FEDERAL LABOR COURT ON AN EMPLOYER'S MANAGERIAL PREROGATIVE IN RESPECT OF WORK ON SUNDAYS AND PUBLIC HOLIDAYS

HEADNOTE In the absence of explicit contractual provisions stipulating otherwise, employers may require that employees also work on Sundays (Federal Labor Court Judgment of 15 September 2009, 9 AZR 757/08).

FACTS The employer against whom the claim was brought operated an enterprise that supplied the automobile industry. The claimant had been employed by the enterprise since 1977. His employment contract called for a 40-hour work week in shifts. The employment contract contained no further provisions in this regard. In July 2007, the employer applied to the responsible authorities (Landratsamt) for a temporary permit to have employees work on Sundays and public holidays. The permit was issued, and the claimant was assigned to work on public holidays and weekends. In the fall of 2008, orders dried up and short-time work was introduced. The employee nevertheless sought a declaratory judgment to the effect that he was under no obligation to work on Sundays and public holidays. The employer insisted that he had the right – by virtue of issuance of the corresponding permit – to require that his employees work on Sundays and public holidays.

Unless stipulated otherwise in an employment contract, an enterprise's usual working hours include weekends if a permit has been obtained in compliance with the Working Hours Act [...] to allow weekend work under exceptional circumstances.

DECISION Like the lower courts, the Federal Labor Court also dismissed the action for a declaratory judgment in its judgment of 15 September 2009. The court confirmed the employer's right to require that his employees work on Sundays and public holidays by virtue of his managerial prerogative if the authorities issue the requisite permit. This court based its opinion on Section 106 of the Industrial Code (Gewerbeordnung – GewO), according to which, except as restricted by statute or contract, an employer may determine working hours at his reasonable discretion. The court added that this does not apply if the possibility of work on Sundays and public holidays is excluded by contract and, if that is not the case, employees must accept usual company work practice. In the case covered by the judgment, this also happened to include working on Sundays and public holidays for a limited period of time..

COMMENTS This case amply reflects economic developments in the course of the past three years. The working time model resembles a roller-coaster ride. Following a peak order period with weekend work, the employer experienced an order shortfall only one year later and had to introduce short-time work. The judgment is also encouraging from the perspective of employers in this regard; it creates clarity with respect to the employer's managerial prerogative as far as freedom to schedule working hours is concerned. In particular, it guarantees employers the flexibility required in such situations. Unless stipulated otherwise in an employment contract, an enterprise's usual working hours include weekends if a permit has been obtained in compliance with the Working Hours Act (Arbeitszeitgesetz – ArbZG) to allow weekend work under exceptional circumstances. The Federal Labor Court's refusal in the case of this judgment to specifically limit working hours to working days was also encouragingly clear. Although the claimant had never worked on a Sunday in the course of the past 30 years, the Federal Labor Court refused to specifically limit working hours to normal working days. According to the court, the mere fact that the claimant had been employed by the employer for 30 years did not suffice to justify such restriction and further considerations would have to be involved.