

Is it permissible to terminate employment due to reorganisation?

In a recent decision, the Supreme Court rejected a claim for review in a case concerning the termination of an employment relationship. It ruled that the lawfulness of dismissal is not affected and that it does not constitute an unlawful practice if the employer, for economic reasons, decides not to provide the task in an employment relationship anymore but in another form of a legal relationship.

In the specific case, the employment of the employee (plaintiff) was terminated by the employer (defendant) on the grounds of job reorganization and outsourcing of certain tasks. The Curia rejected the applicant's claim and found that the reasons for the dismissal were well-founded, thereby highlighting the employer's discretion in the matter of reorganization and outsourcing.

The defendant employed the plaintiff in various jobs from April 2018, who was entitled to additional leave as a person with a disability. Over time, however, the defendant digitalized and outsourced certain tasks to external companies, and the employer terminated the employment of the plaintiff employee in 2020, claiming that the plaintiff's job had been terminated due to a workplace reorganization in due to the ongoing epidemic situation. After the termination, the defendant did not hire anyone to fill a similar position. In his application, the plaintiff claimed that the defendant should be ordered to pay damages for loss of earnings resulting from the unlawful termination of his employment. In the grounds of his application, he stated that his position did not cease after the termination of his employment, and that the duties he performed continued to be carried out by the employees previously employed and by the employees hired after the plaintiff's dismissal. On the other hand, it is stated that the external contractors did not carry out the work falling within the plaintiff's scope of employment and that they had already worked for the defendant during the plaintiff's employment. According to the plaintiff's plea, the defendant had in fact terminated his employment because of the additional leave he had requested for 2020.

In the case at first instance, the tribunal decided to order the defendant to pay part of the unpaid salary, but dismissed the plaintiff's claim for further damages on the grounds that the reorganization invoked by the defendant constituted a valid and legitimate reason for dismissal. The court also found that the plaintiff's specific job title was established on the basis of witness testimony and that the defendant was not required to offer alternative jobs that did not exist as a separate activity. According to the court, the plaintiff failed to prove that the dispute over the additional leave was the real reason for the termination, as the defendant had given him additional leave in previous years.

The Court of Second instance upheld the judgment of the first instance, confirming that the reasons for the dismissal, including the outsourcing of tasks and the increased orders due to the epidemic, were not contradictory. The Court acknowledged that the defendant had outsourced the work efficiently and cost-effectively through external partners, in particular in view of the pandemic situation. The court stressed that the plaintiff's duties ceased after the termination and that the defendant didn't have any obligation to offer an alternative job.



The Supreme Court rejected the plaintiff's claim for review. The plaintiff argued in the appeal that the reasons for the dismissal and the reorganization were not clear. The defendant was required to prove that the plaintiff's position ceased, that the alleged reorganization had actually taken place and that the reorganization was necessitated by the epidemic situation during the period of notice, which had occurred at the time of termination of employment.

The Supreme Court, agreeing with the courts that had previously ruled, found that the employer's reason for dismissing the plaintiff, which concerned the reorganization of his job, was valid and reasonable. The defendant had submitted evidence in support of its reasoning concerning the outsourcing and reassignment of tasks. The plaintiff's objection that the courts had not examined the justification for the reorganization was groundless, as the courts cannot intervene in matters outside the scope of labor disputes. The lawfulness of the dismissal was not affected and it was not an abuse of rights that the employer had carried out the tasks under another legal relationship. The involvement of an external firm as part of the reorganization was at the discretion of the employer and is not subject to judicial review.