Roj: **SAN 4555/2023 - ECLI:EN:AN:2023:4555**

Cendoj Id: **28079240012023100100**
Body: **Audiencia Nacional. Sala de lo Social**
Headquarters: **Madrid**
Section: **1**
Date: **18/09/2023**
Appeal No: **184/2020**
Resolution No: **99/2023**
Procedure: **Collective dispute**
Rapporteur: **JOSE PABLO ARAMENDI SANCHEZ**
Type of decision: **Judgment**

AUD.NACIONAL SALA DE LO SOCIAL

MADRID

JUDGMENT: 00099/2023

NATIONAL AUDIENCE

Social Chamber

Ms MARTA JAUREGUIZAR SERRANO

JUDGMENT OF THE ADMINISTRATION

OF JUSTICE JUDGMENT No 99/2023

Trial Date: 12/09/2023

Sentence Date: 18/09/2023

Type and No. of Proceeding: Collective Disputes 0000184 /2020

Accumulated Proc:

Rapporteur: JOSÉ PABLO ARAMENDI SÁNCHEZ

Applicant(s): EUROPEAN WORK COUNCIL IAG

Defendant(s): INTERNATIONAL CONSOLIDATED AIRLINES GROUP, S.A.

Resolution of the Judgment: PARTIAL APPROVAL

AUD.NACIONAL SALA DE LO SOCIAL

-

GOYA 14 (MADRID)

Tel: 914007258

E-mail:

Team/user: MAD

NIG: 28079 24 4 2020 0000186

Model: ANS105 SENTENCE

CCO COLLECTIVE DISPUTES 0000184 /2020

Originating procedure: / About:

COLLECTIVE DISPUTE

Rapporteur Mr JOSE PABLO ARAMENDI SANCHEZ

JUDGMENT 99/2023

MR.PRESIDENT:

MR JOSE PABLO ARAMENDI SANCHEZ

ILMOS/AS. MRS./MADAMS. MAGISTRATES:

D. RAMÓN GALLO LLANOS

Dª ANA SANCHO

ARANZASTI

In MADRID, this eighteenth day of September two thousand and twenty-three.

The Social Division of the Audiencia Nacional composed of the Judges cited in the margin and of the Judges of the Court of First Instance of the European Communities. Magistrates cited in the margin and

IN THE NAME OF THE KING

Have given the following decision

JUDGMENT

In the procedure CONFLICTOS COLECTIVOS 0000184/2020 followed by application of COMITE DE EMPRESA EUROPEO IAG (Lawyer Mr. José Manuel Copa Martínez) against INTERNATIONAL CONSOLIDATED AIRLINES GROUP, S.A (Lawyer Mr. Adriano Gómez García-Bernal) regarding COLLECTIVE DISPUTES. JOSÉ PABLO ARAMENDI SÁNCHEZ was the Judge-Rapporteur.

FACTUAL BACKGROUND

First.- According to the case file, on 3.6.2020, a lawsuit was filed by the EUROPEAN COMPANY COMMITTEE IAG against INTERNATIONAL CONSOLIDATED AIRLINES GROUP, S.A. regarding collective conflict.

Secondly, the present claim was initially resolved by the SAN of 14-9-2020, which in its ruling ruled *that this Court lacked jurisdiction to hear the claim brought by the European Works Council of the IAG GROUP against the company INTERNATIONAL CONSOLIDATED AIRLINES GROUP S.A., declaring the jurisdiction of the Social Courts of the city of Madrid and that the plaintiff could re-state her claim before the said forum.*

Third.- This judgement was appealed in cassation by the Social Division of the Supreme Court, a judgement was handed down on 24-2-2023, which ruled:

1. The appeals brought by International Consolidated Airlines Group, SA, represented and assisted by Adriano Gómez García-Bernal, lawyer, and by the European Works Council of IAG International Group, represented and assisted by José Manuel Copa Martínez, lawyer, are dismissed.

2. Set aside and annul the judgment of the Sala de lo Social de la Audiencia Nacional 68/2020, 14 September 2020 (proc. 184/2020).

3. Declares that the Sala de lo Social de la Audiencia Nacional has objective jurisdiction.

4. Refer the proceedings back to the Social Division of the Audiencia Nacional so that, on the basis of its objective jurisdiction, it may examine the collective dispute brought by the European Works Council of the AG International Group, in so far as that council has not withdrawn or waived its claim, with full freedom of discretion.

5. Order the parties to bear their own costs and not to pay the costs. With reimbursement to International Consolidated Airlines Group, SA of the deposit lodged for the purposes of the appeal.

In compliance with the order, the following order was issued on 8-6-2023:

On 24 February 2023, the Supreme Court handed down a judgement upholding the appeals lodged by INTERNATIONAL CONSOLIDATED AIRLINES GROUP, S.A. and by the EUROPEAN BUSINESS COMMITTEE OF IAG INTERNATIONAL GROUP, annulling the judgement of this Chamber dated 14/09/20 (Judgement 68/2020), and ordering the proceedings to return to the time prior to the judgement for a new judgement to be handed down.

The Chamber that handed down the annulled Judgment was composed of the Honourable Emilia Ruíz-Jarabo quemada as president, and the Honourable Ramón Gallo Llanos and Susana María Molina Gutiérrez, Judges.

Ramón Gallo Llanos and Susana María Molina Gutiérrez.

At present, neither Ms. Emilia Ruíz-Jarabo quemada nor Ms. Susana María Molina Gutiérrez are members of the Chamber.

Consequently, and given that the original composition of the Court has been altered, the proceedings should be set back to the date of the reconvening of the conciliation and trial proceedings on the basis of the current composition of the Chamber.

Fourth: The parties were summoned to a new trial on 12 September 2023. The parties having been summoned to a new trial on 12 September 2023, the applicant confirms its claim, although it withdraws the second paragraph of the second request contained in the plea in law and claims that the IAG group proceeded to dismiss 12 000 workers at British Airways and 500 at Air Lingus, which required the opening of a process of information and consultation with the European Works Council of AIG, which was not carried out, in breach of the provisions of the European Works Council Regulation (EEC) No 4064/89.It submits that the IAG group made 12 000 workers redundant at British Airways and 500 at Air Lingus, which required the opening of a process of information and consultation with the European Works Council of AIG, which was not carried out, in breach of the provisions of the Community Directive, Law 10/97 and the agreement establishing the EWC at AIG. He claims that compensation for damages arising from the failure to convene the EWC should be awarded, a matter which is reserved for a later action.

IAG opposes the claim, arguing that it has no standing to bring this dispute at the present time, given that the dismissals in question took place three years ago, so that there is no real and direct interest today.

He considers that the events that took place did not determine the convening of the EWC on the basis of the agreement regulating its operation, as the requirements set out in Art. 3.3 and 3.4 are not met, as it is not a matter of a transnational nature. It points out that although the redundancies were due to a general cause such as the pandemic, the decisions had no relevance outside the individual companies. IAG is a group of groups of companies, namely British Airways, Iberia and Air Lingus, each of which is in turn made up of various companies, but each group is fully autonomous, so that the measures adopted, in each case in accordance with the legislation of each Member State of the Union, were not relevant outside each group and in no case did they exceed 50 % of the workforce of each group; there was no transfer of activity from one group to another, nor was there any relocation.

Result and so declared, the following

ESTABLISHED FACTS

FIRST - By Resolution of 29 May 2017, published in the Official State Gazette of 16 June 2017, the European Works Council (hereinafter EWC) of the company EUROPEA IAG INTERNATIONAL GROUP SA was constituted, which is made up of different European airlines such as: BRITIS AIRWAYS IBERIA, IBERIA EXPRESS, AER LINGUS and FRANCE LEVEL (descriptor 84).

SECOND: The EWC established its address at Calle El Caserío, Iberia Zona Industrial, Camino de la Muñoza S/N, Madrid 28042.

THIRD - On 1 May 2020, Mr Roberto, CEO of the airline BRITISH AIRWAYS spoke at the Transport Committee of the British Parliament to explain the impact that Covid-19 had had on the industry. In his speech he reported on the employment measures taken by his company. Specifically, question number 126 put by Mr Rogelio was as follows:

"You have partly explained the dual focus on Spanish and UK operations, but I think British Airways employees, ourselves as parliamentarians and the general public, see that by far the majority of lAG's profits are generated by British Airways, as we have seen so far, and yet they have decided to cut 12,000 jobs in this country, while basically saving Spanish jobs. Doesn't that seem a bit unfair?"

To this question Mr. Roberto replied:

"That is not correct. It is not. Let me explain. What we have done at British Airways, as we are required to do under UK law, is to advise our elected representatives on the need for restructuring.

As you know, under the Trade Union and Labour Relations (Consolidation) Act 1992, we are obliged to do this as soon as possible. We are obliged to inform the Secretary of State if redundancies are likely to occur, and then we are obliged by law to undertake a round of consultation to give elected representatives the opportunity to influence the decisions that are taken, to mitigate the severity of any redundancies that may be necessary and to reduce, if possible, the number of redundancies necessary. The restructuring of British Airways that you have read about in the press is the result of the consultations that we must do, that we will do and that we have initiated in good faith to give elected representatives the opportunity to influence the process.

The labour laws in Ireland and Spain, the main countries in which we operate are different, and we are required to do

it differently. We are embarking on a restructuring and we have made it clear

which affects the whole group; it is not specific to British Airways. It is the restructuring of the whole group in the face of the biggest crisis ever faced by the airline industry and by the airlines themselves.

It is not as you describe it. We are not taking it out on British Airways. We are not doing anything that we do not believe is absolutely necessary to ensure the survival of British Airways, and we are doing exactly the same for the other airlines in the group, complying with the law of the countries in which we operate."

(cross-examination of Mr. Roberto , and descriptors 13 and 97)

FOURTH - At the date of filing of the complaint on 3 June 2020, only one of the companies of the IAE group, namely BRISTISH AIRWAYS, had formally initiated the processing of employment restructuring measures affecting only staff located in the United Kingdom (facts and descriptors 4 to 10).

FIFTH - The company AER LINGUS sent a communication to the Minister of Labour Affairs and Social Protection on 19 June 2020 with the following content:

"Employment Protection Acts of 1977 and 2007 Notification of Collective Redundancy Proceedings - Shore Operations Dear

Minister:

I am writing to you on behalf of Aer Lingus (Ireland) Limited and Aer Lingus Limited ("Aer Lingus").

Since our previous letter of 23 March 2020, we have seen our business and revenues deteriorate significantly further as a direct consequence of the Covid 19 pandemic and its associated impact on travel and the aviation sector in general.

We are currently operating with only a 5% programme of flights, which represents a 95% drop compared to our equivalent volumes in the same period in 2019. Current forecasts point to a very slow return of international travel, and this is evident from our future booking levels compared to what would be expected at this time of year.

Unfortunately, it seems that uncertainty will continue in the coming months and years and the current market expectation is that we may have to wait until 2023 to see a recovery of the aviation market.

We have been in dialogue since early March with the Irish Congress of Trade Unions (ICTU) on the challenges we face.

We have introduced a package of measures to respond to this crisis while maintaining direct employment (as far as possible). We have reduced working hours and basic wages by 50% for the months of April and May, and suspended all recruitment. We have just announced that these reduced wage conditions remain in place and, for certain workers in operational roles where there is simply little or no work at the moment, we will implement temporary lay-offs and further reductions in working hours and wages, up to 30%, until 29 August. We have allowed those workers who wish to apply to take unpaid leave and part-time working conditions. We have withdrawn job offers to candidates who had not yet joined and let workers on fixed-term training contracts leave at the end of training courses.

As we reported to you in March, we have terminated 176 fixed-term and seasonal employees on the grounds of redundancy. In addition, some 120 employees have expressed their wish to leave Aer Lingus between June and the end of September under a separate voluntary redundancy programme linked to a restructuring of our catering business, launched in May 2020, under a collective agreement negotiated with the SIPTU union, which was formalised after a consultation process in February 2020.

Despite the measures taken to date, the challenges we face in getting out of this crisis in the sector remain significant.

Consequently, the only alternative we have is to implement a structural cost reduction plan because it is simply not sustainable to operate at our current levels of resource and payroll costs in the face of such a sharp deterioration in activity and revenues, and such an uncertain commercial future.

At this point in time I foresee the need to reduce the workforce by up to 500 employees across our company. Should the situation continue to deteriorate, we may have to reconsider the necessary job cuts.

This plan includes an on-going study of our resources in the current multi-group structure of Shore Operations at the Dublin, Shannon and Cork bases.

We anticipate the need to cut up to 100 staff in our Shore Operations Departments in Dublin, Cork and Shannon, while seeking to maintain an appropriate mix of skills to meet our future operational needs. At the time of writing, this is only an estimate and, as a result, the percentage and number may change in the coming weeks and months.

This workforce reduction plan envisages a review of the workforce resources and skill mix of our Ground Operations Department at Dublin Airport as part of a restructuring of the area, which currently has employees employed on a "job catalogue" basis with groups and levels in all departments including ramp and cargo, baggage reclaim, cabin cleaning and passenger handling. We have identified a number of restructuring initiatives involving teamwork and diversification of skills that we will implement in Ground Operations in Dublin to ensure that we can emerge from this crisis with the levels of efficiency necessary to be competitive in an industry that will have changed and where there will be new regulatory requirements, new logistical challenges and new business costs. This will require us to develop a competency matrix by job category in Land-based Operations as part of the proposed selection process.

We are therefore writing to you under the Employment Protection Acts of 1977 and 2007 (the Acts) because we anticipate that, if confirmed, early retirement as a result of this proposed downsizing will reach the threshold set out in the Acts. 7 .
Our consultations with the ICTU-affiliated trade union SIPTU on the impact of Covid 19 started on 6 March 2020, and we have had an ongoing dialogue on the package of measures implemented to date.

We continue to maintain a regular dialogue with the ICTU and SIPTU confederation on the business and industry challenges we face and our short term needs for cost reductions in payroll and working hours, and temporary lay-offs in certain areas, in a context where we operate with 5% of the flight schedule and consequently have very little work for our operational staff. We have also been in dialogue with the ICTU and SIPTU regarding our future needs for key change initiatives that we believe are necessary (and are covered by our existing collective agreements) to ensure that our Ground Operations Departments respond effectively and swiftly to the operational challenges facing Aer Lingus as we seek to rebuild our flight programme for the coming months and years.

We have informed the ICTU confederation and the SIPTU union that, given these challenges, we are overstaffed, indicating that our intention is to reduce staffing levels in the coming months" (descriptor 67).

SIXTH - The management of AIG sent a letter to the EWC on 12-6-2020 stating:

At the last meeting we provided an update on the measures being taken by different airlines to respond to the Covid-19 crisis, which, with the introduction of the quarantine measures, has only worsened. Please find attached the slides we wanted to share with you at yesterday's meeting.

Given your interest in BA's consultation process, we share some of the information that BA has shared with its own Unions, although most of this will already be known to BA representatives on the EWC. There are no non-UK employees covered by these proposals, and we do not accept that they are transnational. That said, in view of the fact that in BA both Unite and GMB are telling their representatives and members not to engage in dialogue with local management, your participation and the information you bring to us could be used to re-engage in dialogue.

In view of the impact the current situation at LEVEL Europe (Anisec) is having in both Austria and the Netherlands, we would like to start consultations with you on the future of these bases, and we had hoped to be able to do so yesterday. I suggest that we arrange for an urgent meeting where we can follow up on this issue or reschedule the meeting of the Committee in Charge of Transport as soon as possible. Please let me know your availability.

I have also attached the latest LATA report on the economic performance of the airline industry in case you have not seen it.

SEVENTH - On 14 July 2020, the management of the defendant company submitted to the EWC the documentation relating to the employment restructuring measures adopted by LEVEL EUROPE (hereinafter ANISEC) affecting bases located in Austria and the Netherlands, considering the decision to be transnational in nature (descriptor 118).

EIGHTH - At the IBERIA Board of Directors' meeting of 23-3-2020, it was agreed to request authorisation for an ERTE due to force majeure caused by COVID19 that would affect all operational areas of flight, handling, line maintenance and cargo, up to 90% and 70% of central services.

NINTH.- The IBERIA EXPRESS Management Committee decides on 13-3-2020 to initiate a suspension of contracts due to force majeure with cause in the COVID19 affecting 90% of the flight personnel and 80% of the office personnel.

TENTH - On 26-3-2020 the Board of Directors of VUELING AIRLINES SA decides to present a file for the suspension of 90% of the contracts of the workforce with cause in the COVID19

ELEVENTH: For 42 workers of IAG CARGO LIMITES SUCURSAL IN SPAIN, a request for contract suspensions due to ETOP causes was presented on 9-4-2020.

Also for the same reasons, on 11-5-2020, the suspension of the contracts of 27 workers at IAG GBS LIMITED SUCURSAL EN ESPAÑA was requested.

TWELFTH - Following the merger between IBERIA LAE and BRITISH AIRWAYS three collective redundancies were carried out in IBERIA, affecting 2,696 workers, which were validated by the SANs of 13-2-2013, orders 169/13, 14-3-2014 orders 241/14 and 6-2-2020.

The legal provisions have been complied with.

THE LEGAL BASIS

FIRST.- The facts that are declared proven have been proven on the basis of the following elements of conviction:

- 1st to 5th and 7th facts: as declared proven in the previous judgment and not contested by the parties.
- Fact 6: taken from document s D88
- Fact 8: for D109
- Fact 9: Document to D111
- fact 10: D 112
- 11th recital: for D 113 and 114
- Fact 12: The existence of these dismissals is not disputed and is evidenced by the SNSs referred to.

SECOND.- These proceedings originate from the lawsuit filed on 3-6-2020 by the European Works Council of IAG INTERNATIONAL GROUP and in which it is requested, in the terms established in the previous trial, that:

a) Declare that the restructuring measures initiated in BRITISH AIRWAYS and in other companies of the IAG GROUP are considered to be transnational in the terms defined in the agreement establishing the European Works Council of IAG and, consequently, the defendant is obliged to carry out the procedures for information and consultation with the European Works Council, in accordance with the provisions of the agreement establishing that body, and order the defendant to comply with that declaration.

b) order IAG to carry out the procedures for informing and consulting the European Works Council in accordance with the provisions of the agreement establishing the European Works Council.

The defendant IAG first of all pleads lack of action on the grounds that the dispute is not topical, arguing that there is no real and current interest, since the employment measures giving rise to the EWC's request for action have already been implemented and completed, so that a decision to inform and consult with the EWC at the present time makes no sense.

The argument cannot be shared, as the fact that we are currently judging the merits of the controversy that arose on 3-6-2020 is due to the erroneous decision of this Chamber adopted in the previous judgment to consider itself incompetent to resolve it, which has led to the consequent procedural delay caused by the filing of an appeal in cassation before the SC, which in its judgment of 24-2-2023 returned the proceedings to us so that we can resolve the merits of the case.

Therefore, and given that the first part of the plea is also a declaratory claim, the Court considers that, in view of the date on which the application was lodged, there is no lack of action and we can proceed to resolve the merits of the case, ultimately declaring whether, in view of the events detailed in the proven facts, the EWC should have been called for information and consultation.

The solution, if positive, would establish the existence of a breach of an obligation in such a case from which a claim for damages could possibly arise.

On the other hand, we do see a lack of action with regard to the request for a conviction contained in the second part of that plea, since the obligations to inform and consult the EWC only make sense if they are carried out prior to the employment measure adopted by the European company, and it makes no sense to oblige the defendant now, when those measures have already been fully implemented.

THIRD - The regulation of the EWC is based on Directive 2009/38, which justifies it in its considerations by stating:

(10) The functioning of the internal market entails a process of concentrations of undertakings, cross-border mergers, takeovers and partnerships and, consequently, a transnationalisation of undertakings and groups of undertakings. In order to ensure that economic activities develop in a harmonious way, it is necessary for undertakings and groups of undertakings operating in several Member States to inform and consult the representatives of the employees affected by their decisions.

(11) The procedures for informing and consulting employees provided for in the legislation or practice of the Member States are often not adapted to the transnational structure of the entity taking the decision affecting them. This situation may lead to unequal treatment of employees affected by decisions within the same undertaking or group of undertakings.

(12) Appropriate arrangements must be made to ensure that employees of Community-scale undertakings or Community-scale groups of undertakings are duly informed and consulted where decisions affecting them are taken in a Member State other than the one in which they work.

...

(15) Workers and their representatives must be guaranteed information and consultation at the relevant level of management and representation, depending on the subject matter.

To this end, the competence and scope of intervention of the EWC should be distinguished from those of national representative bodies and limited to transnational issues.

(16) The transnational nature of an issue should be determined by taking into account both the extent of its potential effects and the level of direction and representation involved. For this purpose, issues are considered to be transnational where they affect the whole undertaking or group of undertakings, or at least two Member States. Such issues include, irrespective of the number of Member States concerned, those which are of importance for European workers in terms of the extent of their potential effects or those which involve the transfer of activities between Member States.

This reasoning culminates in the mandate that the Directive imposes in Art. 1 when it states:

1. The purpose of this Directive is to improve the right to information and consultation of employees in Community-scale undertakings and Community-scale groups of undertakings.

2. To this end, a European Works Council or a procedure for informing and consulting employees shall be set up in each Community-scale undertaking and Community-scale group of undertakings, provided that a request to this effect has been made in accordance with the procedure laid down in Article 5(1), in order to inform and consult employees. The arrangements for informing and consulting employees shall be defined and implemented in such a way as to ensure their effectiveness and to enable effective decision-making by the undertaking or group of undertakings.

FOURTH - In accordance with the provisions of this directive and those of Law 10/1997, IAG and its workers' representatives at European level reached an agreement on 27-4-2017 for the constitution of the EWC of the IAG group, which is published in the BOE of 16-6-2017 and which regulates its operation.

The preamble of the agreement details the purpose of the agreement, stating that:

0.1 IAG and employee representatives recognise the value of information and consultation with their employees and the importance of their collaboration in a spirit of cooperation to ensure the future success of the Group. To this end, both parties recognise the need to exchange information and maintain a constructive dialogue on the Group's activities.

0.2 This is without prejudice to existing information and consultation mechanisms at national level, which this Agreement is intended to complement. Both parties recognise the need to develop a dialogue and mutual understanding between management and employees on the transnational aspects of the Group, and the purpose of this Agreement is to enable issues of a transnational nature to be addressed at European level.

The term transnational issues, which, as can be seen both in the directive and in this agreement itself, determines when the obligation to inform and consult employees' representatives arises, is defined in Art. 1 of the agreement as follows:

Transnational: Issues that affect the IAG group as a whole or at least two EEA states. These include issues which, irrespective of the number of states involved, are of relevance to European employees in terms of the extent of their possible effects or which involve transfers of activities between states.

Art. 3 sets out the specific obligations of AIG vis-à-vis the EWC when a transnational issue arises, stating:

3.2 The EWC will receive regular updates on Transnational issues with particular emphasis on the potential impact of management proposals on EEA workers. These updates will include all relevant documentation (including financial documentation). The intention is that prior to any announcement of planned measures affecting Employees, management will inform and consult (where required under clause 3.4) the EWC with a view to reaching an agreement. Where management decides not to act in accordance with the opinion issued by the EWC, the EWC shall have the right to a detailed response from management in a meeting.

3.3 Management shall report and consult (where required under clause 3.4) on the following issues when they are of a Transnational nature:

IAG's economic and financial situation. The

development of the business.

The employment situation and likely employment trends.

Investments.

IAG's structure and any significant changes to the organisation (including mergers, acquisitions or the formation of new IAG companies).

The introduction of new working methods and practices (including, but not limited to, information on their possible impact on the prevention of occupational hazards and on Equal Opportunities).

The transfer or centralisation of functions or activities within/outside IAG.

Reductions or closures of companies, establishments or important parts thereof.

Collective redundancies.

Other issues may be included by agreement. The complexity and commercial sensitivity of the business is recognised and the two Chairmen may agree on how to address particular issues.

3.4 The parties agree that the Consultation will only take place when the issue to be addressed is of a Transnational nature and:

affects 25 or more Workers; or

affects more than 50% of the Workers from a single EEA country.

FIFTH: It is an undisputed fact that in the first quarter of 2020 the world's population was affected to a greater or lesser extent by the harmful effects of the pandemic known as COVD19.

It is also an undisputed fact that the pandemic has had harmful effects on our daily lives and, as far as we are concerned, on employment.

In order to deal with this situation, IAG adopted various employment measures in its various business groups, which, as established in the proven facts, consisted of the following:

- 12,000 redundancies at BRITISH AIRWAYS
- 500 redundancies at AER LINGUS
- ANISEC, a company operating in Austria and Amsterdam, is closed down
- Contract suspensions for most of the staff of IBERIA LAE, IBERIA EXPRESS, VUELING, IAG CARGO LIMITES SUCURSAL EN ESPAÑA, IAG GBS LIMITED SUCURSAL EN ESPAÑA, to be taken into account

In previous years, following the merger between IBERIA LAE and BRITISH AIRWAYS, IBERIA carried out three collective redundancies affecting 2,696 workers.

IAG's defence argued at the trial, as an essential element of its argument, that although the cause for all these measures, COVID19 , had transnational effects, this was not the case with each of these measures, so that the redundancies at BRITISH AIRWAYS had no effect on the rest of the group either in terms of employment or in terms of a possible transfer of activities.

The same would have happened with the redundancies in the Irish company AER LINGUS or with the various contract suspension measures taken in companies operating in Spain.

It concludes that the measures adopted in each country, with the exception of the closure of ANISEC, which could not be described as transnational, did not require information and consultation with the EWC, as they did not meet the requirements of Article 3.3 of the agreement establishing the EWC in AIG, nor the level of impact on the workforce required by Article 3.4.

SIXTH - The Board disagrees with IAG's approach.

As mentioned above, transnational issues are understood to be those *which concern the IAG group as a whole or at least two EEA states*.

And it is clear that COVID19 unquestionably affected employment in all the countries of the European Union of which the United Kingdom was then a member.

It is true that when the agreement in Art. 1 defines what is meant by a transnational issue, it then goes on to state: *These include matters which, irrespective of the number of states involved, are of importance for European workers in terms of the extent of their possible effects or which involve transfers of activities between states*.

But this paragraph does not define or limit the scope of transnationality, namely that it is a matter that affects at least two states of the Union, but rather makes explicit some of the cases in which transnationality takes place.

Nor does Art. 3.3 of the agreement affect the definition of transnational expressed in Art. 1 in the terms we have just explained.

Article 3.3 determines the matters that are subject to information, when these are of a transnational nature. These matters include the situation and probable evolution of employment, reductions or closures of companies and establishments and collective redundancies. Furthermore, it is in any case a list of subjects open to other possible subjects, in accordance with the last paragraph of the aforementioned art. 3.3.

In turn, Article 3.4 specifies the obligation to consult when the issue is of a transnational nature, which, as we have seen, is the case and affects more than 25 workers (this must be understood to be from more than one EU country) or more than 50% of workers from a single country.

However, since the application does not refer to the contract termination measures in Spain, but only to those in the United Kingdom and Ireland, none of them, in the light of the evidence, met the additional numerical requirements for the EWC to be consulted on them.

SEVENTH: The duties of information and consultation constitute specific and differentiated obligations that are defined in Article 1 of the agreement as follows:

Information: Information means the provision of information by IAG to employee representatives (or the Select Committee, where appropriate) to enable them to understand and discuss the issue to be addressed; the information shall be provided at an appropriate time, in an appropriate manner and with an appropriate content, so as to enable employee representatives to make a detailed assessment of the potential impact and, where appropriate, to prepare for consultation with IAG.

Consultation: Consultation means the establishment of dialogue and exchange of views between employee representatives (or the Select Committee, as appropriate) and management, at such time, in such manner and with such content as to enable employee representatives, on the basis of the information provided, to give an opinion on the proposed measures to which the consultation relates, without prejudice to the responsibilities of management, and within a reasonable timeframe, which can be taken into account by IAG.

In view of what has happened and in accordance with the rules established for the functioning of the EWC, it can be seen that IAG did not adequately fulfil its duty to inform this body of the employment measures, collective redundancies, undertaken in the group by the companies BRITISH AIRWAYS in the United Kingdom and AER LINGUS in Ireland, under the terms of art. 3.3 of the Agreement of 27-4-2017, which prevented this committee, whose purpose as set out in Directive 2009/38 is to *ensure that employees of Community-scale undertakings or groups of undertakings are duly informed and consulted in the event that decisions affecting them are taken in a Member State other than the one in which they work*, from receiving from IAG the information necessary to assess the employment measures adopted and their possible impact on all the employees of the IAG group.

In view of the foregoing, the claim is partially upheld in the terms set out in the judgment. **EIGHTH -** This judgement may be appealed against in an ordinary cassation appeal in accordance with article 206.1 LRJS, HAVING REGARD TO the aforementioned legal precepts and others of general and pertinent application,

WE FAIL

We PARTIALLY AMEND the application brought by the European Works Council of IAG and declare that the restructuring measures initiated in BRITISH AIRWAYS and AER LINGUS of the IAG GROUP are considered transnational in the terms defined in the Agreement establishing the European Works Council of IAG and consequently the defendant INTERNATIONAL CONSOLIDATED AIRLINES GROUP S.A. is obliged to inform the European Works Council, in accordance with the provisions of the agreement establishing that body, and is therefore ordered to comply with this declaration.

The parties are hereby notified of this judgment and warned that an appeal against it may be lodged with the Supreme Court which may be prepared before this Chamber of the Social Division of the Audiencia Nacional within **FIVE** WORKING **DAYS** of the notification, which may be done by means of a declaration by the party or its lawyer, social worker or representative when notified, or by means of a written statement filed with this Chamber within the aforementioned period.

At the time of preparing the Appeal before the Sala de lo Social de la Audiencia Nacional, the appellant, if he does not enjoy the benefit of Free Justice, must prove that he has made the deposit of 600 euros provided for in art. 229.1.b of the Ley Reguladora de la Jurisdicción Social, and, in the case of having been sentenced in a judgement to pay any amount, to have deposited the amount of the sentence in accordance with art. 230 of the same legal text, all of this in the current account that the Court has opened in the Banco de Santander Sucursal de la Calle Barquillo 49, if by transfer (IBAN ES55) nº 0049 3569 92 0005001274 indicating in the observations nº 2419 0000 00 0184 20; if in cash in the account nº 2419 0000 00 0184 20, being able to substitute the deposit in cash for the insurance by means of a bank guarantee, in which the joint and several liability of the guarantor is stated.

Let this judgment be attached to the original case file and entered in the judgment book. Thus by our judgement we pronounce, order and sign it.