

Loss of confidence as reason for termination with immediate effect

The question may often arise on the side of the employer in the practice whether the loss of confidence in connection with an employee may provide a ground for termination of employment relationship with immediate effect. According to the relevant legislative provisions, employees, among others, are required to work personally, with expertise and diligence generally expected from them, according to the rules, requirements, instructions and customs relating to their job, furthermore to behave in a way honouring the trust necessary to perform their job.

Termination of employment relationship (either by the employee or by the employer) with immediate notice is basically possible if the other party is in major breach of her/his essential obligation arising from the employment relationship on purpose or by gross negligence, or otherwise behaves in such a way which makes the maintenance of the employment relationship impossible.

The application of the aforesaid set of rules in practice always requires consideration and reflection on a case by case basis. It can be usually stated that loss of confidence is linked to some specific and essential failure to fulfil the obligations, which are optimally put down in writing either in the employment contract, job description, or in internal regulations also relevant to the employee. It is not always clear in case of adequately recorded written regulations whether the failure to fulfil obligations may establish a cause for termination with immediate effect, and the absence of written rules requires even more careful and detailed consideration taking into account the circumstances of that particular case.

Namely, employers are basically required to give a reason for the termination with immediate effect, too (except for termination during probationary period or termination of a fixed-term employment on the understanding that the employee is entitled to absentee pay for a specified time in the second case) having the burden to prove that the reason is true and reasonable.

Therefore, particular care should be taken regarding the applicability of termination with immediate effect and in giving a reason for it.



A recently published case-by-case decision of the Curia may provide a basis regarding the application of the above set of rules in the event that the failure of the employee to fulfil his obligations, giving rise to loss of confidence, took place in a way other than in breach of a specific written internal regulation or the employment contract.

Following the opposite judgement of the courts acting at first and second instance (which shows in itself that a similar measure of the employer requires thorough consideration), the case-by-case decision of the Curia assessed lawful the termination with immediate effect by the employer in that particular case. It can be stated on the basis of the decision of the Curia that the termination with immediate effect can also be considered lawful in the absence of written internal regulations and consistent practice in the workplace in the given situation; in this context, the following bases must be taken into consideration.

On the one hand, as mentioned above, it is essential that the termination specifically includes the act which led to loss of confidence in the employee. It must be emphasised that the employees must take into consideration even in the absence of written internal regulations as to what kind of practice is applied in the workplace in that particular case; furthermore, how work should be performed to comply with the confidence expected in that job. Namely, if an employee's behaviour may give rise to loss of confidence and in particular in such a way that the practice applied in the workplace (even if it is not fully consistent is in contrast to the behaviour selected by the employee, it may provide lawful ground for the termination of the employment by the employer with immediate effect.

In the specific case, the employee working at the help desk took the object left by the customer home without notifying his colleagues or his superior at the end of his working time. After the return of the customer, following the watching of the video records, the employee returned the left object after his colleagues had called upon him to do so. Referring to the loss of confidence, the employer terminated the employment relationship of the employee with immediate effect – by recording the specific act leading to loss of confidence, namely that the object had been taken home rather than placed at the help desk. The Curia accepted neither the referencing by the employee to that there had not been any written internal regulation for the specific situation nor that his act would not have been qualified as a criminal act if a criminal procedure had been initiated.

On the basis of the above, the Curia emphasized in its decision that it was not disputed in the absence of written internal regulations that the employee could have chosen several other solutions instead of taking home the left object, and also recorded that judicial practice is consequent in that the criminal



and employment proceedings differ from one another, and the employer may terminate the employment with immediate effect even in the absence of a crime committed by the employee.

In conclusion, the termination with immediate effect based on loss of confidence can be lawful on the part of the employer even if there is no specific written internal regulation regarding the act leading to loss of confidence, and the behaviour is not necessarily considered as a criminal act. It is important to note that employees should always perform their job with reasonable diligence and dependably as expected from them in that particular position, even if there are no written internal regulations applicable to all situations that may arise during their work.