

FNV v. Helpling



Positions

FNV (and a cleaner):

- declaratory judgment that there is an employment contract (principal claim) or an agency work employment contract between the cleaner and Helpling

Helpling:

- Helpling only has a notice board function
- employment contract between the cleaner and the household due to accepted terms and conditions on website Helpling

Facts in case FNV v. Helpling

- Households and cleaners make their own profile on website Helpling
- Cleaners determine (and present on website) hourly rate between (statutory) minimum (wage) and maximum rate (€ 45,-), which can be increased manually on request
- Households mention zip code, frequency and times
- Website Helpling presents available cleaners, client chooses, household confirms
- Helpling has separate terms and conditions for cleaners and households
- Cleaners and clients have to accept the terms and conditions first
- No separate contracts apart from terms and conditions Helpling
- Afterwards Helpling delivers invoice to cleaner to send to client
- Helpling receives commission for the cleaning work (23% for recurring and 32% for one-off assignments)
- Payments only through payment service Stripe

Judgment in first instance (1-7-2019) (ECLI:NL:RBAMS:2019:4546)

judgement: employment contract between cleaners and households, not between households and Helpling

grounds:

- no employment contract between Helpling and cleaners because:
 - Helpling and cleaners didn't intend to conclude an employment contract
 - Helpling does not exercise control over cleaners (no subordination)
- no agency work employment contract between the cleaner and Helpling
 - because there is no employment contract between the cleaner and Helpling
- Helpling carries out job placement activities as an intermediary with the intent to conclude employment contracts between cleaners and households
- based on the terms and conditions of Helpling, accepting them leads to an employment contract between the cleaners and the household

Judgment on appeal (21-9-2021) (ECLI:NL:GHAMS:2021:2741)

judgement: agency work employment contract between cleaners and Helpling,
no employment contract between cleaners and households

grounds:

- Helpling makes some demands on the *selection* of the cleaners and makes a modest selection in presenting cleaners to the household
- *instructions* to the cleaner are almost exclusively given by the household
- the *payment* is determined by the price (advised by Helpling, based on zip code and) asked by the cleaner and accepted by the household
- Helpling has interest in high rate because of the commission (percentage!)
- the household is not allowed to pay the cleaner directly (only through Stripe)
- Helpling doesn't in any way remind household of its *employer obligations*
- the *formal relationship of control* is largely determined by Helpling:
 - Helpling asks the household for particularities and hours worked
 - Helpling sends invoice to cleaner to send it to household
 - Helpling asks both parties to rate each other

Employment contract or agency work employment contract

Dutch Civil Code:

An employment agreement is an agreement under which one of the parties ('the employee') engages himself towards the opposite party ('the employer') to perform work for a period of time in service of this opposite party in exchange of payment.

An agency work agreement (or temporary employment agency agreement) is an employment agreement under which the employer, within the framework of his business or professional practice, places the employee at the disposal of a third party in order to perform work under supervision and direction of that third party by virtue of an agreement for the provision of services between the third party and the employer.

- no employment contract between cleaner and household:

- 👍 household has an important role in the selection of the cleaner

- 👍 household gives work instructions regarding cleaning

- 👎 payment not between cleaner and household, but fully controlled by Helpling

- 👎 way in which household and cleaner perform their rights and obligations doesn't indicate an employment contract between them

- (agency work [aw]) employment contract [ec] between cleaners and Helpling?

- formal relationship of control by Helpling (aw/ec)

- cleaner performs work for household (third party) and for Helpling (financially)

- cleaner performs work under supervision and direction of that third party (aw)

- triangular relationship meets definition of agency work employment contract (aw)

- the law does not require that the employee is placed at the disposal of a third party *within the framework of that party's business or professional practice* (aw)

Some remarks

- Being a temporary employment agency Helpling is required to register its company in the Dutch Commercial Register
 - The condition prohibiting households to conclude an employment contract with a cleaner placed at its disposal by Helpling within 24 months after the last contact with Helpling is null and void (legal impediment ban)
 - Dutch Court in appeal:
 - the law does not require that the employee is placed at the disposal of a third party *within the framework of that party's business or professional practice*
 - in conformity with Directive on temporary agency work?
- Article 1 sub d: (d) 'user undertaking' means any natural or legal person for whom and under the supervision and direction of whom a temporary agency worker works temporarily.
- Article 1 paragraph 2: This Directive applies to public and private undertakings which are temporary-work agencies or user undertakings engaged in economic activities whether or not they are operating for gain.