

# “Pay me my lodging allowance for spending the night in my sleeper cab”

Łukasz Lasek



Agnieszka Lisiecka



**The Supreme Court of Poland recently held that providing a truck driver with a berth in a sleeper cab in the vehicle for use during international transport does not constitute “free lodging” and thus requires the employer to pay the driver a lodging allowance. This interpretation may prove costly not only for transport companies.**

This ruling, issued by a panel of seven judges on 12 June 2014 (Case II PZP 1/2014), means that the truck driver’s employer is not released from the obligation to pay the driver a lodging allowance,

based on the amount payable to public employees on official travel abroad (EUR 25–40 per night, depending on the country), even though the truck is equipped with a sleeper cab. This ruling was repeated by the Supreme Court in a subsequent resolution of 7 October 2014 (Case I PZP 3/2014).

As soon as they were published, these resolutions unleashed a flood of claims against transport companies, often encouraged by various associations claiming to defend the rights of drivers. Current and former employees are seeking allowances in arrears for nights spent in their sleeper cabs over the past 3 years (the limitations period on such claims). The claims could prove more than many transport companies can bear, possibly even forcing them into bankruptcy. The total estimated value of claims that are not time-barred is some PLN 2.5 billion.

The view of the Supreme Court, even if guided by valid concerns, is dubious. First, the reasoning stated in the resolution raises a number of legal doubts and is not very persuasive. Second, rather than improving the sleeping conditions of drivers and thus road safety, the resolution could have the opposite effect in practice. Drivers would continue to sleep in their cabs, treating the lodging allowance as an additional element of their pay, and their employers would see no point to investing in vehicles with sleeping areas or in overnight bases in Europe.

Thus drivers could gain from this interpretation only on the surface. Ultimately they could lose out in terms of both lodging standards and their very jobs. Polish companies could lose also as they become less competitive on the European market for transport services. This is why the view presented by the Supreme Court should be reconsidered and the issue of “free lodging” for drivers should ultimately be resolved by the Parliament.

#### Controversies and (un)expected consequences

Under current regulations of employment law, an employee (including a driver) on business travel is entitled to reimbursement of lodging costs upon presentation of a hotel bill (in an amount limited by the regulations) or a lump-sum allowance for lodging if the employee does not present a hotel bill and is not provided free lodging. The employee is not entitled to reimbursement or an allowance if the employer provides the employee with free lodging.

Previously, the Polish courts had permitted a berth in a sleeper cab to qualify as “free lodging” if it was equipped to an appropriate standard ensuring a safe night’s rest. Through the resolution in Case II PZP 1/2014, the Supreme Court has now deprived the courts of this discretion. The Supreme Court has taken the view that “free lodging” can be provided only in a hotel, which categorically disqualifies lodging in sleeper cabs.

The Supreme Court offers surprisingly unpersuasive arguments in favour of its view. It bases its arguments on outdated language from repealed regulations of the Minister of Labour and Social Policy establishing the rules for reimbursement of costs of official travel by public employees (which stated that “an employee is entitled to reimbursement for lodging in the amount confirmed by a hotel bill”). The court deduced from this language that the minister required “free lodging” to be offered at a hotel standard.

#### A good night’s sleep = road safety

The Supreme Court’s interpretation deviates from the ordinary understanding of “lodging” as “overnight rest away from home.” It is also inconsistent with the EU regulation on driving time and rest periods (Regulation (EC) 561/2006), which expressly provides that “daily rest periods and reduced weekly rest periods away from base may be taken in a vehicle, as long as it has suitable sleeping facilities for each driver.” It follows that a well-equipped sleeper cab assures the driver proper rest and road safety.

The Supreme Court justifies its failure to consider the EU regulation in its interpretation by claiming that the rules concerning “free lodging” do not involve the issue of road safety. This is an erroneous argument. There is no doubt that the provisions of the national regulation on amounts owed to public employees for official travel are not intended solely to provide compensation for travel-related expenditures. They also serve to ensure drivers safe and comfortable rest and a proper level of safety on the roads. Paradoxically, while asserting that the national regulation does not address occupational health and safety issues, the Supreme Court refers to these very issues in its argumentation and uses them to justify its position.

It should be pointed out that empirical studies confirm that berths in sleeper cabs provide comfortable rest. This was the conclusion reached by a team of researchers at the Centre for Sleep Research at the University of South Australia. Their study of Australian drivers compared the quality of their sleep (the time it took for them to fall asleep, the length of their sleep and the number of times they woke during sleep) at home and in their sleeper berths. The study found no material differences in these locations (D. Darwent, G. Roach & D. Dawson, “How Well Do Truck Drivers Sleep in Cabin Sleeper Berths?” *Applied Ergonomics* 43 (2012), pp. 442–446).

The Supreme Court also ignores the discussion of the relevance of applying this lodging standard in the transport sector, whose employees conduct foreign travel incomparably more often than public employees. The nature of drivers’ work means that they spend most of their time on “business trips” and sleep “on the road” in various locations around Europe. But they rarely use hotels or their employers’ overnight bases, mainly because of the difficulty in coordinating their routes with the locations

of overnight bases. Moreover, common experience shows that hotels offer different standards, just as there may be differences in standards among sleeper berths and among the parking areas where the drivers lay over for the night. Lodging at a hotel does not necessarily guarantee a higher standard than a properly equipped berth in a sleeper cab.

#### Who loses on allowances?

It should also be pointed out that most of the instances of claims asserted by employees do not further their justified expectations (payment of benefits the employees felt they were entitled to) but are an attempt to gain a windfall they never felt they deserved before, particularly since most of them accepted lodging in sleeper cabins without complaint.

In consequence, the position of the Supreme Court is not only inconsistent with the requirements of Regulation (EC) 561/2006, but also reduces the competitiveness of Polish shippers on the European market and reduces road safety. When lodging allowances are paid even when the drivers sleep in properly equipped cabins, they become an additional element of the drivers' pay, increasing Polish employers' costs. Meanwhile, employers will lose their incentive to continue equipping drivers' cabs with proper sleeping facilities, but drivers may continue to sleep in their cabs while pocketing the lodging allowance as a bonus. So employers will end up

paying more, drivers will get a worse night's sleep, and road safety will suffer.

#### Change in law needed

The issue of lodging for drivers should be resolved through legislative intervention and a definition of the concept of "free lodging," which would eliminate doubts and provide a clear understanding. At the same time, the regulations should set the technical specifications that must be met by sleeper cabs to ensure that they provide proper sleeping conditions. This is an area that deserves statutory treatment rather than being resolved at the level of interpretation of executive regulations for reimbursement of expenses for official travel by public employees.

Until lawmakers intervene on this issue, it requires a careful analysis on a case-by-case basis. Currently it appears correct to take the view that cases involving lodging allowances for nights spent in sleeper cabs cannot be resolved without considering the sleeping conditions in the trucks. Ignoring this aspect cannot be reconciled with a literal, systemic or purposive interpretation of the current regulations.

The proposed direction for changes should mobilise transport companies to raise the standards of the sleeper cabs in their vehicles, which would much more effectively improve occupational health and safety standards for drivers and raise the overall level of road safety.

*Lukasz Lasek, Dispute Resolution & Arbitration Practice*

*Agnieszka Lisiecka, adwokat, partner in charge of the Employment Law Practice*