

## **The decision of the Tariff Board of 27 May 2015 concerning the issue of Regulations on general application of collective agreements concerning passenger transport by tour bus**

This matter derives from a claim by the Yrkesorganisasjonenes Sentralforbund (YS) [Confederation of Vocational Unions]/Yrkestrafikkforbundet (YTF) [Union of Norwegian Transport Employees] of 12 August 2014 and concerns general application of the Bus Sector Agreement between the Confederation of Norwegian Enterprise (NHO) and NHO Transport for the one part and the Confederation of Vocational Unions (YS) and Yrkestrafikkforbundet (YTF) [Union of Norwegian Transport Employees] for the other part.

On 5 January 2015, the Norwegian Confederation of Trade Unions (LO) submitted a claim for general application of the Bus Sector Agreement 2014–2016 between the Confederation of Norwegian Enterprise (NHO) and NHO Transport for the one part and the Norwegian Confederation of Trade Unions and Norsk Transportarbeiderforbund (NTF) [Norwegian Transport Workers' Union] for the other part. The claim refers to dialogue between the involved unions in LO and YS, and that there is agreement that it would be appropriate for LO to claim general application of its corresponding agreement with the same contracting party. The two agreements are identical, and LO's claim refers to and concurs in the grounds submitted by YS.

The claims apply to general application for the whole of Norway.

### **1. Introduction**

The Act of 4 June 1993 No. 58 relating to general application of collective agreements, etc. (The General Application Act) entered into force at the same time as the EEA agreement in 1994. The purpose of the Act is:

“...to ensure foreign employees terms of wages and employment which are equivalent to those of Norwegian employees, and to prevent distortion of competition detrimental to the Norwegian labour market.” See section 1.

A claim for general application must relate to a nationwide collective agreement and be submitted by an employees' or employers' organisation which is party to the agreement and is entitled to submit nominations pursuant to section 39, first paragraph, of the Labour Disputes Act (employers' associations with a membership of not less than 100 employers who employ in all not less than 10 000 workers and trade unions with a membership totalling not less than 10 000 workers). It follows from section 4, first paragraph, final sentence, of the General Application Act that other entities may submit claims for general application, but that such entities may not require a decision from the Tariff Board on a claim for general application. If general considerations so indicate, the Tariff Board may make decisions concerning general application on its own initiative.

The decision of the Tariff Board will apply as the minimum terms for all persons who perform work within the scope of the decision, for Norwegian unionised and non-unionised workers, for foreign workers employed in Norwegian undertakings and for workers temporarily posted in connection with provision of services.

The Regulations of 16 December 2005 No. 1566 concerning posted workers were issued pursuant to section 1-7 of the Working Environment Act. In accordance with section 2 of the Regulations, Norwegian statutory provisions concerning further specified terms of work and employment shall apply to posted workers. This applies, inter alia, to health, safety and environment, wages and working hours. If posted workers are covered by the scope of a decision pursuant to the General Application Act, the provisions concerning terms of wages and employment made generally applicable shall also apply to the posted workers (see section 2, second paragraph, of the Regulations). The Regulations implement the Posting of Workers Directive<sup>1</sup> in Norwegian law.

The Norwegian Labour Inspection Authority and the Petroleum Safety Authority Norway oversee compliance with the General Application Regulations (see section 11 of the General Application Act). Regardless of any duty of secrecy, the supervisory authorities shall have access to all necessary information, and shall issue orders and make any other decisions necessary for implementation of the General Application Regulations. All contractors shall also be informed of orders and other decisions made by the supervisory authorities. The Norwegian Labour Inspection Authority and the Petroleum Safety Authority Norway may impose fines for infringement of the regulations (see section 11, second paragraph, of the General Application Act and section 18-10 of the Working Environment Act), and may also report infringements to the police.

Pursuant to the Regulations of 22 February 2008 No. 166 on the obligation to provide information, the obligation to ensure compliance and the right of inspection, orderers, contractors and suppliers who enter into contracts with subcontractors are obliged to provide information concerning terms of wages and employment in accordance with the General Application Regulations. Pursuant to the Regulations, main contractors are moreover obliged to ensure that workers employed by contractors and subcontractors have terms of wages and employment in compliance with the General Application Regulations. The Norwegian Labour Inspection Authority and the Petroleum Safety Authority Norway oversee compliance with the obligation to ensure compliance. Furthermore, elected union representatives at main contractors shall have the right to inspect terms of wages and employment of workers employed by contractors and subcontractors in order to establish whether the General Application Regulations have been complied with. Information concerning lack of compliance shall be provided to the Norwegian Labour Inspection Authority or the Petroleum Safety Authority Norway. The elected union representative is obliged to maintain secrecy concerning the information except in relation to the supervisory authorities.

The General Application Regulations provide a joint and several liability for pay and holiday pay (see section 13 of the General Application Act). This means that contractors and subcontractors may also be liable for the pay and holiday pay of the employees of their subcontractors. The parties to a collective agreement made generally applicable have an extended right to implement a boycott if a decision concerning general application is not complied with by an undertaking. The employer or any person managing the undertaking in the employer's stead may also be liable to fines<sup>2</sup> if the decision is not complied with. In addition, affected workers or their trade unions may institute private prosecution.

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<sup>1</sup> Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services

<sup>2</sup> From 1 July 2015, non-compliance may also be subject to imprisonment (see section 15 of the General Application Act and Prop. 48 L (2014–2015))

### *The relationship to EEA law*

The general application arrangement involves laying down in regulations of specific terms of wages and employment. Regulations concerning general application apply to all persons who perform work in Norway, including foreign undertakings that post workers to Norway in connection with temporary provision of services (see the Regulations concerning posted workers). General application may thus restrict foreign undertakings' potential for providing services in Norway. This gives reason to consider whether the general application arrangement contravenes article 36 of the EEA agreement, which in principle prohibits all restrictions of the freedom to provide services across national borders. However, it follows clearly from case law that restrictions of the freedom to provide services are nevertheless permitted if justified on grounds of overriding reasons of public interests, are capable of fulfilling the purposes they pursue and are not more extensive than necessary for fulfilment of these purposes. In a number of cases, the European Court of Justice has found regard for protection of workers and regard for fair competition to be overriding reasons of public interests that may justify restrictions of the freedom to provide services. The balance between the freedom to provide services and regard for protection of workers is further regulated in the Posting of Workers Directive. It follows from article 3 (1) of this Directive that general application is a permitted method for establishing minimum terms.

The EFTA Surveillance Authority (ESA) has considered the Norwegian general application arrangement in relation to EEA law, and has concluded that the arrangement is in compliance with Norway's obligations pursuant to the EEA agreement. The Supreme Court arrived at the same conclusion in the shipyard case (Norwegian Supreme Court Reports 2013, page 258).

In keeping with this, the Tariff Board finds the general application arrangement as such to be in compliance with EEA law.

The General Application Act gives relatively wide powers to the Tariff Board for deciding general application of collective agreements. The Posting of Workers Directive sets limits specifying which terms of wages and employment can be provided in individual general application regulations with effect for posted workers. This means that the Tariff Board, when issuing the various the Regulations, must ensure that its provisions are not more extensive than is permitted by the Posting of Workers Directive.

The Posting of Workers Directive obliges EU/EEA member states to make their national provisions concerning further specified terms of wages and employment applicable to undertakings established in other member states when these undertakings post their own employees to carry out temporary services (see articles 1 and 3). The European Court of Justice has interpreted article 3 (1) (a–f) of the Directive as an exhaustive list, so that it is only terms of wages and employment specified here that shall and may be made applicable to foreign service providers.

The Tariff Board furthermore refers to the decision of the Supreme Court in the shipyard case (Norwegian Supreme Court Reports 2013 page 258), where the Supreme Court addressed the question of whether general application of provisions in the collective agreement for the maritime construction industry concerning overtime pay, compensation for the disadvantage of living away from home and coverage of travel, board and lodging expenses are in compliance with EEA law. The Supreme Court concluded that general application of these terms of wages and employment is permitted. It follows from the judgment that the Supreme Court's assessments are also relevant in sectors other than the maritime construction industry.

## 2. The claim from the Confederation of Vocational Unions

### *Background*

In its claim, the Confederation of Vocational Unions referred by way of introduction to the concern voiced by central actors in the transport sector regarding the increase in recent years in the number of cases of social dumping in the sector. The confederation referred particularly to the considerable differences in wage levels between EU countries, and to the fact that foreign companies operating cabotage in Norway use drivers from the countries where they are registered on the terms of wages and employment that apply in their home countries, although these persons reside in Norway for several months at a time. This is stated to apply particularly to companies from Estonia, Latvia and Lithuania, where the average wage costs in private enterprises are respectively NOK 54.40, NOK 41.60 and NOK 35.30 per hour. On the date of the claim, the minimum wage in the Bus Sector Agreement was NOK 148 per hour.

The claim also refers to surveys and media reports showing that foreign drivers working in Norway have considerably less favourable terms of wages and employment than Norwegian drivers. It is pointed out that it is normal for foreign drivers to drive cabotage in Norway for long periods at a time on the terms of wages and employment that apply in their home country. It is further pointed out that cases have been revealed involving an agreed wage of NOK 30 per hour, where not even that amount was paid. It is referred to as normal that drivers earn less than EUR 1000 per month. In some cases, drivers have to sleep in the bus, and cannot afford to buy food in Norway during the months they spend here.

It is stated in the claim that parts of the employers' organisations and the companies consider the main challenge regarding drivers on less favourable terms to be the outcompeting of Norwegian companies, which will then have to close down or reduce their tour bus activities.

### *What is general application requested for?*

Yrkesorganisasjonenes Sentralforbund (YS) [the Confederation of Vocational Unions] has requested general application of the minimum wage rate in the Bus Sector Agreement, and the Agreement's provision of a 100 per cent supplement for working on public holidays. YS has also claimed general application of provisions concerning board and lodging.

It follows from the claim that the Confederation of Vocational Unions holds the view that a general application decision in the form traditionally made by the Tariff Board would be in compliance with EEA law.

## 3. The Tariff Board

The Tariff Board is appointed and composed pursuant to the provisions of section 3 of the General Application Act. The Board is appointed by the King for a period of three years, and has five permanent members; a chairperson and two more neutral members, one member from the Norwegian Confederation of Trade Unions (LO) and one from the Confederation of Norwegian Enterprise (NHO). The Tariff Board was last appointed for the period from 1 June 2012 to 31 May 2015, and with regard to this matter has had the following composition:

- Judge Johan Kr. Øydegard (chair)
- Professor Steinar Holden
- Advocate Terese Smith Ulseth
- Head of Department Knut Bodding (LO)

- Advocate Margrethe Meder (NHO)
- Negotiator at YTF, Lin Andrea Gulbrandsen
- Director Jon Stordrange, NHO Transport

The Ministry of Labour and Social Affairs has responsibility for providing the Tariff Board's secretariat, and secretaries for this matter are Deputy Director General Eli Mette Jarbo and Senior Advisers Bodil Stueflaten and Ingrid Finsland.

The Tariff Board is an independent public administrative body, and the procedure of the Board is subject to the provisions of the Public Administration Act (see section 9 of the General Application Act). A decision concerning general application is almost without exception provided in the form of Regulations (see section 2, first paragraph, (c), of the Public Administration Act). In addition to the general provisions of the Public Administration Act, the special provisions of the Act concerning regulations shall apply, particularly chapter VII. The requirement regarding clarification of cases provided in section 37 of the Public Administration Act entails that Regulations must be circulated for consultation before they can be issued, nevertheless so that such consultation may take place in consultation meetings (see section 9 of the General Application Act).

The travaux préparatoires of the General Application Act require that the Tariff Board shall only make a decision concerning general application to the extent necessary for fulfilment of the purpose of the Act (Proposition No. 26 (1992–93) to the Odelsting, page 22).

## 4. The requirement regarding documentation

### 4.1 General

Pursuant to section 5 of the General Application Act, the Tariff Board may make a decision if it is documented that foreign workers perform or may perform work on terms that, based on a total assessment, are less favourable than those that apply pursuant to nationwide collective agreements for the trade or industry concerned or what is otherwise normal for the place and occupation concerned.

The documentation requirement was somewhat amended by the Act of 19 June 2009 No. 42 without any intention of amending current law. The travaux préparatoires to the amendment act (Proposition to the Odelsting No. 88 (2008–2009) on amendments to the General Application Act, etc. (joint and several liability, etc.)) therefore refer to previous travaux préparatoires for further guidance concerning the contents of the documentation requirement. The requirements for accepting a case for consideration are stated in section 4, while the requirement regarding documentation prior to making a decision in a case is stated in section 5. Prior to the clarifications provided in the Act in 2009, it followed from the practice of the Board that the threshold for accepting a case for consideration was lower than that for fulfilment of the documentation requirement enabling the Tariff Board to make a decision.

Pursuant to the Act, it is sufficient that it is shown to be highly probable that, in the collective agreement area concerned, there are foreign workers with terms of wages and employment that are not equivalent to those enjoyed by Norwegian workers. A requirement of qualified probability cannot be applied. It is required that it appears to the Board to be more probable that the conditions of the Act are satisfied than that they are not. However, the Board's assessment must be based on concrete information that the Board, following an overall assessment, finds that it is able to adopt as a basis.

It is not a requirement of the Act that intervention by the Board shall be dependent upon the foreign workers' terms of wages and employment being substantially less favourable than those of comparable Norwegian workers, that the difference shall be unfair or that such discrimination shall apply to a large number of workers. However, if the problem appears slight, the Board may, following an overall assessment, find that a decision concerning general application does not appear necessary for promotion of the purpose of the Act.

In the Proposition to the Odelsting No. 26 (1992–93) it was assumed that the Tariff Board may make decisions not only in those cases where concrete examples show that problems have already arisen but also in cases where it can be assumed that such problems are imminent. In such cases, it will be sufficient that such a development appears highly probable. This is also reflected by section 5 of the General Application Act, where it is stated that the Tariff Board may make such a decision if it “is documented that foreign employees perform or may perform work on terms that, based on a total assessment, are less favourable than those that apply pursuant to nationwide collective agreements for the trade or industry concerned, or what is otherwise normal for the place and occupation concerned.” For further information on the documentation requirement, see Proposition No. 88 to the Odelsting No. 88 (2008-2009), chapter 3.2, page 19 ff.

In principle, it is the party that claims general application of a collective agreement that is required to provide sufficient information for the Board to find grounds for initiating its own investigations. However, in practice, it is, almost without exception, the employers who possess the relevant documentation. Workers and their organisations do not have access to information concerning the terms of wages and employment of other employees, and are dependent on the cooperation of the employers in obtaining such information. If the employer does not cooperate, it is not possible for the employees' organisation to document in writing the information that may have been received orally.

The employer and any person managing the undertaking in the employer's stead are obliged to provide information to the Board (see section 10 of the General Application Act). Failure to comply with this obligation is a punishable offence (see section 15 of the General Application Act). If the employer fails to cooperate in providing information concerning the case, the Board will proceed on the basis of the documentation provided by the employee side. Whether insufficient documentation is to be accorded such significance in individual cases, must be dependent on a concrete overall assessment.

The Tariff Board finds that a large number of foreign workers have been registered in Norway. This particularly concerns workers from Poland and the Baltic countries. Reference is also made to the existence of regulations concerning general application in the building and construction sector, the maritime construction industry, the agriculture and horticulture sectors, private cleaning services, the fish processing industry and the electrical trades.

#### *4.2 The documentation enclosed with the claim*

All the documentation that accompanied the claim was enclosed with the Tariff Board's request for comments.

The claim refers to the lack of any comprehensive study and comparison of the terms of wages and employment of tour bus drivers in Norway. A number of small investigations, individual studies and cases cited in the media have therefore been enclosed, as well as an EU

study<sup>3</sup>, which reveals that there are strong pressures on terms of wages and employment in transport companies in the EU and that a number of companies are involved in social dumping. Although the study does not include Norway, it is nevertheless stated to be relevant since European drivers and companies are engaged in tour bus driving in Norway.

On the basis of available data, YTF has prepared wage statistics showing considerable variation between EU countries with regard to wage levels and terms of employment in the sector. Particularly great variation is found between Eastern European countries and Norway.

The claim refers to and presents investigations and media reports showing it to be normal that foreign workers who drive in Norway receive the terms of wages and employment that are normal in their home countries. It is referred to as normal for drivers to earn EUR 1 000 per month. Cases are also referred to where drivers cannot afford to buy food in Norway, but must bring food with them from their home countries.

In 2013, the Ministry of Transport and Communications appointed a Working Group on Cabotage with representatives from relevant organisations and road transport authorities. The report on cabotage on Norwegian roads was issued on 26 March 2014. Despite the lack or deficiency of official statistics, there was agreement, on the basis of the sources used by the working group, that cabotage is on the increase in Norway. However, the members of the working group had differing views concerning the consequences of unlawful passenger and freight cabotage. The members from Norsk Transportarbeiderforbund (NTF) [Norwegian Transport Workers' Union], Yrkestrafikkforbundet (YTF) [Union of Norwegian Transport Employees] and Norges Lastebileier-Forbund (NLF) [Norwegian Hauliers Association] regard freight cabotage as the foremost threat to the Norwegian road haulage sector. These members and the members from Spekter and NHO Transport stress the disparities in the terms of wages and employment between Norwegian and foreign passenger and freight transporters, and hold the view that these disparities result in a loss of market shares and Norwegian jobs. The representative from NHO Logistikk og Transport [the Norwegian Logistics and Freight Association] also believed cabotage traffic to be on the increase, but that it was modest compared with the total domestic transport market, and that the current domestic market is not significantly disturbed by cabotage.

FAFO Paper 2013:16 *Arbeidsforhold i vegsektoren* [Employment conditions in the road transport sector], prepared by the Institute of Applied Social Science and the Institute of Transport Economics in cooperation, concludes that there is broad agreement between the employer and employee sides and the Norwegian Labour Inspection Authority that some parts of the land-based transport sector face a number of challenges as a result of changes in rules and increased international competition during the last 20 years. The report was prepared on the basis of a pilot project set up to investigate employment conditions in the road transport sector. According to the report, it will be important to conduct a deeper analysis of the areas raised in the report in order to establish a point of departure for considering the need for measures to create a common view of the world between the parties in the sector.

## 5. Consultation round

### 5.1 Request for comments

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<sup>3</sup> European Parliament, Directorate General for Internal Policies: Social and working conditions of road transport hauliers. A study from 2013



On 14 January 2015, the Tariff Board circulated for comments the draft regulations on general application of the collective agreements for passenger transport by tour bus to the parties to the collective agreement, other representatives of the social partners, certain affected ministries and other organisations who may consider it to be in their interest to contribute input to the question of whether there is a basis for general application and to the draft regulations. The request for comments was published on the Internet.

In the consultation paper, the Board made it clear that it had not reached any conclusions regarding whether the conditions for general application were met in this case. The Board made it known that the consultation round would be able to provide further information and thus provide a better basis for a decision on this matter.

Replies were received from the following commenting bodies:

- Akademikerne [Federation of Norwegian Professional Associations]
- Arbeidsgiverforeningen Spekter [Employer's Association Spekter]
- Arbeidstilsynet [Norwegian Labour Inspection Authority]
- Finansdepartementet [Ministry of Finance]
- Justis- og beredskapsdepartementet [Ministry of Justice and Public Security]
- Kommunal- og moderniseringsdepartementet [Ministry of Local Government and Modernisation]
- KS
- Landsorganisasjonen i Norge (LO) [Norwegian Confederation of Trade Unions]
- Norges Turbileierforbund [Norwegian Tour Bus Operators' Association]
- Nærings- og fiskeridepartementet [Ministry of Trade, Industry and Fisheries]
- Næringslivets Hovedorganisasjon [Confederation of Norwegian Enterprise]
- Petroleumstilsynet [Petroleum Safety Authority Norway]
- Samferdselsdepartementet [Ministry of Transport and Communications]
- TIA Norge [Truckers International Association Norway]
- University of Oslo, Department of Private Law
- Unio [Confederation of Unions for Professionals]
- Utenriksdepartementet [Ministry of Foreign Affairs]
- Yrkesorganisasjonenes Sentralforbund (YS) [Confederation of Vocational Unions]
- Virke [The Enterprise Federation of Norway]

## *5.2 Comments of the commenting bodies – summary*

*Yrkestrafikkforbundet (YTF) [the Union of Norwegian Transport Employees]* supports the claim from the Norwegian Confederation of Trade Unions concerning application of their corresponding agreement. Reference is made to YTF's own survey, which showed that foreign drivers earn considerably less than Norwegian tour bus drivers, and to the report of the Institute of Applied Social Science/the Institute of Transport Economics "*Arbeidsforhold i gods og turbil*" [*Working Conditions in the Road Transport Sector*], which was published after the claim was submitted, and which draws attention to the fact that foreign tour buses drive assignments in Norway during the tourist season and that the foreign drivers have considerably less favourable wage conditions than Norwegian drivers. The report also refers to Germany's introduction of a minimum wage for all work performed in Germany, including cabotage and international transport.



*Fagforbundet [Norwegian Union of Municipal and General Employees]* supports the Tariff Board's proposed regulations. It refers to the fact that general application makes low-wage competition unlawful, and is thus a major instrument for combating the development of an asocial and unregulated labour market. Sufficient resources must be set aside for enforcement.

*Parat* supports the Confederation of Vocational Unions' claim for general application of the Bus Sector Agreement, and views general application as an appropriate measure for combating distortion of competition and social dumping. In *Parat's* view, the existing documentation is more than sufficient.

*Unio [the Confederation of Unions for Professionals]* supports the claims for general application, and finds the grounds and the documentation submitted to be sufficient. *Unio* wishes prevention of a two-tier labour market, where foreign drivers on transport assignments in Norway work more or less unregistered and on unacceptable terms of wages and employment. A clear framework is therefore needed to regulate this employment. In *Unio's* view, general application forms part of such a framework, and plays an important role in combating extremely low wages in the exposed sectors. *Unio* believes that it will be possible to carry out effective controls at border crossings, lay-bys, ports, large freight forwarding centres, etc.

*Akademikerne [the Federation of Norwegian Professional Associations]* supports the proposed Regulations.

In the view of *NHO*, protection of foreign workers is the guiding principle behind the general application arrangement, and pure competition considerations cannot form the basis for general application. According to *NHO*, the documentation is too weak. It points out that international transport is carried out by *mobile*, rather than *posted* workers. It draws attention to the challenges involved in exercising controls in connection with a general application decision. If there is no real possibility of follow-up, the Board should not make such a decision. *NHO* calls for a broader assessment of the EEA law aspects of a general application decision.

In *NHO Transport's* view, there is no doubt that a number of drivers have unacceptable terms of wages and employment in connection with assignments in Norway. *NHO Transport* wishes well-ordered conditions in the tour bus sector, and supports general application of the tour bus part of the Bus Sector Agreement. On the basis of current legislation, general application appears to be the only available instrument for creating more equal conditions of competition. However, the positive attitude of *NHO Transport* to general application in the tour bus sector is subject to two conditions: (1) that effective enforcement and sanctions are ensured and (2) that the scope of the general application is delimited against international transport. *NHO Transport* also requests the Tariff Board to conduct a closer assessment of the justification for the laying down in regulations of coverage of subsistence expenses and requirements regarding lodging.

*NHO Reiseliv [the Norwegian Hospitality Association]* is opposed to general application in this area. In its view, the main intention behind the general application claim appears to be protection of Norwegian enterprises against competition from abroad, not protection of foreign workers. *NHO Reiseliv* concurs in the consultative comments of the Confederation of Norwegian Enterprise (*NHO*). *NHO Reiseliv* is anxious that general application may have an

undesirable impact on the Norwegian tourist industry. This applies particularly to hotels, catering establishments and tourist destinations in rural areas, which depend on foreign bus tourists for a considerable part of their activities. According to NHO Reiseliv, bus tourism in Norway has existed for many years, particularly during the summer season. Foreign tour operators with activities and customers abroad put together package tours and enter into contracts with selected hotels and catering establishments on accommodation and catering. It is feared that general application will result in Norway losing much of this bus tour business because the tour operators will prefer other destinations. Some will also choose to drive through Sweden or to fly tourists to Sweden or Finland and then drive them by bus to Northern Norway. NHO Reiseliv also considers that the documentary basis for general application is too weak, that there are no satisfactory procedures for enforcement and control, and that the relationship to EEA law has not been clarified.

In the view of *Virke*, it has not been documented that the conditions for general application are met. It finds there to be a general lack of concrete knowledge concerning wages and competition in the tour bus market, and thus too weak a factual basis to conclude that the conditions for general application are met. *Virke* does not consider general application of the Bus Sector Agreement to be an appropriate measure for ensuring foreign workers terms of wages and employment equal to those of Norwegian workers or for preventing distortion of competition to the disadvantage of the Norwegian labour market.

Following an overall assessment, the employer's association *Spekter* has concluded that it does not support general application of the Bus Sector Agreement. In the absence of effective enforcement, general application may easily result in distortion of competition to the disadvantage of actors who are loyal to the regulation. It points out that the matter has specific EEA law aspects, particularly associated with transnational transport. A paper from BA-HR is enclosed, providing a closer assessment of the EEA law aspects of general application of the Bus Sector Agreement and the Haulage Vehicle Agreement.

*TIA Norge [Truckers International Association Norway]* believes that general application will make Norway an even more attractive destination for foreign drivers, both for lawful and for unlawful assignments. In *TIA Norge's* view, a concerted effort must be made to ensure competitive conditions for all tour bus operators in Norway. General application will then contribute to this, but until this stage is reached, *TIA Norge* does not consider that general application will be a crucial factor for achieving competitive conditions in the sector. It recommends that a broadly composed committee be set up to investigate the whole issue of cabotage and social dumping in order to put an end to disgraceful conditions in the sector.

*The Norwegian Labour Inspection Authority* considers that general application would provide the agency with an effective instrument for controlling foreign drivers and for preventing them from being subjected to less favourable terms of wages and employment than Norwegian drivers. Experience of inspections carried out in cooperation with the Norwegian Public Roads Administration and contact with Norwegian actors and organisations in the sectors indicate increasing competition from foreign actors and undertakings using employed or hired drivers with far less favourable terms of wages and employment than are usual in Norway. The Authority will be able to supervise the compliance of orderers and tour bus operators with the obligation to provide information and ensure compliance. The authority will have comments on any draft regulations.

*The Ministry of Finance* points out that, in sectors with a low level of unionisation, general application may result in an increase in the wage level in non-unionised enterprises, and this would also apply to Norwegian workers. The Ministry of Finance draws attention to poor quality and a major lack of relevant statistics, which are pervasive features of the sector and which the Tariff Board should be particularly aware of when assessing whether general application is an expedient measure for the problems revealed. The Ministry also draws attention to the challenges regarding control and compliance.

The Ministry of Justice and Public Security and the Ministry of Transport and Communications submitted no comments.

## 6 Other documentation

### 6.1 *Fafo-report 2014:58 Arbeidsforhold i gods og turbil [Working Conditions in the Road Transport Sector]*

The report was prepared by the Institute of Applied Social Science (Fafo) and the Institute of Transport Economics (TØI). The purpose of the project was to provide more knowledge on the challenges and problems facing the road transport sector, and to indicate necessary future measures. As in the case of the pilot project (Fafo-paper 2013:16), the report of this project concluded that there is broad agreement between the employer and employee sides that the land-based transport sector has faced a number of challenges as a result of increased international competition during recent decades. Both employers and workers in the sector are concerned about irresponsible use of foreign labour by undertakings in order to put pressure on terms of wages and employment.

### 6.2 *Letter from Virke*

After the consultation round, the Tariff Board requested Virke [the Enterprise Federation of Norway] to obtain as much information as possible from its member enterprises concerning the organisation of transport assignments, the volume represented by foreign actors, the countries they come from, wage levels and price differences. Virke obtained responses from a number of large and small operators of bus tours in Norway, and has summarised the responses as follows:

“The responses show that drivers have good working conditions. They enjoy at least the same standard of board and lodging as the guests or receive a subsistence allowance. This is stipulated by the contracts between the tour operators and the tour bus companies, as illustrated by the following response: *“We almost always order accommodation in the same hotels as we use for our guests. Sometimes we order better rooms for drivers when hotels are fully booked. Our drivers either eat together with the groups or receive a subsistence allowance with no requirement regarding documentation by receipts.”* Responses from tour guides also confirm that the drivers seem to enjoy good conditions, and that their board and lodging arrangements are at a level at least the same as that of the guests.”

As regards organisation, Virke's members state that they arrange tours in Norway either as independent tours or packages or as partial arrangements or excursions for other operators, e.g. excursions for tourists who arrive in Norway by cruise ship.

Virke states that it is difficult to estimate the number of foreign operators and workers owing to the complexity of the market.

Most member enterprises respond that they order buses via Norwegian tour bus operators. However, some say that they also order directly from abroad. In 2013, they reported orders from Latvia, Sweden, Denmark, Hungary and Belgium, and in 2014, orders from Sweden, Denmark, Hungary and Belgium were reported. Poland, the Baltic States and Sweden were also mentioned as countries with many buses in Norway, particularly in Western Norway, during certain periods.

Virke's members report that they are sure that the drivers have good terms of wages and employment. All arrangers of tours in Norway impose a standard requirement that the drivers must have good conditions for board and lodging, either by being included in the same group as the tourists or by being paid a subsistence allowance. Arrangers of tours involving foreign drivers inform that they check that the wages are at an acceptable level in relation to the level of costs in the country they come from.

Virke has not received any responses from members on whether or not foreign transport is cheaper. One of the actors responded that the choice of company is based on a combination of a number of factors: lack of buses in the peak season, flexibility, price and stable quality.

### *6.3 New documentation from Yrkestrafikkforbundet (YTF) [Union of Norwegian Transport Employees] and Norsk Transportarbeiderforbund (NTF) [Norwegian Transport Workers' Union]*

In May 2015, in order to shed further light on the situation in the sector for the Tariff Board, YTF conducted a survey of the terms of wages and employment in the sector. It should be pointed out that, in May, the tourist season has only just begun, and that this limits the significance of the survey. Interviews with 24 respondents included drivers of 13 different nationalities; six from Poland, three from Lithuania, two from Estonia, two from Latvia and one each from Norway, Denmark, Sweden, Switzerland, Spain, the Czech Republic, Romania and the Netherlands. Most drove buses registered in the driver's home country. The exceptions were a Romanian and a German driver, who drove Norwegian buses. Very few indicated that they received a wage corresponding to the minimum wage laid down in the collective agreement.

The drivers from Norway, Denmark and Switzerland informed that they received wages over the minimum wage. One driver from Sweden, two from Germany and one from the Netherlands stated that they received a wage that was just under the minimum wage laid down in the collective agreement. The Romanian, German, Spanish and Latvian drivers told that they received between EUR 2500 and EUR 2000 per month. Eleven of the drivers told that they earned less than EUR 2000 per month, and eight of these received less than EUR 1500 per month before tax. The lowest wages were reported by two Polish drivers, who respectively earned less than EUR 600 and EUR 900 per month.

When asked whether they received the same, lower or higher wages when they drove in Norway as compared with other countries, most of them told that they received the same wage for driving in Norway as for driving in their home country.

YTF has also been in contact with the Swedish trade union federation, Kommunal, which was able to inform that Swedish companies operate tour buses in Norway with both Swedish and foreign drivers, many of them from Estonia, Poland and Romania. The drivers who are not Swedish are paid in accordance with the standard rates in their home countries. It was stated

that the drivers live at the same hotels as the tourists when driving, but that some of them live in the bus between assignments.

#### *6.4. New documentation from NHO Transport*

NHO Transport too has been in contact with its member enterprises after the consultation round. According to their assessment, it must be the differences in the terms of wages and employment that enable foreign actors to price themselves far lower than Norwegian tour bus companies. The quality of the tour buses is largely the same and the price of input factors such as fuel, road tolls, etc. is also the same. It is pointed out that drivers' wages in the former Eastern European countries lie between 11 and 25 per cent of those in Norway.

NHO Transport draws attention to specific examples: Last year, one tour bus company in Northern Norway lost contracts amounting to a total of NOK 1.5 million, which constituted 30 per cent of the turnover. Another company recently lost a contract worth NOK 1.8 million to an Eastern European actor. Many companies experience less demand for Norwegian actors at the typical tourist destinations. There are also fewer assignments at major airports. At the beginning of May, at the Norwegian Travel Workshop, where commercial purchasers and suppliers of tourism services meet, there was, according to NHO Transport, even less interest for Norwegian tour bus services than previously despite a favourable krone exchange rate. In recent years, this has resulted in some operators reducing their fleet of tour buses, while others have retained their tour buses but have allowed them to stand idle. Other operators have compensated their loss of assignments by providing bus services to replace temporarily suspended train services.

In the view of NHO Transport, there is little reason for assuming that the terms of wages and employment of foreign tour bus drivers deviate markedly from the terms of haulage vehicle drivers. There are many who work more than 20 days a month, and are not compensated for overtime or inconvenient working hours. Some are not compensated for waiting time between assignments. NHO Transport also reports breaches of the provisions for driving time and rest periods. NHO Transport too refers to cases where drivers must spend their nights in the bus between assignments, and where no wages are paid for waiting time between assignments.

### **7. The Tariff Board's assessments and conclusion**

The Tariff Board is concerned to ensure that general application shall not be more extensive than necessary for fulfilment of the purpose of the General Application Act and to stay within the framework of EEA law.

On the basis of an overall assessment of the documentation enclosed with the claim, information received by the Tariff Board after the consultation round and other information concerning this matter, the Tariff Board's majority, the members Øydegard, Holden, Smith Ulseth, Bodding, Gulbrandsen and Stordrange find it substantiated that foreign workers who carry out passenger transport by tour bus in Norway have terms of wages and employment which, based on a total assessment, are less favourable than those that apply to Norwegian workers.

On the basis of the facts made known, the Tariff Board's majority, the members Øydegard, Holden, Bodding, Gulbrandsen and Stordrange, find that general application is a necessary and appropriate measure for safeguarding the purpose of the Act.

The Tariff Board's minority, the members Meder and Smith Ulseth, do not support general application. It has been substantiated that there are foreign workers who carry out passenger transport by tour bus in Norway on less favourable terms of wages and employment than are enjoyed by Norwegian workers. However, this is not sufficient. General application must also be an appropriate instrument for achieving the purposes of the Act. This is dependent on a broad assessment. Major issues to be assessed are whether a general application decision is needed and whether general application is a proportional measure. Factors to be considered are the number of workers concerned – in both absolute and relative terms – and how unfavourable their terms of wages and employment are. In such an assessment it will normally be the case that the less favourable the terms of wages and employment are, the less need the extent to be. The Board must also give weight to the question of whether there is reason to believe that general application will help to improve the terms of wages and employment for the foreign workers, and in this connection consider the potential for conducting controls. The minority would point out that there is considerable uncertainty as regards both the extent and the duration of the cases that general application is intended to affect, and the degree to which general application would have the desired effect. Following an overall assessment, the minority finds that the Tariff Board, on the basis of the purposes of the Act, should not decide on general application.

#### *Scope*

The Bus Sector Agreement, on which the claim is based, applies to bus drivers in scheduled bus services, express bus drivers and tour bus drivers as well as workshop workers and cleaners. However, the claims only apply to passenger transport by tour bus. The Tariff Board therefore finds reason to limit the scope of the General Application Regulations to workers who carry out transport by coach or bus whose operators do not need to be licensed pursuant to section 8 of the Professional Transport Act.

The Tariff Board's majority has furthermore considered the extent to which passenger transport by tour bus carried out by foreign undertakings in Norway shall be subject to the General Application Regulations. When foreign undertakings perform passenger transport by tour bus in Norway, it is normally in the form of cabotage or international transport.

By cabotage is meant transport where a transporter from one state is engaged in transport between two places within the territory of another state. Pursuant to EEA law, a transporter registered in another EU/EEA member state may carry out *temporary* passenger cabotage in Norway. No definition is given of what is deemed to be temporary.

By international transport is meant cross-border transport, typically transport from the home state of the transporter with a destination in another state. Transport assignments that are commenced and terminated in the same state, but where passengers embark or disembark in another state, are also deemed to be international transport.

In principle the Tariff Board does not wish international transport to be covered by the Regulations, both because it is not deemed appropriate and because it may in practice be difficult to control compliance.

The question regarding application of the General Application Regulations to foreign undertakings was particularly considered in the request for comments. The Tariff Board found there that the Posting of Workers Directive defines the framework for when terms of wages and employment may be made applicable to foreign undertakings performing services



in Norway, and that General Application Regulations which have been provided in compliance with the Directive are also in compliance with article 36 of the EEA agreement. Furthermore, the Tariff Board found that both cabotage and international transport in principle fall under the Posting of Workers Directive, provided that the individual transport assignment actually constitutes a transnational provision of services as defined in article 1 of the Posting of Workers Directive.

The Posting of Workers Directive applies to all undertakings in EU/EEA member states that, in connection with provision of services, post workers to another member state. According to article 1, the Directive applies when undertakings either post workers to the territory of a Member State on their account and under their direction, under a contract concluded with a service recipient in another EU/EEA member state, or post workers to an establishment or to an undertaking owned by the group in the territory of another EU/EEA member state, or, being a temporary employment undertaking or placement agency, hire out a worker to a user undertaking established or operating in the territory of another EU/EEA member state. In all cases, it is required that there is an employment relationship between the undertaking making the posting and the worker during the period of posting.

The condition that the service provision must be subject to a contract concluded with a service recipient in the host country entails that both cabotage and international transport may fall under the Posting of Workers Directive in some cases and outside it in other cases. It is important to note that the condition regarding a service recipient is associated with the recipient of *the transport service*. Whether the transport service is categorised as cabotage or international transport is thus not decisive for the question of whether or not the Posting of Workers Directive is applicable. Against this background, the Tariff Board finds that it is not possible from a legal point of view to define the scope of the General Application Regulations solely on the basis of whether cabotage or international transport is involved.

The Tariff Board's majority is concerned that the General Application Regulations must comply with the framework of EEA law. In this connection, the Board will refer to the proceedings instituted against Germany by the European Commission on the basis of the claim that the German minimum wage provisions are applied in the transport sector to a greater extent than allowed by the Posting of Workers Directive.

In order to ensure that the General Application Regulations do not exceed the limits imposed by the Posting of Workers Directive, the Tariff Board's majority finds that the scope provision of the Regulations must cite the legal definition of posting of an employee provided in section 1-7 of the Working Environment Act.

In practice, cabotage assignments often involve service provision on the basis of a contract with a service recipient in Norway, and thus fall under the definition provided in the Posting of Workers Directive as well as the General Application Regulations. This is normally the case when the transport assignment takes place between two places in Norway. However, cabotage assignments may also take place between two places in Norway although the orderer of the transport is established in another state. This may apply to undertakings that only act as agents in the provision of passenger transport in Norway. In connection with international transport assignments, there is more often no recipient of the transport service in Norway. In addition, international transport entails that the transporter spends relatively little time on Norwegian roads. However, this depends on where the border is crossed and on where the destination for the transport assignment is located.

The tour bus market can be divided into three categories. A typical example of international transport is when a foreign bus with foreign passengers drives to Norway from a specific place in another country and then returns to the point of departure with the same passenger (i.e. without taking up passengers in Norway). In this situation, there is not normally a client in Norway, and the situation thus falls outside the scope of the Posting of Workers Directive and the General Application Regulations.

Another example is that foreign buses take up passengers, for example at Oslo Airport, and drive for a period in Norway. This is deemed to be cabotage, but there is not necessarily a Norwegian client for the transport assignment. The transport that is to take place in Norway may, for example, have been ordered by a tour operator abroad. The Posting of Workers Directive's definition of posted worker requires a client who can be said to operate in Norway. This means that a certain activity must take place in Norway. A foreign tour operator who arranges tours in Norway in this way may be deemed to operate in Norway although his undertaking is not established in Norway. This will depend on the circumstances, among other things, the extent of the activity in Norway.

A third category is that of foreign buses that remain in Norway for longer periods, and take whatever assignments arise ("ad hoc assignments" or "spot market"). Here the client is more often Norwegian, in which case the situation falls under the scope of the Posting of Workers Directive.

The Tariff Board's majority is aware that this way of formulating the scope of the Regulations may result in cases of doubt regarding whether a transport assignment falls under the Regulations. However, this is not viewed as particularly more marked than in other areas of the Norwegian labour market. The crucial factors are how the transport assignment is organised and who the recipient of the transport service is. It has been taken into account that the Norwegian Labour Inspection Authority is very familiar with the assessment that must be made pursuant to section 1-7 of the Working Environment Act. In connection with supervision of compliance with the General Application Regulations, the Norwegian Labour Inspection Authority is authorised by section 11 of the General Application Act to demand information deemed necessary for performance of its inspection. Pursuant to Regulation (EC) No 1073/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international market for transport by coach or bus, implemented in Norwegian law by means of section 55 of the Professional Transport Regulations, certain documentation requirements are specified both international transport and cabotage assignments. The Tariff Board takes into account that the Norwegian Labour Inspection Authority may make use of this documentation in connection with its inspection activities.

The Tariff Board's minority, Jon Stordrange, notes the following: In its consultative comments of 11 March 2015, NHO Transport supported general application in connection with cabotage assignments, but clearly stressed that the association was opposed to general application in connection with international transport assignments. This was also maintained at the Tariff Board's meetings of 11 May 2015 and 27 May 2015. In addition, the association agreed that the documentation requirement has been met, and that general application is a necessary and appropriate measure for fulfilling the purposes of the General Application Act.

However, NHO Transport cannot subscribe to the scope outlined in the draft decision and Regulations. The draft is based on interpretation of the Posting of Workers Directive, and entails that certain categories of international transport and cabotage will be affected by general application. The main criterion seems to be whether or not the orderer of the transport service is abroad, which involves many different interpretations and potential circumvention. The Regulations are thus difficult to comply with for both purchasers and suppliers of passenger transport services, and enforcement and control by the authorities will be very complicated. The draft Regulations will thus not necessarily result in fewer foreign drivers with unacceptable terms of wages and employment on Norwegian roads. In addition, Norwegian transporters' competitiveness may be further weakened in parts of the market.

NHO Transport has of course considerable understanding and respect for the Board's wish to adapt the scope of the Regulations to the provisions of the Posting of Workers Directive. However, the association upholds its original standpoint as regards scope. This indicates that the General Application Regulations should cover all national transport, including cabotage. On the other hand all international transport should be excepted. We refer in this connection to Germany's enforcement of the minimum wage provisions in the transport sector, where the European Commission has not so far reacted to use of the minimum wage rates in connection with cabotage.

In line with the Tariff Board's practice in previous cases, the General Application Regulations will not apply to apprentices and persons taking part in labour market schemes.

#### *Wages*

The Tariff Board has based its decision on the claim, and has given general application to the minimum wage rate in the underlying collective agreements for workers who fall within the scope of section 2 of the Regulations.

The Tariff Board has not found a basis for general application of the public holidays supplement in the agreements.

#### *Board and lodging*

The Board's majority, the members Øydegard, Holden, Smith Ulseth, Bodding, Gulbrandsen and Stordrange refer to the claim, where it is proposed that the following provisions be made generally applicable:

- In the case of tours with overnight stays, the employer shall ensure that the driver receives adequate rest in satisfactory accommodation, with a shower and toilet, preferably a single room.
- If necessary meals are not covered by the client, these shall also be paid for by the employer.

The majority find that coverage of additional costs associated with stays away from home constitutes a major part of the remuneration of the drivers, also in the case of Norwegian workers, and consider it necessary to lay down in regulations the coverage of the board and lodging expenses in order to ensure equal treatment of foreign and Norwegian drivers.

The majority points out that, in many cases, the drivers are provided with board and lodging by the client.

In the majority's view, it would therefore be most appropriate to lay down a provision stating that an agreement shall be concluded concerning the coverage of board and lodging. Such a

provision would also be most consistent with corresponding provisions in other general application regulations.

The minority, the member Meder, observes that the purpose of general application must be to ensure an acceptable level as regards terms of wages and employment. General application of such an allowance is not perceived as necessary on the basis of the purpose of the Act.

## **8. Regulations on general application**

### *8.1 Further information concerning the regulations*

The Regulations have been drafted along largely the same lines as other General Application Regulations. At the same time, The Tariff Board would point out that relatively few provisions are made generally applicable by these Regulations.

In consistency with the claim, the Tariff Board has given general application to the agreement's minimum wage provision and provisions concerning board and lodging. However, the scope of the Regulations is narrower than was requested (see above under the Board's assessments and conclusions).

The Tariff Board finds that general application of these provisions of the agreement lies within the framework of what terms of wages and employment can be made generally applicable in accordance with the Posting of Workers Directive.

### *8.2. Comments to the individual provisions*

#### **Chapter I Introductory provisions**

Re section 1 The basis for general application

In consistency with the claims from the Confederation of Vocational Unions and the Norwegian Confederation of Trade Unions, the Regulations have been laid down on the basis of the identical collective agreements: the Bus Sector Agreement of 2014 between Næringslivets Hovedorganisasjon [the Confederation of Norwegian Enterprise] and NHO Transport for the one part and the Yrkesorganisasjonenes Sentralforbund [the Confederation of Vocational Unions] and Yrkestrafikkforbundet (YTF) [the Union of Norwegian Transport Employees] for the other part and the Bus Sector Agreement 2014–2016 between Næringslivets Hovedorganisasjon [the Confederation of Norwegian Enterprise] and NHO Transport for the one part and the Norwegian Confederation of Trade Unions and Norsk Transportarbeiderforbund (NTF) [the Norwegian Transport Workers' Union] for the other part. The Regulations concern few specific agreement provisions, but are nevertheless based on the agreements.

Re section 2 Scope and executive responsibility

The Regulations shall apply to all workers who carry out passenger transport by tour bus. The Regulations also apply to workers in foreign undertakings provided that the transport assignment is organised in a manner involving posting of workers as part of a temporary service provision, as defined in section 1-7 of the Working Environment Act. Pursuant to the Act, posting may occur in three situations: when the foreign undertaking posts the worker for its own account and at its own risk by agreement with the recipient of the transport service in Norway when the worker is posted to a company within the same group or is posted from a foreign temporary employment agency. Both cabotage and international transport may pursuant to this fall within the scope of the Regulations.

It is the employer that is subject to legislation pursuant to the Regulations.

Exceptions have been made for apprentices and persons taking part in labour market schemes.

## Chapter II Terms of wages and employment

### Re section 3 Provision concerning wages

The minimum wage rate given general application would apply to all drivers in Norway who fall within the scope of section 2.

### Re section 4 Wage adjustments within the duration of these regulations

If the rates laid down in the agreement are amended within the duration of the regulations the Board may decide new minimum wage rates. The Board finds that amendment of the rates laid down in the Regulations normally takes place at the request of the parties.

### Re section 5 Board and lodging

Pursuant to the provision, the employer and employee shall, prior to the start of the assignment, enter into an agreement concerning coverage of the board and lodging expenses. In principle, it is the employer who shall pay for board and lodging, but coverage may also be agreed, for example, on the basis of documented expenses, fixed rates for compensation, etc. It may be appropriate to refer for guidance to the underlying collective agreements.

## Chapter III Derogation, etc.

### Re section 6 Derogation

This provision clarifies that which also follows from section 6, final paragraph, of the General Application Act that the terms of wages and employment laid down in these Regulations are minimum terms. If workers who fall within the scope of the Regulations already enjoy better terms according to individual agreements, collective agreements or other statutes or regulations that apply to the employment relationship, it is these terms that shall apply. It is further specified that terms of wages and employment shall, taken as a whole, be in compliance with the Regulations. This entails that employment relationships with terms of wages and employment that in one or more regards deviate from these regulations may nevertheless be in compliance with the regulations if, following a concrete assessment of all aspects of the employment relationship, it is concluded that, when taken as a whole, the terms are at least as favourable as the terms that follow from these regulations.

## Chapter IV Commencement, etc.

### Re section 7 Commencement and expiry

Regulations may as a rule enter into force at the earliest one month after the date they are published in the Norwegian Law Gazette (see section 39 of the Public Administration Act).

These regulations enter into force on 1 August 2015. From this date, they will apply to all undertakings and employment relationships that fall within the scope of the regulations, i.e. undertakings that have less favourable terms of wages and employment than apply pursuant to these regulations will be obliged to remunerate their employees in accordance with the new terms from this date.

The regulations shall cease to apply one month after the Bus Sector Agreement of 2014 between Næringslivets Hovedorganisasjon [the Confederation of Norwegian Enterprise] and NHO Transport for the one part and Yrkesorganisasjonenes Sentralforbund [the Confederation of Vocational Unions] and Yrkestrafikkforbundet (YTF) [the Union of Norwegian Transport Employees] for the other part and the Bus Sector Agreement 2014—

2016 between Næringslivets Hovedorganisasjon [the Confederation of Norwegian Enterprise] and NHO Transport for the one part and the Norwegian Confederation of Trade Unions and Norsk Transportarbeiderforbund (NTF) [Norwegian Transport Workers' Union] for the other part, are replaced by new agreements, or if the Tariff Board makes a new decision concerning general application on the basis of the same agreements.



Oslo, 27 May 2015

Johan Kr. Øydegard

Steinar Holden

Terese Smith Ulseth

Knut Bodding

Margrethe Meder

Lin Andrea Gulbrandsen

Jon Stordrange

## **Regulations on general application of the collective agreement for passenger transport by tour bus**

Issued by the Tariff Board on 27 May 2015 pursuant to section 5 of the Act of 4 June 1993 No. 58 relating to general application of collective agreements, etc. (the General Application Act).

### **Chapter I. Introductory provisions**

#### *Section 1. The basis for general application*

These Regulations are laid down on the basis of the Bus Sector Agreement of 2014 between Næringslivets Hovedorganisasjon [the Confederation of Norwegian Enterprise] and NHO Transport for the one part and Confederation of Vocational Unions og Yrkestrafikkforbundet (YTF) [Union of Norwegian Transport Employees] for the other part and the Bus Sector Agreement 2014–2016 between Næringslivets Hovedorganisasjon [the Confederation of Norwegian Enterprise] and NHO Transport for the one part and Landsorganisasjonen i Norge [the Norwegian Confederation of Trade Unions] and Norsk Transportarbeiderforbund (NTF) [the Norwegian Transport Workers' Union] for the other part.

#### *Section 2. Scope and executive responsibility*

The Regulations apply to workers in enterprises that carry out passenger transport by coach or bus when operation of the transport does not require a license awarded following competition pursuant to section 8 of the Professional Transport Act. For workers in enterprises established outside Norway, the Regulations only apply to the extent that the transport is a service provision pursuant to section 1-7 of the Working Environment Act (*Posted workers*).

The employer and any person managing the undertaking in the employer's stead who perform tasks as referred to in the first paragraph shall ensure that the provisions of these regulations are complied with.

The Regulations shall not apply to apprentices and persons taking part in labour market schemes.

### **Chapter II. Terms of wages and employment**

#### *Section 3. Provisions concerning wages*

Workers who perform work in accordance with section 2, shall receive a minimum hourly wage of NOK 150.00.

#### *Section 4. Wage adjustments within the duration of these regulations*

The Tariff Board may amend the rate laid down in section 3 as a result of wage revisions.

### *Section 5. Board and lodging expenses*

Board and lodging arrangements shall be agreed. As a main rule, the employer shall provide board and lodging, but a standard subsistence allowance rate, payment as per account rendered or the like may be agreed.

## **Chapter III. Derogation, etc.**

### *Section 6. Derogation*

The Regulations shall not apply if, pursuant to agreement or to the national law, the worker is covered by terms of wages and employment that otherwise apply to the employment relationship, which, taken as a whole, are more favourable.

## **Chapter IV. Commencement, etc.**

### *Section 7. Commencement and expiry*

These regulations enter into force on 1 August 2015.

These regulations shall cease to apply one month after the Bus Sector Agreement of 2014 between Næringslivets Hovedorganisasjon [the Confederation of Norwegian Enterprise] and NHO Transport for the one part and the Yrkesorganisasjonenes Sentralforbund [the Confederation of Vocational Unions] and Yrkestrafikkforbundet (YTF) [the Union of Norwegian Transport Employees] for the other part and the Bus Sector Agreement 2014–2016 between Næringslivets Hovedorganisasjon [the Confederation of Norwegian Enterprise] and NHO Transport for the one part and the Norwegian Confederation of Trade Unions and Norsk Transportarbeiderforbund (NTF) [Norwegian Transport Workers' Union] for the other part are replaced by a new collective agreement, or if the Tariff Board makes a new decision concerning general application of the collective agreement.