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Special characteristics	Appeal
Content indication	Labour law WWZ (Wet Werk en Zekerheid - Work and Security Act) Polish employee refuses transfer from Eindhoven to Dublin by Ryanair on the basis of a unilateral changes clause. Competence Dutch Court. Applicable law. Explanation of the term 'habitual place of work of the employee' in aviation. Legal dismissal with immediate effect? Fair compensation, transfer compensation, compensation for unlawful termination, salary claim.
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Verdict

COURT OF APPEAL 'S-HERTOGENBOSCH

Civil Law Department

Verdict : 5 July 2018 Case number
: 200,234,447/01
Case number first instance : 6309906 / EJ VERZ 17-599

in the appeals case of:

[appellant] ,
domiciled in [place], appellant in
appeal on the merits,
defendant in appeal, hereinafter referred to
as [appellant], lawyer: mr. M.J. Klinkert,

against

Ryanair DAC,
established in [place of establishment],
Ireland, defendant in appeal on merits,
appellant in appeal, hereinafter referred to
as Ryanair,
lawyers: mr. J.J. Croon and mr. R.H.G. Hartman.

1 The proceedings in first instance

The Court refers to the order of the district judge of the Court of Oost-Brabant, place of session Eindhoven of 4 December 2017 (ECLI:NL:RBOBR:2017:6802).

2 The proceedings on appeal

2.1. The course of the proceedings is apparent from:

- the appeal, with the process file of the proceedings in first instance and an exhibit, received by the Clerk of the Court on 26 February 2018;
- the defence, including an appeal with exhibits, received by the Clerk of the Court on 5 April 2018;
- the defence on appeal with exhibits, received by the Clerk of the Court on 15 May 2018;
- a 'legal opinion' on behalf of the [appellant] , received by the Clerk of the Court on 31 May 2018;
- a 'legal opinion' on behalf of Ryanair, received by the Clerk of the Court on 04 June 2018;

- the oral procedure held on 14 June 2018, where the following have been heard:

- [appellant] , assisted by mr. Klinkers;

- Ryanair, represented by [HR manager] , HR manager, and [head of in-flight operation] , head of in-flight operation, assisted by mr. Croon and mr. Hartman.

2.2. The Court thereafter decided on a date for the ruling. The Court rules on the basis of the above documents.

3 The Verdict

in the appeal on merits and the appeal

3.1. This appeal can – as argued on the one hand and not, or at least not sufficiently, contested on the other hand – be based on the following facts.

3.1.1. [appellant] entered into the service of Ryanair on 1 January 2012. She was born on [date of birth] 1980 and has the Polish nationality. [appellant] was employed as a customer service supervisor. In this position she performed duties on board Ryanair aircraft. The customer service supervisor is a member of the cabin crew.

3.1.2. Ryanair is an Irish company with registered offices in [place of establishment] that is active in the international aviation sector. All aircraft of Ryanair are registered in Ireland. Ryanair is operates a budget airline. It employs approximately 1500 persons that are employed on aircraft as cabin crew.

3.1.3. Upon joining the company the working location of the [appellant] was Stockholm Skavsta, Sweden. As of 1 April 2014 parties agreed a new employment contract and the new work location became Eindhoven Airport.

3.1.4. Article 4 paragraph 1 of this employment contract is as follows:

"4. LOCATION

4.1 *Ryanair's aircraft are registered in the Republic of Ireland and as you will perform your duties on these aircraft your employment is based in the republic of Ireland. You will be located principally at Eindhoven Airport and at such other places as the Company reasonably requires for the proper fulfilment of your duties and responsibilities under this Agreement. It is a condition of your employment that you comply with any such requirement. This would include, for the avoidance of doubt, transfer to any if the Company's bases without compensation. It must be understood that you should be transferred to another base you will be paid in accordance with the prevailing salary and flight pay system at that base."*

3.1.5. In a letter of 30 May 2017 Ryanair notified the [appellant] that as of 1 July 2017 her location of work would be changed to Dublin. As grounds for the transfer Ryanair argued that there was a staff surplus in Eindhoven and a staff shortage in Dublin and that the [appellant] was selected for transfer on the basis of her insufficient sales results.

3.1.6. In a letter of 12 June 2017 the [appellant] notified Ryanair that she was of the opinion that the transfer is not permitted, because it is in contravention of imperative Dutch labour law. The grounds given by Ryanair for the transfer can, according to the [appellant], not be regarded as an overriding interest. Ryanair also did not take her personal circumstances not sufficiently into account, according to the [appellant]
.

3.1.7. Ryanair invited the [appellant] to a meeting on 30 June 2017. The [appellant] appeared at that meeting. The parties exchanged their points of view. During this meeting no agreement was reached.

3.1.8. Thereafter, the [appellant] did not start her work duties in Dublin. Thereupon Ryanair started disciplinary proceedings in accordance with the personnel manual of Ryanair, 'The Rough Guide to Ryanair'. The [appellant] was notified about this in a letter of 4 July 2017.

3.1.9. The [appellant] did not attend the meetings planned by Ryanair within the framework of the disciplinary proceedings. There was an extensive exchange of correspondence between (the authorised representatives of) the [appellant] and (the authorised representative of) Ryanair.

3.1.10. In a letter of 25 July 2017 [appellant] was dismissed with immediate effect by Ryanair. Reasons for the dismissal were, in summary, the repeated refusal of the [appellant] to start her work duties in Dublin and the repeated refusal of the [appellant]

to attend the planned meetings.

3.1.11. In a letter of 3 August 2017 the [appellant] notified Ryanair that she accepted the termination of the work agreement per 25 July 2017.

3.2.1. In the present procedure the [appellant] requested in first instance, and as far as provisionally enforceable:

Principal claim

To sentence Ryanair to a payment to [appellant] of:

A. fair compensation of €25,000 gross, pursuant to article 7:681 of the Dutch Civil Code, or other fair compensation to be determined by the District Court;

B. the legal transition compensation of € 4,050.53 gross, pursuant to article 7:673 of the Dutch Civil Code;

C. compensation for unlawful termination of € 4,944.80 gross, pursuant to article 7:672, paragraph 10 of the Dutch Civil Code;

D. the salary for the period of 1 July 2017 to 25 July 2017 to an amount of €567.67 gross, pursuant to article 7:628 of the Dutch Civil Code;

in the alternative:

E. for the eventuality that the employment contract did end by the dismissal with immediate effect, to sentence Ryanair to pay the [appellant] the legal transition compensation of € 4,050.53 gross, in accordance with article 7:673 juncto 673, paragraph 8 of the Dutch Civil Code;

F. to sentence Ryanair to pay the [appellant] the salary for the period of 1 July 2017 to 25 July 2017 to an amount of € 567.67 gross, pursuant to article 7:628 of the Dutch Civil Code;

Principal claim and in the alternative

G. To sentence Ryanair to pay the [appellant] the legal interest from the time of the aforementioned amounts becoming due to the day of full payment;

H. To sentence Ryanair to pay the costs for the present proceedings, including the salary of the authorised representative.

I. To sentence Ryanair to pay the authorised representative of the [appellant] the (advanced) translation costs as (part) preparation of the proceedings to an amount of €3,527.16.

3.2.2. For all that the [appellant] has based these requests on and the defence offered by Ryanair the Court refers to the representation thereof by the District Court in the contested ruling, on pages 2 to 4 inclusive. As far as pertinent for the appeal, this will be addressed below.

3.3. In the contested ruling the District Court considered first that it is not being disputed by the parties that in article 32.1 of the employment contract they have made a legal choice for the Irish Courts. The District Court then discussed the appeal of the [appellant] to article 21, paragraph 1, sub b under I Brussels I bis. It also addressed the verdict of the European Court of Justice of 14 September 2017 in the cases C-168/16 and C-169/16 (ECLI:EU:C:2017:688), hereinafter referred to as: *Nogueira et all/Crewlink & Ryanair*. In view of the facts in this case the District Court concluded that the Dutch Court is competent to hear the case, in

particular the District Court in Eindhoven, on the grounds of article 100 Rv (Dutch Civil Procedures Code).

After that the District Court considered that it is not disputed between the parties that in Article 32.1 of the employment contract Irish law has been agreed as applicable law. The District Court considered that including a unilateral change clause in Article 4 of the employment contract and the appeal that was made to this clause by Ryanair is not contrary to a Dutch legally enforceable provision. The exception provision of Article 8, paragraph 1 Rome I cannot be appealed to for this reason, so that the chosen Irish law applies, according to the District Court.

Finally the District Court considered that under Irish law Ryanair can be awarded an appeal to the unilateral change clause and the behaviour of the [appellant] result in 'gross misconduct', after which he judged that Ryanair was permitted to dismiss the [appellant] with immediate effect. He also did not deem the salary claim (see above par. 3.2.1 under F) admissible.

On those grounds the District Court rejected the requests of the [appellant] and sentenced her to pay the costs for the proceedings.

3.4.1. The [appellant] has brought seven grounds for the appeal on the merits. The [appellant] has concluded for the annulment of the contested ruling and to award its claims, and sentencing Ryanair to pay the costs for the proceedings.

3.4.2. In its appeal Ryanair brought one objection. The appeal of Ryanair aims to have the contested ruling annulled by the Court and to have the claims by the [appellant] declared inadmissible because of lack of jurisdiction by the Dutch Court, and sentencing the [appellant] to pay the costs for the proceedings.

3.5. Objections 2 to 5 inclusive of the [appellant] and the appeal by Ryanair can be treated jointly as far as they pertain to the question as to whether Ryanair may appeal the choice of forum and jurisdiction in Article 32.1 of the employment contract. This in view of the fact that a parallel interpretation must be given to Rome I and Brussels I bis as regards the phrase 'place where the employee is habitually employed' (cf. *Nogueira et all/Crewlink & Ryanair*. par. 56-57), which is at issue here.

3.6. In the jurisprudence of the European Court of Justice a number of indications are given that the national Court may include in its consideration when addressing the phrase 'place where the employee is habitually employed' for the transport sector *Nogueira et all/Crewlink & Ryanair*. par. 63-64) within the framework of addressing the question as to whether the Court is competent to hear a labour dispute. The national Court must establish in particular in which State the place is situated from which the employee carries out his transport tasks, receives instructions concerning his tasks and organises his work, and the place in which his work tools are situated. When it concerns aviation the Court must also take into account the place where the aircraft are stationed on board of which the work is usually carried out. In *Nogueira et all/Crewlink & Ryanair*. par. 69, it is further stated that the term 'home base', in the sense of annex III to Regulation 3922/91, constitutes a factor that may play an important role for the assessment of these indications.

3.7. As established above in par. 3.1.3, the working location of the [appellant] was at first Stockholm. The original employment contract between Ryanair and the [appellant] also included a unilateral change clause. By means of a new employment contract the working location of the [appellant] was changed to Eindhoven. At the time this was done in consultation; there was no question of a forced transfer at that time. It is not argued, nor has it become apparent, that this concerned a temporary secondment. Furthermore, the placement in Eindhoven was not limited in time beforehand. As of 1 April 2014 the [appellant] carried out her work duties from Eindhoven, until June 2017 when she ended up in the present labour dispute with Ryanair. From this it may be deduced that

after the transfer from Stockholm the new permanent work location of the [appellant] was, as of 1 April 2014, Eindhoven.

3.8. On the basis of the documents in the case-file and during the oral procedure on appeal the Court further established that the [appellant] was not only posted in Eindhoven, but also that the work shifts of the [appellant] always started in Eindhoven and at the end of her shift she also always returned to Eindhoven airport. The [appellant] also received her work instructions, including the mandatory briefings, at Eindhoven Airport. Furthermore, she carried out preparatory work and other work duties (sales administration) in Eindhoven. Furthermore, the aircraft operated by Ryanair, on board off which the [appellant] worked, were factually (primarily) stationed in Eindhoven. The fact that Ryanair has a 'rotating system' according to which aircraft rotate between different airports depending on the flight and maintenance schedule of the specific individual aircraft, does not alter the above. Ryanair also has an 'operational base' in Eindhoven and the Ryanair crew makes use of a crew room at Eindhoven Airport. Finally it follows from the employment contract of the [appellant] that she needs to live in the vicinity of Eindhoven Airport, which the [appellant] does.

3.9. For these reasons, from the point of view of the protection intention that forms the basis of the legislation, it must be decided that the place where the [appellant] was habitually working at the time of the conflict was Eindhoven. The conclusion must therefore be that the [appellant] is admitted to make an appeal on the basis of Article 21, paragraph 1, sub b under i, Brussels I bis and Article 8, paragraph 1, Rome I.

3.10. The facts and circumstances that Ryanair has brought to bear, in particular under margin number 25 of its defence, including the appeal, cannot in the light of the above give rise to a different judgement. It deserves attention that for the explanation of the phrase 'place where the employee habitually works' it is of lesser importance in aviation that – in this case – the work duties of the [appellant] as customer service supervisor are largely carried out in flight on board an aircraft. Ryanair has also argued that the aircraft are registered in Ireland in the sense of Article 17 of the Chicago treaty. That is not, or at least not sufficiently, relevant in the present case. We refer to *Nogueira et all/Crewlink & Ryanair*. par. 75-76.

3.11. The Court rejects the argument of Ryanair that Irish law applies on the grounds of Article 8, paragraph 4, Rome I. In the given circumstances there is no closer tie to Ireland than there is to the Netherlands. Thereby it was taken into consideration that the [appellant] paid her taxes and social security contributions in the Netherlands, as she stated during the oral proceedings of the appeal and which Ryanair did not contradict.

3.12. The next question is whether Dutch law offers the [appellant] more protection than Irish law. Ryanair has informed the Court about Irish law by submitting a 'legal opinion' by Mark Kelly, solicitor for the solicitor's firm of McDowel Purcell (who work on their behalf). The Court considers that Dutch law, as regards the unilateral change clause and dismissal with immediate effect, offers the employee far reaching protection. Article 7:613 of the Dutch Civil Code and Article 7:677 of the Dutch Civil Code are also mandatory statutory provisions in the sense of article 8 lid 1 Rome I. Furthermore, an employee who has been dismissed with immediate effect unlawfully, can have this dismissal quashed and claim for several forms of compensation, in particular, apart from the transition compensation and the compensation for unlawful termination, fair compensation to be determined by the Court. In the Netherlands, the employee who has been dismissed with immediate effect unjustifiably has immediate access to the Courts, which, according to the 'legal opinion', is not the case in Ireland as far as relevant in the present case. During the oral proceedings of the appeal the [appellant] emphasized that it the aspect of access to the Courts in particular that makes legal proceedings in Ireland difficult for her in view of her personal circumstances. The above also brings with it that in the view of the Court the choice for Irish law in the employment contract cannot give rise to the [appellant] losing the protection of Dutch law.

3.13. The conclusion must be that the Dutch Court is competent to hear this case. The

ground for appeal by Ryanair is therefore rejected. The Dutch Court will also apply Dutch law for the further assessment. To that extent the grounds for appeal 2 to 5 inclusive of the [appellant] are successful.

3.14. The objections 2 to 5 inclusive of the [appellant] further intend for the requests, which are grounded on the provisions of the Dutch Work and Security Act, to be awarded. The dispute focuses on the question as to whether Ryanair had the right to dismiss the [appellant] with immediate effect. The dismissal letter gives two reasons for this, being the repeated refusal of the [appellant] to start her work duties in Dublin and the repeated refusal of the [appellant] to attend the planned meetings (see in this regard par. 3.1.10).

3.15. The Court will first address the refusal of the [appellant] to start her work duties in Dublin. Ryanair has written, both in the letter of 30 May 2017, in which it notified the [appellant] of her transfer (see for this par. 3.1.5) and the dismissal letter, that the transfer was in accordance with the employment contract. Thereby Ryanair apparently aims at the provisions in Article 4, paragraph 1 (see in this respect par. 3.1.4.).

3.16. Article 4 par. 1 of the employment contract between Ryanair and the [appellant] constitutes a unilateral change clause in the sense of Article 7:613 of the Dutch Civil Code. On the grounds of Article 7:613 of the Dutch Civil Code the employer can only make an appeal to a written clause that gives him the authority to change the working conditions that are included in in the employment contract, if he has such an overriding interest in the change that the interest of the employee that would have to be harmed by the change, must in all reasonableness and fairness give way to that interest.

3.17. The Court considers the above as follows.

Ryanair notified the [appellant] with a so-called 'one month notice' that she would be transferred from Eindhoven to Dublin. The conversation that Ryanair had with the [appellant] took place on 30 May 2017 and she would have to start her duties in Dublin from 1 July 2017. For the [appellant] there were no indications up until that time that such a transfer would be imminent. On behalf of Ryanair it was argued during the oral proceedings of the appeal that they only knew in May 2017 that from July 2017 there would be a staffing surplus in Eindhoven. In their own words, they had to act quickly. It also did not first carry out an inventory as to whether there were any volunteers for Dublin, but immediately made its own selection from the personnel in Eindhoven for two members of the personnel to be transferred.

Thereby Ryanair did not in any way take into account the personal circumstances of the [appellant]. The [appellant] had at that time been working in Eindhoven for approximately three and a half years. She is a single mother with a child of at that time two years old. For childcare she relies on the social network that she has built up in the Netherlands. Furthermore, she had recently moved into rented social housing accommodation in Eindhoven.

It is clear that the sudden and unexpected change of working location had drastic personal consequences for the [appellant]. Her interest would therefore be harmed by the change in the current employment conditions. In the view of the Court therefore, Ryanair should have taken into account the personal circumstances of the [appellant]. Furthermore the interest of the [appellant] was such that Ryanair could not have decided in all reasonableness and fairness to change the working location as it did.
Thereby it is important that Ryanair has not sufficiently demonstrated that it had an overriding interest to enact the forced transfer of (in particular) the [appellant].

In support of the business economic reasons for the transfer, Ryanair explained that its operations, which include the deployment of personnel, must be as efficient as possible to keep the price of a ticket as low as possible. That is the reason why the unilateral change clause is included in the employment contract, according to Ryanair. According to Ryanair, in this case a staffing surplus had arisen because Ryanair had been forced to have fewer flights leave from and return to Eindhoven Airport. In this regard it referred to its own memorandum (exhibit 6 of Ryanair in first instance). The

Court deems this insufficient in the current case, also because Ryanair did not demonstrate at all that there was a staffing shortage in Dublin.

The explanation of how Ryanair made the selection for the [appellant] to be transferred to Dublin is also insufficient. It always stated to the [appellant] that this was on the basis of her insufficient sales results. More specifically, according to Ryanair she was the 'worst performing customer service supervisor' in Eindhoven. In the proceedings Ryanair presented an overview of the sales results of the personnel of Ryanair in Eindhoven (exhibit 12 in the appeal). From the explanation on behalf of Ryanair during the oral proceedings of the appeal it appears however that the selection for a forced transfer at Ryanair is based on more than just the sales results. It concerns 'performance' in general, and 'sales' is only one aspect of this. In any case it is not clear why in the present case 'sales' was the decisive factor. Furthermore, in view of the argument of the [appellant] disputing this, Ryanair has demonstrated insufficiently why in this case the normal transfer procedure on the basis of voluntariness was not applied and a choice was mode for a forced transfer.

3.18. In view of the above the Court is of the opinion that Ryanair could not in all reasonableness charge the [appellant] to work out of Dublin as of 1 July 2017. In a letter of 12 June 2017 the [appellant] made her view on this sufficiently clear (see in this respect par. 3.1.6.). She also addressed the invitation by Ryanair to a conversation on 30 June 2017 (see in this respect par. 3.1.7.). There it became clear that Ryanair was determined to continue to pursue the transfer. The [appellant] did not agree to this, and under the circumstances could not have been expected to agree. Taking everything into consideration, the conduct of the [appellant] does not constitute a pressing reason for dismissal. The dismissal with immediate effect, as far as grounded on the work refusal, was therefore not justified.

3.19. In this regard the argument of the [appellant] is correct that the dismissal on 25 July 2017 because of a refusal to work was not given forthwith, as is prescribed in Article 7:677, par. 1 of the Dutch Civil Code. Not only did the [appellant] not start work in Dublin, but from 1 July 2017 Ryanair also did not permit the [appellant] access to her work. It was not argued nor demonstrated that further investigation of the relevant facts in this regard was necessary. Ryanair therefore unnecessarily kept the [appellant] in uncertainty about the consequences of the conflict for her employment rights. This contributes to the culpability of the dismissal by Ryanair.

3.20. The Court will now consider the second reason for the dismissal, being the repeated refusal of the [appellant] to attend the planned meetings. This concerns meetings within the framework of the disciplinary procedure started by Ryanair. Ryanair started this procedure at the time that it became clear that the [appellant] would not start her work duties in Dublin on 1 July 2017. Ryanair applied the personnel manual of Ryanair, 'The Rough Guide to Ryanair' in this respect. Initially Ryanair planned 'investigative meetings' and eventually 'disciplinary hearings' that all were to take place in Dublin. The [appellant] did not attend any of these.

3.21. In the light of the above, Ryanair could not after the meeting of 30 June 2017 in all reasonableness expect the [appellant] to subject herself to the disciplinary procedure of Ryanair. During that conversation it had after all become clear that the parties, who knew each other's point of view on the basis of the preceding correspondence, could not come to an agreement. That the aim of the disciplinary procedure of Ryanair would be to (again) consult with the [appellant] to see whether agreement would be possible is supported insufficiently by the documents of the proceedings. It is moreover in contradiction with the personnel policy that Ryanair says it has to adopt as a budget airline and the flexibility that it demands from its employees (see also par. 03.17).

3.22. Therefore it follows that the [appellant] argued on good grounds that the fact that she had indicated not to wish to make use of the disciplinary meetings resulted in a separate reason for dismissal in the letter of dismissal. From the choice of Ryanair to instigate a disciplinary procedure it can after all not follow that the dismissal with immediate effect was (after all) enacted justifiably by Ryanair.

3.23. The grounds for appeal 2 to 5 inclusive are therefore successful. Ground 1 of the appeal of the [appellant], which is aimed against the establishment of the facts by the District Court, does not warrant further discussion due to lack of sufficient interest.

3.24. Now that Ryanair has cancelled the employment contract contrary to Article 7:671 of the Dutch Civil Code and the [appellant] has accepted the cancellation, the [appellant] can, apart from the transition compensation on the grounds of Article 7:673 of the Dutch Civil Code, claim for compensation because of unlawful termination of the employment contract on the grounds of Article 7:672 of the Dutch Civil Code. The Court will now assess to what extent the requested compensation can be awarded.

3.25. The [appellant] requests fair compensation of €25,000 gross. In view of the point of view that the Hoge Raad (Supreme Court of the Netherlands) formulated to determine fair compensation in ECLI:NL:HR:2017:1187 (*New Hairstyle*), the Court deems the size of this amount in any event reasonable. As regards fair compensation, the issue is after all that the employee is compensated for the very serious culpable act or omission of the employer. Because Ryanair unlawfully dismissed the [appellant] with immediate effect, the serious culpability of the act by Ryanair is a given. This culpability is exacerbated by the circumstances under which the dismissal was effected, in particular that Ryanair did not take into account the personal circumstances and justified interests of the appellant. For this the Court refers to what was considered about this in par. 3.17 to 3.22 inclusive. The requested amount of €25,000 gross amounts to (almost) an annual salary of the [appellant]. As a result of the actions of Ryanair, the [appellant] is no longer employed in the aviation sector, although she wished to continue to work in that sector, but now works for an employment agency at a lower salary. The fact that the [appellant] is no longer acceptable as an employee to work for Ryanair and has chosen not to ask for the annulment of the dismissal must be attributed to Ryanair. The consequences for the [appellant] of the loss of the employment contract are therefore substantial. As regard the value of the contract (cf. ECLI:NL:HR:2018:857, par. 3.4.2) it is important that Ryanair has not contested that the [appellant] could assume that she would remain employed by Ryanair for (at least) another year, if not longer. The requested fair compensation can therefore be awarded in full. Thereby it was taken into account that the [appellant] is also due transition compensation, as will be shown below. Ryanair, also in its appeal, did not argue anything new that may detract from the above.

3.26. The [appellant] has submitted a calculation for the requested transition compensation of € 4,050.53 as exhibit 43 with the application initiating proceedings. Thereby she also added a calculation of the average variable bonus (exhibit 44). Ryanair contested (in first instance) that the [appellant] did not calculate the variable bonus correctly and furthermore that an amount of €33.33 per month should be disregarded because this concerns a compensation for expenses. The [appellant] has argued the contrary during the oral proceedings of the appeal. Ryanair did not return to this issue. The Court will therefore award the full transition compensation.

3.27. The requested compensation for unlawful termination of € 4,944.80 gross concerns two monthly salaries (see exhibit 45 of the [appellant] for the calculation), now that Ryanair has terminated the employment contract as of 25 July 2017, without observing the (statutory) cancellation term of two months. Here too Ryanair argued that the [appellant] does not use the correct salary, but the Court dismisses this as set out above. Ryanair did not contest the duration of the cancellation term. The requested compensation for unlawful termination is therefore awarded in full.

3.28. The Court then comes to the consideration of objection 6, which is aimed against the rejection of the wage claim of the [appellant] by the District Court. This objection is justified. It concerns the wages for the period 1 July 2017 to 25 July 2017 of€ 567.67 gross. It is not contested that Ryanair did not pay this. It is also not contested that Ryanair did not from 1 July 2017 permit the [appellant] any longer

to perform her work duties whilst she did remain available to carry out these duties. Therefore the conditions of Article 7:628 of the Dutch Civil Code have been met. This wage claim must therefore be awarded.

3.29. The requested interest on the aforementioned amounts for fair compensation, transition compensation, compensation for unlawful termination and wages, are not contested by Ryanair and are therefore to be awarded as justified by law.

3.30. In first instance the [appellant] also requested compensation for the translation costs. In the contested ruling this request too was (implicitly) rejected. The [appellant] does not address this in any of her grounds for appeal. As far as [appellant] concluded that her requests should still be awarded, and on appeal also wants to claim compensation for these costs, the Court judges as follows. Apparently the authorised representatives of the [appellant] had correspondence and court document translated into English for a total sum of € 3,527.16. Without further explanation, which is absent, it cannot be decided that it was reasonable to make these costs. Ryanair has contested this request with a motivation. The requested translation costs therefore do not have to be awarded.

3.31. Objection 7 has no independent meaning and therefore does not require separate deliberation. The provision of evidence is not at issue.

3.32. The above gives rise to the conclusion that the contested ruling must be annulled. As the unsuccessful party Ryanair will be sentenced to pay the legal costs for the first instance and the appeal.

4 The decision

The Court:

in the appeal on merits and the appeal

annuls the contested ruling:

and adjudicating afresh:

sentences Ryanair to pay the [appellant] fair compensation of €25,000 gross;

sentences Ryanair to pay the [appellant] statutory transition compensation of € 4,050.53 gross;

sentences Ryanair to pay the [appellant] compensation for unlawful termination of € 4,944.80 gross;

sentences Ryanair to pay the [appellant] to pay the salary for the period 1 July 2017 to 25 July 2017 of € 567.67 gross;

sentences Ryanair to pay the [appellant] the legal interest from the time of the aforementioned amounts becoming due to the day of full payment;

sentences Ryanair to pay the legal costs of the first instance and the appeal, and estimates those costs up to the present day on behalf of the [appellant] at € 470.00 in Court fees and € 800.00 in salary for the lawyer in first instance and at €318.00 in Court fees and at € 4,173.00 in salary for the lawyer for the appeal;

declares the aforementioned sentences to be provisionally enforceable;

rejects what was requested more or otherwise.

This decision was given by Mrs. J.P. de Haan, M.L.A. Filippini and R.J. and was pronounced in public hearing on 5 July 2018.