Legal Update Labour and Employment

Employee‘s resignation without notice: „What do I care about my silly talk from yesterday!“

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Cologne, 09.02.2012

Headnote

If an employee resigns from his job, without notice, but does not have a good cause for resignation, he may later claim that his resignation was invalid and that his employment relationship continues to exist.

Facts

The plaintiff who was employed by an airline was suspected of having stolen various items from an aircraft. She had been informed of the airline-employer‘s suspicions during an interview and given an opportunity to make a statement. Since she was unable to dispel the suspicion against her, the employer indicated that it would dismiss her without notice. To preempt this, the employee duly resigned without notice during the interview. However, a short while later she went back to her employer and claimed that her employment contract was still in force. In the same vein as Konrad Adenauer‘s remark – „What do I care about my silly talk from yesterday!” – she informed her employer that she no longer felt bound by her own resignation. She claimed that her resignation was invalid because no „good cause“ had existed.

Decision

The Hessian Higher Labor Court allowed the claim and found that her employment contract was still in force (Judgment of 25 May 2011 – 17 Sa 222/11). It made it clear that a resignation by an employee without notice will only be valid if the employee also has good cause for the resignation. However, according to the Higher Labor Court, the plaintiff in the case before it did not have good cause for resignation. Quite the contrary was the case since the employer had not been guilty of any breaches of contract and had not done anything during the interview (which had been properly conducted) that could be grounds for terminating the employment contract. In particular, it had been entitled to indicate to the employee that it would dismiss her without notice.

In addition, the Higher Labor Court was of the opinion that the employee was entitled to rely on the invalidity of her own resignation. It stated that an employee is only prevented from relying on the invalidity of his own resignation if his employer is entitled to assume that the resignation was meant seriously and intended to be final. Where – as was the case here – there was no such intention on the part of the employee, and if the employee resigns without notice so as to preempt termination without notice by the employer, then the employee is not acting in breach of the principles of good faith by asserting that his own resignation was invalid.

The Higher Labor Court noted as an aside that the invalid resignation should be requalified as an offer to enter into a mutual release and that the employer had actually accepted this offer. However, a valid release must be in writing and for this reason both parties must personally sign the one and the same document. In the present case, however, the letter of resignation had only been signed by the plaintiff. Consequently, no document, duly signed by both of the parties, had come into being terminating the employment contract.

As a result, the Higher Labor Court found that the employment contract was still in force.

Comment

The decision is surprising, but it nonetheless shows how an employer should act in such a situation. It is not uncommon for the parties to an employment contract to agree on a mutual release or for the employee to resign during a hearing for suspected misconduct. At first sight it would appear absurd that an employee should of all things be able to dispute his own resignation at a later date and thus – from the employer‘s perspective – terminate the contract in the least certain of ways. Unlike in cases where an employer terminates the contract, resignation by an employee is not subject to a three-week time limit in relation to a claim that the resignation was invalid. Under the circumstances described by the Higher Labor Court, an employee may thus assert that his resignation was invalid even after the three-week time limit has expired.

Accordingly, employers must aim to conclude deeds of release whose validity is not dependent on the existence of a ground for termination. It is thus advisable for employers in comparable situations to accept an employee‘s resignation and to add a written note with the word „agreed“ to it, and then sign it. This way the employer can upgrade a – possibly – invalid resignation to a deed of release, which will still be valid without the existence of good cause for termination. The employee will then no longer be able to claim that his employment contract is still in force.

In this event his only chance of successfully alleging before a labor court that his employment contract still exists is if he can challenge the validity of his resignation. This presupposes, however, that the employer made an illegal threat or fraudulently deceived him during the hearing so that he would resign. If instead the hearing was properly conducted, i.e. the employer gave a full account of its suspicions as well as any exonerating circumstances and did not exert undue pressure on the employee, the employee‘s challenge will as a rule fail. If the employer wishes to safeguard itself against the risk of a challenge to the deed of release, it would be advisable for it to issue in addition, by way of precaution, its own notice of termination. Since an employee has three weeks from receipt of such a notice of termination to institute proceedings for unfair dismissal, the employer can at least trigger a time limit upon expiry of which the legal certainty of one element of contractual termination (namely the employer‘s notice of termination) will exist.

As can be seen from the above, the path to a legally certain termination of an employment relationship can thus be a stony one even if the employee (supposedly) agrees to a deed of termination.

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