



STATUTORY INSTRUMENTS.

S.I. No. 377 of 2009

EUROPEAN COMMUNITIES (WORKING CONDITIONS OF MOBILE
WORKERS ENGAGED IN INTEROPERABLE CROSS-BORDER
SERVICES IN THE RAILWAY SECTOR) REGULATIONS 2009

(Prn. A9/1310)

EUROPEAN COMMUNITIES (WORKING CONDITIONS OF MOBILE WORKERS ENGAGED IN INTEROPERABLE CROSS-BORDER SERVICES IN THE RAILWAY SECTOR) REGULATIONS 2009

I, NOEL DEMPSEY, Minister for Transport, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving effect to Council Directive No. 2005/47/EC of 18 July 2005¹, hereby make the following regulations:

Citation.

1. These Regulations may be cited as the European Communities (Working Conditions of Mobile Workers engaged in Interoperable Cross-border Services in the Railway Sector) Regulations 2009.

Interpretation.

2. (1) In these Regulations—

“Agreement” means the Agreement done at Brussels on 27 January 2004 between the European Transport Workers’ Federation and the Community of European Railways on certain aspects of the working conditions of mobile workers engaged in interoperable cross-border services which, for convenience of reference, is set out in the Schedule;

“Commission” means the Railway Safety Commission established by the Railway Safety Act (No. 31 of 2005);

“Directive” means Council Directive 2005/47/EC of 18 July 2005;

“employer” means an undertaking in the State that employs mobile workers;

“Minister” means the Minister for Transport;

“mobile worker” means a mobile worker engaged in interoperable cross-border services who is employed in the State.

(2) A word or expression that is used in these Regulations and the Directive has the same meaning in these Regulations as it has in the Directive.

(3) A word or expression that is used in these Regulations and in the Agreement has the same meaning in these Regulations as it has in the Agreement.

Application of Regulations.

3. (1) These Regulations apply to mobile workers engaged in interoperable cross-border railway services who are employed in the State.

¹OJ No. L.195, 27.7.2005, p. 15.

Notice of the making of this Statutory Instrument was published in “Iris Oifigiúil” of 22nd September, 2009.

(2) These Regulations set down minimum requirements for the protection of workers and apply without prejudice to more favourable requirements set down by other legislation or agreed by employers and mobile workers.

Competent authority.

4. The Commission is designated as the competent authority for the purpose of these Regulations.

Working conditions of mobile workers.

5. Clauses 2 to 9 of the Agreement shall be given the force of law and judicial notice shall be taken thereof.

Inspectors.

6. (1) A person appointed as an inspector under section 73 of the Railway Safety Act 2005 shall—

- (a) be deemed to be an inspector for the purposes of these Regulations.
- (b) be furnished with a warrant of his or her appointment, and
- (c) when exercising any power conferred by this Regulation, if requested by any person thereby affected, show the warrant to that person.

(2) An inspector may, for the purposes of these Regulations, do all or any of the following:

- (a) subject to paragraph (3), enter at all times any premises or place (including any railcar) where he or she has reasonable grounds for believing that these Regulations apply, or from where he or she believes activities of mobile workers are being controlled or directed,
- (b) inquire into, search, examine or inspect any place or premises referred to in paragraph (a) and any records found there,
- (c) require that that place or premises and anything at it be left undisturbed for so long as is reasonably necessary for the purpose of any search, examination, investigation, inspection or inquiry under these Regulations;
- (d) require the person in charge to produce to the inspector any records which the employer is required to keep and, in the case of such information in a non-legible form, to reproduce it in a legible form and to give to the inspector such information as the inspector may reasonably require in relation to any entries in those records;
- (e) inspect and take copies of or extracts from any such records or any electronic information system at that place, including in the case of information in a non-legible form, copies of or extracts from such information in a permanent legible form or require that such copies be provided;

- (f) require a person at that place by whom or on whose behalf a computer is or has been used to produce or store records or any person having control of, or otherwise concerned with the operation of the computer, to afford the inspector access thereto and all reasonable assistance as the inspector may require;
 - (g) remove from that place and retain the records (including documents stored in a non-legible form) and copies taken and detain the records for such period as the inspector reasonably considers to be necessary for further examination or until the conclusion of any legal proceedings;
 - (h) require that records at that place be maintained for such period as may be reasonable;
 - (i) require the person in charge to give the inspector such information as the inspector may reasonably require for the purposes of any search, examination, investigation, inspection or inquiry under these Regulations;
 - (j) require the person in charge to give the inspector such assistance and facilities within the person's power or control as are reasonably necessary to enable the inspector to exercise any of his or her powers under these Regulations;
 - (k) require by notice, at a time and place specified in the notice, any person (including the person in charge) to give the inspector any information that the inspector may reasonably require in relation to the place, to produce to the inspector any records that are under that person's power or control;
 - (l) examine any person (including any person whom he or she has reasonable cause to believe to be or to have been a mobile worker or the employer of any such mobile worker) whom the inspector reasonably believes to be able to give to the inspector information relevant to any search, examination, investigation, inspection or inquiry under these Regulations and require the person to answer such questions as the inspector may ask relative to the search, examination, investigation, inspection or inquiry and to sign a declaration of the truth of the answers.
- (3) An inspector shall not enter a dwelling other than—
- (a) with the consent of the occupier, or
 - (b) in accordance with a warrant of the District Court issued under paragraph (6) authorising such entry.
- (4) The competent authority may authorise any other person as it considers appropriate to accompany an inspector in the performance of his or her functions.

(5) Where an inspector in the exercise of his or her powers under this Regulation is prevented from entering any place, an application may be made to the District Court for a warrant under paragraph (6) authorising such entry.

(6) Without prejudice to the powers conferred on an inspector by or under any other provision of this Regulation, if a judge of the District Court is satisfied by information on oath of an inspector that there are reasonable grounds for believing that—

- (a) there are any records (including documents stored in a non-legible form) or information, relating to a place, that the inspector requires to inspect for the purposes of these Regulations, held at any place, or
- (b) there is, or such an inspection is likely to disclose, evidence of a contravention of these Regulations, the judge may issue a warrant authorising an inspector, accompanied by such other inspectors or such other competent persons as may be appropriate or members of the Garda Síochána as may be necessary, at any time or times, within one month from the date of issue of the warrant, on production of the warrant if requested, to enter the place, if necessary by the use of reasonable force, and perform the functions conferred on an inspector by or under these Regulations.

(7) Where an inspector has reasonable grounds for apprehending any serious obstruction in the performance of his or her functions or otherwise considers it necessary, he or she may be accompanied by a member of the Garda Síochána or any other person authorised by the competent authority, when performing any functions conferred on him or her by or under these Regulations.

(8) Where an inspector, upon reasonable grounds, believes that a person has committed an offence under these Regulations he or she may require that person to provide him or her with his or her name and the address at which he or she ordinarily resides.

(9) In this Regulation “person in charge” means, in relation to a place—

- (a) the employer,
- (b) the person under whose direction and control the activities at that place are being conducted, or
- (c) the person whom the inspector has reasonable grounds for believing is in control of that place.

Offences and penalties.

7. (1) A person who—

- (a) obstructs or impedes an inspector in the exercise of any of the powers conferred on an inspector under Regulation 6,

- (b) refuses to produce any record which an inspector lawfully requires him or her to produce,
- (c) produces or causes to be produced or knowingly allows to be produced, to an inspector, any record which is false or misleading in any material respect knowing it to be so false or misleading,
- (d) gives to an inspector any information which is false or misleading in any material respect knowing it to be so false or misleading, or
- (e) fails to comply with any requirement of an inspector under Regulation 6,

shall be guilty of an offence.

(2) A person guilty of an offence under these Regulations is liable on summary conviction to a fine not exceeding €5,000.

(3) Where an offence under these Regulations is committed by a body corporate and the offence is proved to have been committed with the consent, connivance or approval of, or to have been attributable to any wilful neglect on the part of, any person being a director, manager, secretary or other officer of the body corporate or a person who was purporting to act in any such capacity, that person, as well as the body corporate, shall be guilty of an offence and be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

(4) Where a person is convicted of an offence under these Regulations and there is a continuation of the offence by the person after his or her conviction, the person shall be guilty of a further offence on every day on which the contravention continues and for each such offence shall be liable on summary conviction to a fine not exceeding €300 for each day on which the offence is so continued.

(5) Proceedings for an offence under these Regulations may be brought and prosecuted by the Commission.

(6) Notwithstanding section 10(4) of the Petty Sessions (Ireland) Act 1851, proceedings for an offence under these Regulations may be instituted within 12 months from the date of the offence.

(7) In any proceedings for an offence under these Regulations, it shall be a defence for the defendant to show that he or she has taken all reasonable steps to ensure compliance with these Regulations.

Complaint to rights commissioner.

8. (1) A mobile worker or any trade union of which the mobile worker is a member, with the consent of the mobile worker concerned, may present a complaint to a rights commissioner that the mobile worker's employer has contravened any provision of these Regulations in relation to the mobile worker concerned.

- (2) Where a complaint under paragraph (1) is made, the rights commissioner shall—
- (a) give the parties an opportunity to be heard by the commissioner and to present to the commissioner any evidence relevant to the complaint,
 - (b) give a decision in writing in relation to it, and
 - (c) communicate the decision to the parties.
- (3) A decision of a rights commissioner under paragraph (1) shall do one or more of the following:
- (a) declare that the complaint was or was not well founded;
 - (b) require the employer to comply with the relevant provision;
 - (c) require the employer to pay to the mobile worker compensation of such amount (if any) as is just and equitable having regard to all the circumstances, but not exceeding 2 years remuneration in respect of the mobile worker's employment,
- and the references in this Regulation to an employer shall be construed, in a case where ownership of the business of the employer changes after the contravention to which the complaint relates occurred, as references to the person who, by virtue of the change, becomes entitled to such ownership.
- (4) A rights commissioner shall not entertain a complaint under this Regulation if it is presented to the commissioner after the expiration of the period of 6 months beginning on the date of the contravention to which the complaint relates or the date of termination of the contract of employment concerned, whichever is the earlier.
- (5) Notwithstanding paragraph (4), a rights commissioner may entertain a complaint under this Regulation presented to him or her after the expiration of the period referred to in paragraph (4) (but not later than 12 months after such expiration) if he or she is satisfied that the failure to present the complaint within that period was due to exceptional circumstances.
- (6) A complaint shall be presented by giving notice of it in writing to a rights commissioner and the notice shall contain such particulars and be in such form as may be specified from time to time by the Minister for Enterprise, Trade and Employment.
- (7) A copy of a notice under paragraph (6) shall be given to the other party concerned by the rights commissioner.
- (8) Proceedings under this Regulation before a rights commissioner shall be conducted otherwise than in public.

(9) A rights commissioner shall furnish the Labour Court with a copy of each decision given by the commissioner under paragraph (2).

(10) The Minister for Enterprise, Trade and Employment may by regulations provide for any matters relating to proceedings under this Regulation that that Minister considers appropriate.

Appeal from decision of rights commissioner.

9. (1) A party concerned may appeal to the Labour Court from a decision of a rights commissioner under Regulation 8 and, if the party does so, the Labour Court shall give the parties an opportunity to be heard by it and to present to it any evidence relevant to the appeal, shall make a determination in writing in relation to the appeal, affirming, varying or setting aside the decision and shall communicate the determination to the parties.

(2) An appeal under this Regulation shall be initiated by the party concerned giving, within 6 weeks of the date on which the decision to which it relates was communicated to the party, a notice in writing to the Labour Court containing such particulars as are determined by the Labour Court under paragraph (4) and stating the intention of the party concerned to appeal against the decision.

(3) A copy of a notice under paragraph (2) shall be given by the Labour Court to the other party concerned as soon as may be after the receipt of the notice by the Labour Court.

(4) The following matters, or the procedures to be followed in relation to them, shall be determined by the Labour Court, namely—

- (a) the procedure in relation to all matters concerning the initiation and the hearing by the Labour Court of appeals under this Regulation,
- (b) the times and places of hearings of such appeals,
- (c) the representation of the parties to such appeals,
- (d) the publication and notification of determinations of the Labour Court,
- (e) the particulars to be contained in a notice under paragraph (2), and
- (f) any matters consequential on, or incidental to, the foregoing matters.

(5) The Minister may, at the request of the Labour Court refer a question of law arising in proceedings before it under this Regulation to the High Court for determination by that Court and the determination of that Court shall be final and conclusive.

(6) A party to proceedings before the Labour Court under this Regulation may appeal to the High Court for a determination of the Labour Court on a point of law and the determination of the High Court shall be final and conclusive.

(7) Section 39(17) of the Redundancy Payments Act 1967 (No. 21 of 1967) shall apply in relation to proceedings before the Labour Court under these Regulations as it applies to matters referred to the Employment Appeals Tribunal under that section with—

- (a) the substitution in that provision of references to the Labour Court for references to the Tribunal,
- (b) the deletion in paragraph (d) of that provision of “registered”, and
- (c) the substitution in paragraph (e) of that provision of “€2,000” for “twenty pounds”.

(8) Where a decision of a rights commissioner in relation to a complaint under these Regulations has not been carried out by the employer concerned in accordance with its terms, the time for bringing an appeal against the decision has expired and no such appeal has been brought, the mobile worker concerned may bring the complaint before the Labour Court and the Labour Court shall, without hearing the employer concerned or any evidence (other than in relation to the matters aforesaid), make a determination to the like effect of the decision.

(9) The bringing of a complaint before the Labour Court under paragraph (8) shall be effected by giving to the Labour Court a notice in writing containing such particulars (if any) as may be determined by the Labour Court.

(10) The Labour Court shall publish, in such manner as it thinks fit, particulars of any determination made by it under subparagraphs (a), (b), (c), (e) and (f) of paragraph (4) (not being a determination as respects a particular appeal under this Regulation).

Application to Circuit Court for enforcement of determination of Labour Court.

10. (1) If an employer fails to carry out in accordance with its terms a determination of the Labour Court in relation to a complaint under Regulation 9 within 6 weeks from the date on which the determination is communicated to the parties, the Circuit Court shall, on application to it in that behalf by—

- (a) the mobile worker concerned,
- (b) with the consent of the mobile worker, any trade union of which the mobile worker is a member, or
- (c) the Minister, if he or she considers it appropriate to make the application having regard to all the circumstances,

without hearing the employer or any evidence (other than in relation to the matters aforesaid), make an order directing the employer to carry out the determination in accordance with its terms.

(2) The reference in paragraph (1) to a determination of the Labour Court is a reference to such a determination in relation to which, at the expiration of the time for bringing an appeal against it, no such appeal has been brought or, if

such an appeal has been brought it has been abandoned and the reference to the date on which the determination is communicated to the parties shall, in a case where such an appeal is abandoned, be construed as references to the date of such abandonment.

(3) The Circuit Court may, in an order under this Regulation, if in all the circumstances it considers it appropriate to do so, where the order relates to the payment of compensation, direct the employer concerned to pay to the mobile worker concerned interest on the compensation at the rate referred to in section 22 of the Courts Act 1981 in respect of the whole or any part of the period beginning 6 weeks after the date on which the determination of the Labour Court is communicated to the parties and ending on the date of the order.

(4) An application under this Regulation to the Circuit Court shall be made to the judge of the Circuit Court for the circuit in which the employer concerned ordinarily resides or carries on any profession, business or occupation.

SCHEDULE 1

Agreement concluded by the European Transport Workers' Federation (ETF) and the Community of European Railways (CER) on certain aspects of the working conditions of mobile workers engaged in interoperable cross-border services

HAVING REGARD TO:

- the development of rail transport, which requires the modernisation of the system and the development of trans-European traffic and thus interoperable services;
- the need to develop safe cross-border traffic and protect the health and safety of the mobile workers engaged in interoperable cross-border services;
- the need to avoid competition based solely on differences in working conditions;
- the importance of developing rail transport within the European Union;
- the idea that these aims will be met by creating common rules on minimum standard working conditions for mobile workers engaged in interoperable cross-border services;
- the conviction that the number of such workers will increase over the coming years;
- the Treaty establishing the European Community, and in particular Articles 138 and 139(2) thereof;
- Directive 93/104/EC (amended by Directive 2000/34/EC), and in particular Articles 14 and 17 thereof;
- the Convention on the law applicable to contractual obligations (Rome, 19 June 1980);
- the fact that Article 139(2) of the Treaty provides that agreements concluded at European level may be implemented at the joint request of the signatories by a Council decision on a proposal from the Commission;
- the fact that the signatories hereby make such a request,

THE SIGNATORIES HAVE AGREED AS FOLLOWS:

Clause 1

Scope

This Agreement shall apply to mobile railway workers assigned to interoperable cross-border services carried out by railway undertakings.

The application of this Agreement is optional for local and regional cross-border passenger traffic, cross-border freight traffic travelling no further than 15 kilometres beyond the border, and for traffic between the official border stations listed in the Annex.

It is also optional for trains on cross-border routes which both start and stop on the infrastructure of the same Member State and use the infrastructure of another Member State without stopping there (and which can therefore be considered national transport operations).

As regards mobile workers engaged in interoperable cross-border services, Directive 93/104/EC shall not apply to those aspects for which this Agreement contains more specific provisions.

Clause 2

Definitions

For the purposes of this Agreement, the following definitions apply:

1. “interoperable cross-border services”: cross-border services for which at least two safety certificates as stipulated by Directive 2001/14/EC are required from the railway undertakings;
2. “mobile worker engaged in interoperable cross-border services”: any worker who is a member of a train crew, who is assigned to interoperable cross-border services for more than one hour on a daily shift basis;
3. “working time”: any period during which the worker is at work, at the employer’s disposal and carrying out his or her activities or duties, in accordance with national laws and/or practice;
4. “rest period”: any period which is not working time;
5. “night time”: any period of not less than seven hours, as defined by national law, and which must include in any case the period between midnight and 5 a.m.;
6. “night shift”: any shift of at least three hours’ work during the night time;
7. “rest away from home”: daily rest which cannot be taken at the normal place of residence of the mobile worker;
8. “driver”: any worker in charge of operating a traction unit;
9. “driving time”: the duration of the scheduled activity where the driver is in charge of the traction unit, excluding the scheduled time to prepare or shut down that traction unit, but including any scheduled interruptions when the driver remains in charge of the traction unit.

Clause 3

Daily rest at home

Daily rest at home must be a minimum of 12 consecutive hours per 24-hour period.

However, it may be reduced to a minimum of nine hours once every seven-day period. In that case, the hours corresponding to the difference between the reduced rest and 12 hours will be added to the next daily rest at home.

A significantly reduced daily rest shall not be scheduled between two daily rests away from home.

Clause 4

Daily rest away from home

The minimum daily rest away from home shall be eight consecutive hours per 24-hour period.

A daily rest away from home must be followed by a daily rest at home¹.

It is recommended that attention should be paid to the level of comfort of the accommodation offered to staff resting away from home.

Clause 5

Breaks

(a) Drivers

If the working time of a driver is longer than eight hours, a break of at least 45 minutes shall be taken during the working day.

Or

When the working time is between six and eight hours, this break shall be at least 30 minutes long and shall be taken during the working day.

The time of day and the duration of the break shall be sufficient to ensure an effective recuperation of the worker.

Breaks may be adapted during the working day in the event of train delays.

A part of the break should be given between the third and the sixth working hour.

¹The parties agree that negotiations on a second consecutive rest away from home as well as compensation for rest away from home could take place between the social partners at railway undertaking or national level as appropriate. At European level, the question of the number of consecutive rests away from home as well as compensation for the rest away from home will be renegotiated two years after signature of this Agreement.

Clause 5(a) shall not apply if there is a second driver. In that case, the conditions for granting the breaks shall be regulated at national level.

(b) Other on-board staff

For other on-board staff, a break of at least 30 minutes shall be taken if the working time is longer than six hours.

Clause 6

Weekly rest period

Any mobile worker engaged in interoperable cross-border services is entitled, per seven-day period, to a minimum uninterrupted weekly rest period of 24 hours plus the 12 hours' daily rest period referred to in Clause 3 above.

Each year, every mobile worker shall have 104 rest periods of 24 hours, including the 24-hour periods of the 52 weekly rest periods,

including:

— 12 double rest periods (of 48 hours plus a daily rest of 12 hours) including Saturday and Sunday,

and

— 12 double rest periods (of 48 hours plus a daily rest of 12 hours) without the guarantee that this will include a Saturday or Sunday.

Clause 7

Driving time

The driving time, as defined in Clause 2, shall not exceed nine hours for a day shift and eight hours for a night shift between two daily rest periods.

The maximum driving time over a two-week period is limited to 80 hours.

Clause 8

Checks

A record of daily working hours and rest periods for the mobile workers shall be kept to allow monitoring of compliance with the provisions of this Agreement. Information on actual working hours must be available. This record shall be kept in the undertaking for at least one year.

Clause 9

Non-regression clause

The implementation of this Agreement shall not constitute in any case valid grounds for reducing the general level of protection afforded to mobile workers engaged in interoperable cross-border services.

Clause 10

Follow-up to the Agreement

The signatories shall follow up the implementation and application of this Agreement in the framework of the Sectoral Dialogue Committee for the railways sector, established in accordance with Commission Decision 98/500/EC.

Clause 11

Evaluation

The parties shall evaluate the provisions of this Agreement two years after its signing in the light of initial experience in the development of interoperable cross-border transport.

Clause 12

Review

The parties shall review the above provisions two years after the end of the implementation period laid down in the Council Decision putting this Agreement into effect.

Brussels, 27 January 2004.

On behalf of the CER

Giancarlo Cimoli
President

Johannes Ludewig
Executive Director

Francesco Forlenza
Chairman of the Group of Human Resources Directors

Jean-Paul Preumont
Social Affairs Adviser

On behalf of the ETF

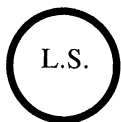
Norbert Hansen
Chairman of the Railway Section

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Jean-Louis Brasseur
Vice-Chairman of the Railway Section

Doro Zinke
General Secretary

Sabine Trier
Political Secretary



GIVEN under my Official Seal,
7 September 2009

NOEL DEMPSEY,
Minister for Transport.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

The purpose of these Regulations is to give effect to Directive 2005/47/EC of the European Parliament and of the Council of 18 July 2005. The Directive provides for an agreement between the Community of the European Railways (CER) and the European Transport Worker's Federation (ETF) on certain aspects of the working conditions of mobile workers engaged in interoperable cross border rail services.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ón
OIFIG DHÍOLTA FOILSEACHÁN RIALTAIS,
TEACH SUN ALLIANCE, SRÁID THEACH LAIGHEAN, BAILE ÁTHA CLIATH 2,
nó tríd an bpost ó
FOILSEACHÁIN RIALTAIS, AN RANNÓG POST-TRÁCHTA,
AONAD 20 PÁIRC MIONDÍOLA COIS LOCHA, CLÁR CHLAINNE MHUIRIS,
CONTAE MHAIGH EO,
(Teil: 01 - 6476834 nó 1890 213434; Fax: 094 - 9378964 nó 01 - 6476843)
nó trí aon díoltóir leabhar.

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