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Labour Relations Act: be careful what you wish for (and who you address)

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In two recent decisions, the Supreme Court made it clear that poor communication with the works council can result in irreparable legal detriment to the employee. In both cases, the employee did not demand with sufficient clarity that the works council responsible for challenging her termination proceed before court. As a result, she also forfeited her own right to challenge.

Background

Pursuant to section 105 of the Labour Relations Act, the employer must notify the works council of an intended termination. If the works council has expressly objected to the termination of an employee, it may challenge the termination itself in court within one week of becoming aware of the termination. However, the works council's right to contest the termination requires that the employee has requested contestation. If the works council does not comply with this request, even though it had expressly objected to the termination, the right to challenge the termination passes to the employee. They can then challenge her termination in court themselves within a further two weeks.

In the event of an express objection to an employee's termination, the works council shall thus have the primary right of challenge. The employee's right of challenge is only accessory and requires that they have unsuccessfully demanded from the works council to carry out the challenge.

First case

Facts

In the first case[(1)] the plaintiff was dismissed. The next day, she wrote to the chairman of the works council to indicate that she would like to know the reason for the dismissal, as she had not been given any reason by the employer. The chairman of the works council, who had objected to the dismissal, held out the prospect of a meeting with the plaintiff. There was no further communication with the works council.

Decision

The lower courts dismissed the action for lack of standing. This was because the plaintiff had failed to clearly demand that the works council contest her termination.

The Supreme Court confirmed and reasoned as follows:

- It was true that no special formal requirements were to be placed on the employee's request to the works council to contest the termination.
- However, the employee's declarations as a whole must indicate that she wishes the termination to be rescinded by means of a legal challenge by the works council. The mere wish to know the reasons for termination did not necessarily mean that the works council should thus be requested to contest the termination.
- Since no sufficient request had been made to the works council, the right to challenge the termination could not pass to the plaintiff, either.

The plaintiff had therefore forfeited her own right of a legal challenge for lack of a clear request from the works council to rescind first.

Second case

Facts

In the second case,[(2)] the plaintiff made the mistake of communicating with the wrong works council.

The plaintiff was a salaried employee and the works council for salaried employees had objected to her termination. On the occasion of the notice of termination, the plaintiff told the employer that she wanted to talk to a member of the works council for blue-collar workers, a person of her trust, and proposed a mutually agreed termination. In the conversation with this confidant, the plaintiff said that she would go to court if her employer did not improve its offer for a mutually agreed termination. The confidant (a member of the works council for blue-collar workers) even reported this to his colleague from the works council for salaried employees.

Shortly thereafter, a discussion took place regarding a separation agreement, which was attended by the plaintiff, the (competent) works council for salaried employees and a human resources (HR) employee. The HR employee rejected the plaintiff's demands and the amicable termination failed. A court challenge of the termination was not discussed at this meeting, nor were other members of the works council for the salaried employees asked by the plaintiff to contest the termination.

Decision

The lower courts rejected the claim because the plaintiff did not have the right to contest the termination. She had indeed informed a member of the works council for blue-collar workers of her intention to contest the termination if an amicable termination failed.

However, this was the wrong contact for such a request. The fact that this information was referred to the works council for salaried employees was irrelevant, because it was not even alleged that this information was provided in the name and on behalf of the plaintiff.

The Supreme Court did not find fault with this opinion, but added succinctly that the plaintiff's view should have been raised as a procedural deficiency at the appellate court level before it became too late.

Comment

The plaintiff thus failed twice due to formal hurdles imposed on her – by the Labour Relations Act on the one hand and by procedural law on the other. The fact that the challenge might have been justified on the merits was irrelevant under these circumstances.

The Supreme Court has always been very narrow in its interpretation of the Labour Relations Act because it is a body of law that is to be strictly observed by both parties to the employment relationship and, thus, also requires a more literal view when construing its meaning. This applies in particular to the formal criteria regulated in the Act, the disregard of which prompts the rebuff of employees' claims before court that may otherwise be justified.

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Endnotes

(1) OGH 22 April 2022, 8 ObA 29/22f.

(2) OGH 31 August 2022, 9 ObA 90/22h.