

LEGAL UPDATE ARBEITSRECHT

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Federal Labour Court: Right to classroom-based training under Works Council constitution law

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Employers assuming the cost of training and further education for members of the staff association often results in conflict. The Federal Labour Court (Bundesarbeitsgericht, BAG) recently dealt with the question of whether members of the staff association may be downgraded to cheaper online training instead of classroom-based training.

Facts of the matter

The employer is a airline located in North Rhine-Westphalia. It has a staff association due to collective agreements whose members have a right to training in compliance with the Works Council Constitution Act (Betriebsverfassungsgesetz, BetrVG).

The staff association sent two of its new members to a multi-day classroom-based training course on the principles of the BetrVG in Potsdam. The same training provider also offered a webinar of the same duration with the same content. Written questions could be asked via the chat function in the webinar or the trainer could be telephoned during the webinar. Participation in a training course on the principles of the BetrVG being held closer to the employer on

the principles of the BetrVG was not possible for operational reasons.

The employer paid for the cost of the training course but refused to pay for accommodation and subsistence costs in the amount of approximately EUR 1,000. The employer justified this because the members of the staff association could have taken part in the webinar offered by the same training provider which contained the same content and ran for the same time as the classroom-based course.

Ruling

In its decision dated 7 February 2024 (case no.: 7 ABR 8/23, currently only available as a [press release](#)), the BAG ordered the employer to reimburse the accommodation and subsistence costs.

Even though the reasons for the decision are still pending, the BAG has already indicated in the press release that staff associations have a certain amount of discretion when it comes to choosing what courses to send members on. In principle this also includes the format of the training. It is not excluded from the outset that

with classroom-based training there are generally higher costs involved due to accommodation and subsistence costs than those that would occur with a webinar.

With regard to the staff association's discretion when it comes to choosing what courses to send its member on, the Düsseldorf Regional Labour Court (Landesarbeitsgericht, LAG) had already indicated this (decision dated 24/11/2022 – 8 TaBV 59/21), therefore the BAG followed the ruling of the previous instance.

The Düsseldorf LAG justified its decision as follows:

The employer shall bear the costs incurred by the staff association as part of its remit in accordance with section 40 (1) BetrVG. This also includes the costs arising from a member of the staff association participating in a training session in accordance with section 37 (6) BetrVG, provided the staff association requires the knowledge imparted in this training.

Although the staff association must take into consideration the employer's corporate circumstances and the financial burden associated with the training course when deciding which courses to send its members on, it enjoys the discretion to choose between various training courses.

Only if multiple courses offered at the same time are considered qualitatively equivalent by the staff association could the employer have the option of bearing the costs of the cheaper course.

In this case the Düsseldorf LAG agreed with the staff association in that classroom-based training is significantly more effective than online training with regards to the learning outcome to be achieved. There is a more intensive exchange/discourse in/at classroom-based training and it is easier for the participants and the

trainer to discuss certain topics, as the inhibition threshold for taking part in discussions is significantly lower than that for online training.

The staff association could, therefore, assume that a qualitatively content-equivalent webinar is not qualitatively comparable with classroom-based training.

Practical guidance

Until the grounds for the decision are published in full it is still unclear whether the BAG adopted the reasoning of the Düsseldorf LAG.

The following conclusions can, however, be drawn even at this stage:

In future employers will no longer be able to reject reimbursing costs for classroom-based training solely based on there being a more affordable training course available online.

Even if staff associations may consider classroom-based training to be more effective than online training in some circumstances due to the opportunities for discussion and discourse, the BAG did not rule that members of staff associations have a general right to participate in classroom-based training.

In the present case it was also to be taken into account that participation within the scope of the course that was being offered at the same time was only possible via the chat function or by calling the trainer and it was not possible to directly/actively make requests using the microphone (during the training) at the same time.

In this respect it is possible, taking into account the statutory safeguards now in place, to assess the respective case and the surrounding circumstances, so that aspects such as content and the complexity of the course topic, the prior

knowledge of the members of the staff association and the duration of the course may be able to play a greater role in future.

The employer should specifically assess the choice of training and the respective terms & conditions of participation, in particular for classroom-based training held some distance away, while taking into account the discretion of the staff association at all times.

In this respect it may be worth offering to enter into an agreement with the staff association to the effect that certain information will be shared

with the employer prior to booking/taking part in a course in order to allow such corresponding assessment to be carried out.

In addition, thought could be given to documenting (in writing) the employer's reasons for the respective decision. In light of this it is also recommended that in accordance with section 119 (1) (2) BetrVG it is an offence if the employer infringes its obligations under section 40 BetrVG and thus obstructs the work of the Works Council.

Hinweis

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