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Supreme Court rule on pursuing claims via conciliation board

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The Supreme Court⁽¹⁾ recently held that a provision in an employment contract requiring an employee to pursue their claims through mandatory dispute resolution by way of a conciliation board was one-sided and delays enforcement of claims, and is therefore null and void.

Facts

After the employee (the claimant) left their job with the defendant employer, they filed employment-related claims (outstanding commission payments and the issue of a reference letter) against their former employer with the competent labour court.

The employment contract contained a provision stipulating that the employee must file an employment-related claim with a conciliation board before invoking the state courts. The respective forum clause provided for a tribunal of three members, one member nominated by the employee, one by the employer and one nominated by the two chosen arbitrators.

This conciliation procedure is intended to aid the employee and the employer in settling the matter by way of a compromise rather than bringing their claims before a state court, and other than arbitration clauses in an employment context that are subject to statutory restrictions. Conciliation clauses, for example, are generally permissible. The legal test for such clauses to stand is determined by whether they are unconscionable under the specific circumstances. The employment contract in question required only the employee to invoke the conciliation board first, but not also the employer.

Contrary to this conciliation clause, the claimant first filed their claims with the competent labour court and only later also requested the formation of an arbitration tribunal for the same matter.

Since the employment contract did not specify how the costs of the conciliation procedure should be allocated among the parties, the chairman of the conciliation board suggested that costs should be borne equally and that the employee had to advance costs where necessary. The parties could not agree on the cost issue and the conciliation procedure failed. The employee then continued to pursue their claims before the labour court.

The trial court and the court of appeals both dismissed the claimant's claims on the grounds that the claimant had failed to honour the conciliation clause and that they should have filed their claims with the conciliation board.

The Supreme Court reversed the decision, arguing that both lower courts erred because the clause was unconscionable.

Decision

The Supreme Court followed the claimant's line of argument and confirmed that the clause in question was grossly disadvantageous and therefore null and void according to the unconscionability test set forth in Section 879 of the Austrian General Civil Code.

Section 879, paragraph 3 of the Code deals with clauses in general terms and conditions or other standardised contract forms. According to this statutory default rule, a clause in a standardised contract form is invalid if it puts the party that is signing a provided contract form at a gross disadvantage. Austrian law assumes that individuals signing standardised contract forms are rarely able to negotiate the terms and conditions of such contracts, and therefore need a higher degree of legal protection.

According to the Supreme Court, employment contracts can also fall under that clause if they are worded in the same way as a standardised contract form. It noted that the contract clause had not directly named or addressed the employee, but merely referred to "he or she" – language often used in pre-formulated contract forms.

The Supreme Court reasoned that the clause in question was grossly disadvantageous because:

- The additional step of bringing an employment-related claim before a conciliation board extended the time period for the enforcement of legal claims to the detriment of the employee, while the employer was not bound by the same restriction.
- There was no clear rule on the allocation of costs associated with the conciliation procedure and the notion that an employee would have to advance costs meant they would have the additional challenge of advancing their claim .

In summary, the core issue that the Supreme Court found with the conciliation clause was its one-sided language which disadvantaged the employee, resulting in the unconscionability and ineffectiveness of the clause.

The Supreme Court set aside the lower courts' decisions and remitted the case to the courts of first instance for a new decision on its merits.

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Endnote

(1) OGH 29.4.2021, 9 ObA 47/20g.