

Is termination against the law if there is a dispute between the employer and the employee?

According to the decision of the Supreme Court, the termination of an employee's employment contract due to a conflict with the employer constitutes an abuse of rights and grounds for a declaration that the termination is unlawful.

The employee concerned worked as a tanker handler and during his employment he experienced a number of problems regarding the emptying of tanks and the adjustment of machines, for which he made several complaints and reports, which critical remarks were published in the press, although in a way that could not be linked to his employer. At the same time as the unfavourable articles were published, the manager made several phone calls to the employee, blocking his phone number, for which the employee filed a harassment complaint against an unknown perpetrator, but the proceedings were terminated for lack of criminal offence. Following this, the company decided to terminate the team in which the employee concerned had been working, because of a further negative newspaper article about the employer. In the agreement with the trade union, the employer undertook to endeavour to offer the team-members affected by the reorganisation another work position, however he terminated the employment of the worker concerned without offering him another work position.

Therefor the employer brought an action for damages to the courts for wrongful termination of the employment, alleging an abuse of rights by the employer. He did not deny the reorganisation, but claimed that his dismissal was in response to a conflict with the plant manager as the person exercising the employer's rights and retaliation for what he perceived as grievances.

The Court of First and Second Instance ordered the employer to pay compensation for the wrongful termination of the employment relationship. Considering that the plant manager had the right to select the workers affected by the downsizing, his role and motivation, as well as the telephone calls, were also a key factor in the decision. The manager himself admitted that he suspected that there was a link between the complaints and the newspaper articles.

According to the courts, the mere fact that the selection of the employee to be dismissed was based on a suspicion, which is in itself a sanction, is sufficient to establish an abuse of rights. In a reorganisation, the employer has a wide discretion regarding the criterias of selecting the employees, but it is important to note that the purpose of this greater latitude is not compatible with the possibility that an employee's interest is harmed. The courts therefore found that **the employer had misused its right to terminate the employment relationship and therefore found the termination to be unlawful.**

The Supreme Court ruled in the same way, stating that the clarity, reality and reason for the redundancy contained in the notice of dismissal were not in dispute in the case, and were therefore not subject to the evidentiary procedure, at the same time, the employee claimed in his appeal that the employer had abused his rights, which was a fact that he needed to prove.

The Labour Code prohibits the abuse of rights as a general requirement of conduct. The rights and obligations granted to employees and employers in a legal relationship are vested in and imposed on them in order to achieve the objectives defined by law. Since the dismissed workers were selected on the basis of a proposal by the manager, it was necessary to examine the relationship between the manager and the worker in the period prior to the dismissal.



The evidence showed that **the criteria for the selection of those affected by the dismissal were not determined during the redundancy** and that the manager alone determined the selection criteria, irrespective of the extent of the reorganisation. The evidence also clearly established that there was a personal conflict between the manager and the employee. The proximity in time between the publication of the newspaper articles, the anonymous phone calls and the selection of the employee concerned demonstrate a subjective circumstance beyond the conflict of employment which played a decisive role in the selection of the employee, and therefore the termination of the employment relationship was unlawful.

This case is another good example of the caution that employers must exercise when terminating employment relationships, it is therefore always advisable to seek the advice of a specialist in employment law before making such a decision, to avoid lengthy and costly litigation.