

THE TARIFF BOARD

NHO Logistikk og Transport
Boks 5489 Majorstuen,
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Your ref:

Our ref:
TN 15/2075

Date:
29. juni 2015

Inquiry about the decision by the Tariff Board regarding The Regulations on general application of collective agreements concerning freight transport by road

The Tariff Board refers to e-mail from NHO Logistikk og Transport [the Norwegian Logistics and Freight Association] 22 June 2015 in which NHO Logistikk og Transport requests a meeting with the Tariff Board in order to explain their views on the consequences of The Regulations on general application of collective agreements concerning freight transport by road. NHO Logistikk og Transport also requests the entry into force of the Regulations to be postponed. The Regulations enter into force 1 July 2015. Attached to the e-mail is a note in which NHO Logistikk og Transport explains their views in more detail.

The Tariff Board is willing to meet NHO Logistikk og Transport for a presentation of the issues at hand. However, because of the holiday season, it is not possible for the Tariff Board to comply with the request for a meeting at this moment. The Tariff Board will come back to this after the holidays.

NHO Logistikk og Transport expresses that the general application of collective agreements within the industry will have unintended or opposite effects, contrary to the intention of the claim. This is supposedly a consequence of section 2 of the Regulations in which the scope of the Regulations is stated.

The Tariff Board does not consider this to provide basis for postponing the entry into force of the Regulations.

The Tariff Board finds it appropriate to underline that the Regulations, as a main rule, apply to all employees performing freight transport in Norway. There are no exceptions to this as regards to workers of enterprises *established in Norway*, meaning that it is not of any relevance whether the recipient of the transport services is located in Norway or not. The precondition regarding recipient of the transport services being in Norway is only relevant when the undertaking is *established outside Norway*, and on its own account and under its direction posts employees to Norway in order to carry out temporary services. This is derived from section 2, first paragraph second sentence of the Regulations, in conjunction with section 1-7, second paragraph letter a of The Working Environment Act.

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The Tariff Board presupposes that the precondition regarding service recipient *being in Norway* is to be understood as the service recipient operating or running a business in Norway. This means that the recipient has to perform a certain level of activity in Norway. On the other hand, it cannot be required that the service recipient is established in Norway. This means that a foreign undertaking ordering freight transport services to be performed in Norway, may be considered to be operating in Norway, albeit the undertaking itself is established in a different country. This assessment will depend on the specific circumstances, including among others, the scale of activity performed in Norway. This might also imply that Norwegian export firms making use of foreign transport undertakings to perform international transport, generally will be considered as a service recipient, despite the transport being organized by a foreign purchaser.

Accordingly the Tariff Board presupposes that the greater part of cabotage traffic will be covered by the Regulations. Also international transport will be covered provided that the recipient of the services runs its business in Norway. This is not an unintended consequence of the Regulations. Nevertheless, the Tariff Board is aware that the Regulations might cause a competitive disadvantage for the Norwegian service recipients.

With regard to foreign undertakings, the application of the Regulations is based on The Posting of Workers Directive. The Tariff Board refers to the fact that the Directive not only allows the host country, but also imposes an *obligation* on the host country to ensure that the legislation in the host country regarding i.e. minimum wage also apply for posted workers. This is derived from article 3 of the Directive.

With regards
on behalf of the Tariff Board

Eli Mette Jarbo
The secretariat of the Tariff Board