

Employment & Labour - Austria

Supreme Court demands quick response from employers following harassment

Contributed by **Graf & Pitkowitz Rechtsanwälte GmbH**

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Employers must respond quickly when defending employees against mobbing attacks by their peers, a recent Supreme Court decision has confirmed.

Facts

The plaintiff worked for the defendant, a rehabilitation centre, in various functions for almost a decade. He was reliable and conscientiously performed the tasks requested of him. In contrast to his co-workers, he drank no alcohol.

The plaintiff was harassed, derided and insulted by his co-workers, possibly as a result of his sober lifestyle. He found the situation increasingly unbearable and emailed his superior venting his anger, naming the perpetrators and mentioning cases of alcohol abuse in the workplace that he had observed. He also requested that he be assigned a different role and transferred to another workplace where he would not find himself under permanent ridicule by his co-workers.

The employer granted the transfer. It also monitored alcohol abuse in the workplace more closely, but did nothing more to contain the situation. When the plaintiff's harassing co-workers learned of his email to his superior and a subsequent, clarifying meeting between the plaintiff and the defendant's management, they stepped up their ranting, calling him a "traitor", a "backstabber" and other more vulgar expletives.

After convening a second meeting several weeks later, the employer realised that it could not resolve the situation without retaining a professional mediator. The employer thus promised to schedule yet another meeting with a mediator present. However, this meeting never took place.

Two months later, early in the new calendar year, the plaintiff called in sick due to his stressful work environment and remained on sick leave until his voluntary retirement almost one year later. After the final meeting with the plaintiff, the employer had contacted a mediator, who replied that he would be available only early in the new calendar year, due to his workload. The employer did not investigate whether another mediator would have been available at an earlier date and did not later convene the promised meeting with the plaintiff and the mediator.

The plaintiff claimed:

- damages (lost income) for the period of his sick leave; and
- compensation for pain and suffering caused by the employer by not adequately protecting him against harassment, vituperations and baseless stigmatisation, and social exclusion by his co-workers.

The defendant claimed that due to the plaintiff's sickness, any further steps to resolve the situation had been delayed and obstructed by the plaintiff.

Decision

The Supreme Court made clear that although an employer is free to choose any means necessary to protect its employees against harassment and mobbing in the workplace, any such measures must be taken without delay. Although a victimised employee has no right to request that the attackers be laid off and it might suffice (under certain circumstances) to bring the adversaries to the table, have a serious word with them and make it clear that further harassment would result in proper penalties, the case at hand was different - even the employer had realised that it could not handle the matter

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without professional support from a mediator.

However, instead of retaining the professional without delay, the defendant failed to put words into action (even though the circumstances demanded an immediate remedy), and thus violated its duty of care owing to each employee. The court held that, at the very least, the employer should have retained a mediator who could have supported the employer promptly. The court thus concluded that the plaintiff's claims were justified on the merits and remitted the case to the court of first instance in order to clarify the quantum of such claims.

Comment

The decision is a clear warning that employers must act quickly and with resolve in response to harassment and mobbing in the workplace. Employers may otherwise face potentially expensive damage claims from employees who become the victims of such attacks.

For further information on this topic please contact [Jakob Widner](#) at Graf & Pitkowitz Rechtsanwälte GmbH by telephone (+431 401 17 0), fax (+431 401 17 40) or email (widner@gpp.at).

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