the conditions set out in the Redundancy Scheme presented by the company, which have already been assessed by the Division in the previous legal basis, and by the workers of that base novate their employment contracts to seasonal or part-time contracts; Finally, as the agreement is not accepted, the workers of said base are included in the collective redundancy, although its closure is subject to a subsequent decision by the employer, offering the possibility of said contractual novation after the end of the consultations, and under the threat of losing their jobs if they do not do so and of possible harm to their colleagues, if the company considers that there is not a sufficient number of acceptances.

Such a course of action constitutes a misguided and fraudulent use of the institution of collective redundancy for a purpose other than that legally laid down for that legal institution, which is none other than to provide undertakings with an instrument of external flexibility to overcome a situation of difficulty, mitigating as far as possible the consequences thereof for the affected workers.

With regard to the coercion and abuse of rights, we also consider that they are found in the acts carried out by the defendant, being sufficient to read in this respect the terms in which the communication sent on 28 November 2019 is written in which the onerous conditions of redundancy appear to be adopted as punishment for the refusal of the employee side to accept the conditions offered and the situation in which it leaves the personnel of the Girona base which we have just referred to.

SEVENTH.- Given that the redundancy can be classified as unlawful, it is not necessary to assess whether or not there is a justifiable reason for the collective redundancy. In this respect, it is sufficient to refer to the assessment that we have made in the fifth legal basis of the technical report and the explanatory report, where it is clearly stated that in no way was it justified that the delay in the delivery of the Bonig [sic] 737 Max aircraft, nor Brexit, nor the seasonality of the Girona base, could operate as organisational or productive grounds that would justify the closure of the four bases.

EIGHTH.- The wages the affected workers ceased to earn must be deposited in order to appeal against this decision.

Article 124(9) of the Employment Jurisdiction Act, in the wording given by Royal Decree-law 3/2012, provided that:

"The judgment shall be delivered within five days of the trial and may be appealed on ordinary cassation. The decision to terminate will be held consistent with the law when the employer, having complied with the provisions of Articles 51(2) or 51(7) of the Workers' Statute Act, proves the concurrence of the statutory event that has been invoked. The judgment will hold unlawful the decision to terminate when the provisions of Articles 51(2) or 51(7) of the Workers' Statute Act have not been observed, or judicial authorisation has not been obtained from an insolvency judge in the cases where this is legally provided for, as well as when the business measure has been carried out in violation of fundamental rights and public freedoms or with fraud, deceit, coercion or abuse of rights. The judgment will hold as inconsistent with the law

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the decision to terminate when the employer has not proved the existence of the legal grounds indicated in the notice of termination".

Following Act 3/2012, these provisions were transferred to Article 124(11) and given a new relevant wording, indicating since then that:

"The judgment shall be delivered within five days of the trial and may be appealed on ordinary cassation. The decision to terminate will be held consistent with the law when the employer, having complied with the provisions of Articles 51(2) or 51(7) of the Workers' Statute Act, proves the concurrence of the statutory event that has been invoked. The judgment will hold the decision to terminate to be inconsistent with the law when the employer has not proven the existence of the legal grounds indicated in the notice of termination. The judgement will declare the decision to terminate unlawful only when the employer has not carried out the period of consultation or delivered the documentation provided in Article 51(2) of the Workers' Statute Act EDL 1995/13475 or has not observed the procedure set out in Article 51(7) of the same legal text or has not obtained the authorisation of an insolvency judge in the cases in which it is legally provided, as well as when the business measure has been carried out in violation of fundamental rights and public liberties. In this case, the judgment shall declare the right of the affected workers to return to their jobs, in accordance with the provisions of Article 123(2) and (3) of this law".

Article 123, numbers 2 and 3, of the Employment Jurisdiction Act states that:

"Where the decision to terminate is held unfair or unlawful, the employer shall be liable to disciplinary action for dismissal.

3. In cases where reinstatement is appropriate, the worker must reimburse the pay received once the judgment has become final and conclusive".

This rule in turn leads to Article 113, which provides that:

"If the redundancy is held unlawful immediate reinstatement of the worker with payment of the lost wages will be ordered. The judgment shall be provisionally executed in the terms established by Article 297, whether it is appealed by the employer or by the worker".

It can thus be seen that, following the amendment introduced by Act 3/2012, judgements holding collective redundancies unlawful have the same ordering effects as those provided for in the above-mentioned Act, which obliges the Division not only to issue a judgement accordingly but also to rule on the consequences attached to such a finding: the recording and possible provisional enforcement of the judgement, a ruling which we believe should be made in this decision and thus ensure that persons found liable have access to appeal in the light of the provisions of Article 230(4) of the Employment Jurisdiction Act.

With regard to the deposit, it can be seen that this procedural method of collective redundancy implemented by Article 124 of the Employment Jurisdiction Act does not contain specific provisions in this regard and that, undoubtedly, since it is a process affecting many parties and where it is not discussed and may in most cases not include the precise parameters for determining the value of the order, its deposit may be complicated.

However, these questions, which are dealt with below, cannot be an obstacle to rejecting the obligation to lodge an appeal in these kinds of proceedings.

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It must be assumed that Article 24(1) of the Constitution guarantees citizens their right to effective judicial protection. Effectiveness has a clear translation and it is that justice does not end up by stating the law but by providing it with material enforceability *("judging and enforcing what is judged" states Article 117(3) of the* EDL Constitution).

And since the provision of justice is part of a public service with limited resources and through a process that imposes deadlines and time limits, it would be paradoxical if the exercise of the right to judicial protection constituted the very limit of its effectiveness. That is why, historically, the employment procedure law, with the aim of preventing the processing of cases and, in particular, access to the remedy from rendering the right in question unenforceable at the trial stage, has been making the appeal stage conditional on the securing of the judgment through a twofold mechanism: deposit (today this is established by Article 230(1) of the Employment Jurisdiction Act for all cassation appeals and applications for review) and provisional enforcement (today under the terms of Title II of Book IV of the Employment Jurisdiction Act).

At the same time, the Civil Procedure Act, which in its original wording of 1881 did not have adequate provisions in this regard, introduces since the current Act 1/2000 and in general the principle of provisional enforcement of judgments, so that once it is issued and without waiting for the resolution that ends the process to become final and conclusive, it can be enforced (Art. 526 of the Civil Procedure Act EDL 2000/77463).

In this context, it is contrary to legal logic that, in the absence of express provision for a different solution, judgments holding a collective redundancy unlawful and entailing an order for reinstatement and payment of back pay lack the precise safeguards that would guarantee the enforceability of the judgment, especially since individual redundancies linked to a collective redundancy are conditioned by the outcome of the latter, as provided for in Article 124(13)(b) of the Employment Jurisdiction Act. In the absence of an order for the payment of lost wages, and in the absence of any express legal provision to the contrary, the legal rule must be applied. On the contrary, to admit an appeal against the judgment without ensuring compliance with the order would place the enforceability of the finding at serious potential risk, thus violating Article 24(1) of the Constitution.

In fact, if the judgment the collective redundancy unlawful could not be guaranteed by the double mechanism of depositing its content until the finding and provisional enforcement of its subsequent consequences, we would be placing those who have obtained a court ruling in their favour in a worse position than the workers who reached a compensation agreement with the defendants, and furthermore, the future reimbursement of unemployment benefits overlapping with the period in which the workers are entitled to back pay under this judgment would be jeopardised.

This Division does not consider the lack of quantification of the value in the judgement to be an obstacle to the deposit, and it should be remembered that it is a question of an order for the payment of back pay during the period in which the redundancy was being processed and that, in the case of back pay in individual redundancy proceedings, it is very common for the order not to include the quantification of the value, without this ever having prevented the requirement for the appropriate deposit or bond.

Lastly, it should be borne in mind that the decision of the Fourth Division of the Supreme Court of 3 July 2013 (appeal 8/2013) held that it was not necessary, in order to lodge an appeal in cassation, to include the value of the order in collective redundancy proceedings, but did so precisely because the finding in those order, under the regulation of Royal Decree-law 3/2012, incorporated pronouncements of orders, but was merely constitutive. The logic of that same decision leads to the fact that the deposit or bond is now enforceable after the amendment of

John Woodger
Traductor-Intérprete Jurado de Inglés
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the procedure for contesting collective redundancies by Act 3/2012, so that in the event that the redundancy is held unlawful, the finding does incorporate an order, which incorporates an order to pay unearned wages accrued since the redundancy and during the conduct of the proceedings.

Once the personal scope has been established in this judgment and finding, and the specific liabilities of each of the defendants have been established, whoever intends to appeal must deposit in accordance with Article 230(1) in relation to Article 113 of the Employment Jurisdiction Act, the wages accrued by the workers during the conduct of the proceedings in the court included in the order made, for the period from the notification of the redundancies until the date of notification of this judgment and to that effect must with the announcement of appeal specify the criteria and calculations used to set the value of the order, both for verification by the Court Clerk and by the opposing party as well as for possible correction and, if necessary, dispute and determination in the procedural stage of the announcement of the appeal.

In support of the above view, the STS of 20.4.2015 - rec 354/2.014 -, which affirms the judgment of this Division of 12.6.2014, and which in view of the amendment operated by Act 3/2.012 and the subsequent RD-law of 2 August 2013 that in its Art. 11 amends Art. 247 LRJS, rectifies the previous doctrine by making a pronouncement in the following sense*:*

"the legal landscape has changed substantially after the previous pronouncements were made. On the one hand, Article 124 LRJS (EDL 2011/222121) after the amendment operated with Act 3/2012 establishes in its number 11 in fine that in cases where a collective redundancy is held unlawful, "the order will declare the right of the affected workers to return to their jobs, in accordance with the provisions of Article 123(2) and (3) of this law".

The aforementioned provision, Article 123(2) and (3) LRJS, set out the content of the judgment on individual redundancies with referral to disciplinary dismissals, and in addition Article 123(2) LRJS - to which it has already been said that Article 124 LRJS refers - states that "...without being able to determine back pay in the period of notice", thus explicitly presupposing the existence of back pay. All of this could ultimately lead to the understanding that the order should be that of reinstatement and payment of wages lost from the time of redundancy until the judgment is passed. It is true that in the absence of a specific provision for these cases contained in Art. 230 LRJS, and being that the deposit of the value of the order is a way of guaranteeing the future enforcement, provisional or definitive, of the order (for all of them, our judgment of 14 July 2000 - R. 487/99), the determining factor was whether the LRJS envisaged in any way the enforcement of any of orders made in the proceedings under Article 124 LRS, which was clearly not the case at the time, as was reasoned in our already cited judgments and Order, which justified the content of those decisions.

And more radically, the regulatory landscape has been altered with the amendment of Article 247(2) LRJS) introduced by Article 11. The new law is based on the provisions of RDL 11/2013 of 2 August 2013, later ratified in its wording by Act 1/2014 of 28 February 2014, in force since 2 March 2014 and applicable, according to the provisions of the 3rd Transitory Provision of said law, to collective redundancies "that begin" as of 4 August 2013 (which covers the present case that we are analysing, where the redundancy begins with the consultation period on 2 January 2014).

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This article was expressly amended to include the provision that we emphasize, that "The modality of enforcement of final and conclusive judgments regulated in this article shall be applicable to the remaining enforceable, judicial or extrajudicial instruments of an employment nature, finding for claims requesting an order and susceptible of individual enforcement in the terms of Article 160(3), as well as final and conclusive judgments or other enforceable instruments on geographical mobility, substantial modifications of working conditions, suspension of contracts or reduction of working hours for economic, technical, organizational or production reasons of a collective nature, and in cases of collective redundancy in which the collective business decision has been held unlawful."

From that moment on, this legislative provision offered a very different perspective, a radical turnaround on the fundamental argument put forward by this Division in the above-mentioned judgments, which stated that it was "very significant that number two of said Article 247 includes the enforcement of collective decisions on geographical mobility, substantial modifications of working conditions, reductions in working hours and suspensions, and does not include collective terminations".

Consequently, if collective redundancy judgments can be definitively enforced when the collective redundancy has been held unlawful, it seems clear that the order as to payment of the back pay contained in the judgment under appeal must go hand in hand with the corresponding need to make a provision for that back pay in order to be able to lodge an appeal, a provision which will thus serve as a guarantee of future enforcement".

HAVING REGARD to the above-mentioned legal provisions and others of general and relevant application

FINDING

In the claim contesting a collective redundancy, instigated by AIDA TROITIÑO, JOSE LUIS ACOSTA, PALOMA LOZANO, LIDIA ARASANZ, JAIRO GONZALO, JOHN FAESSEL, ALEXANDRA SAIS, FERNANDO DIAZ DE AGUILAR, JACOB BREURE, NICOLAS RODRIGUEZ, LUCIANA GACELA SIDI, ABDELSALAM MOHAMED, members of the ad hoc committee, USO, SINDICATO ESPAÑOL DE PILOTOS DE LINEAS AEREAS SEPLA and SINDICATO INDEPENDIENTE DE TRIPULANTES DE CABINA DE PASAJEROS DE LINEAS AEREAS, against RYANAIR DAC, we reject the exception of absence of required joinder of parties and, FINDING IN FULL FOR THE CLAIMANT, we hold the contested decision to collectively terminate unlawful, with e immediate reinstatement in the company in the same working conditions in which the workers had been carrying out their services before the collective redundancy and with the immediate payment of the salaries they have not earned since the termination of their contract.

This judgment shall be notified to the parties, advising them that an appeal to the Supreme Court may be lodged against it, which may be prepared before this Division of the National High Court = within FIVE working days of notification, which can be done by means of a statement of the party or its lawyer, labour law advisor or representative when notified, or by means of a written document presented in this Division within the above-mentioned time limit.

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At the time of preparing the cassation appeal before the Employment Division of the National High Court, the appellant, if he does not enjoy the benefit of legal aid, must prove that he has made the deposit of 600 euros provided for in *Article 229(1)(b) of the Employment Jurisdiction Act*, and, in the event that he has been ordered to pay any amount, he must have deposited the amount that he has been ordered to pay in accordance with *Art. 230 of the same legal text,* in the current account that the Division has opened at Banco de Santander, Sucursal de la Calle Barquillo 49, if by transfer under No. 0049 3569 92 0005001274 and recording under observation the no. 2419 0000 00 0288 19; if cash in account no. 2419 0000 00 0288 19, with the possibility of replacing the cash deposit with a bank bond stating the joint and several liability of the guarantor.

This judgment shall be added to the original records of the proceedings and to the record of judgments.

Thus, by our judgment we pronounce, order and sign.

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Dissemination of the text of this decision to parties with no interest in the proceedings in which it has been issued may only take place after the personal data contained therein have been dissociated and only with full respect for the right to privacy, the rights of persons requiring special protection or the guarantee of anonymity of victims or injured parties, where applicable.

The personal data included in this decision may not be transferred or communicated for purposes contrary to the law.

John Woodger, Certified Translator-Interpreter of English appointed by the Spanish Ministry of Foreign Affairs and Cooperation under number 4651, certifies that the foregoing is a true and complete translation into English of a document written in Spanish.

Madrid, 13 May 2020

D. John Woodger, Traductor-Intérprete Jurado de inglés nombrado por el Ministerio de Asuntos Exteriores y de Cooperación bajo el número 4651, certifica que la que antecede es traducción fiel y completa al inglés de documento redactado en español.

En Madrid a 13 de mayo de 2020

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