

Can Apprentices be Dismissed on the Grounds of Suspected Wrongdoing?

Dr. Christoph Müller

Cologne, 15.10.2015

Decision

In its decision of 12 February 2015 (Ref. 6 AZR 845/13), the Federal Labor Court ruled on the question as to whether an apprentice can be dismissed on the grounds of suspicion of wrongdoing. In the case at issue, the plaintiff was employed by the defendant, a bank, as a banking apprentice. The plaintiff counted the money from the night deposit box of a branch of the bank on 20 June 2011, and a shortage of € 500.00 was ascertained later. When the shortage was put to the plaintiff, he mentioned the amount of the shortage although he had never been informed of the amount by anyone from the bank. The defendant concluded that only the perpetrator could have had such information and that the plaintiff must have been responsible for the shortage. After hearing the plaintiff, the employer terminated the apprenticeship contract with immediate effect for good cause. The Federal Labour Court dismissed the action, as had both lower courts, ruling that dismissal on the grounds of suspected wrongdoing was also possible in the case of employment of apprentices and that the bank was under no obligation to inform the plaintiff of the subject of the hearing in advance, which the plaintiff argued was necessary. The Federal Labour Court found no fault with the assessment of the case by the Higher Labour Court and denied the appeal.

Implications for Practice

The Federal Labor Court made it clear first of all that it is also possible to terminate contracts with apprentices on the basis of suspected wrongdoing. Anything else would also have been surprising since the possibility of

dismissal of employees on suspicion has already been firmly anchored in employment law for many years. This is a reflection of the fact that an employment relationship cannot be maintained on a basis of mutual trust in the case of a strong suspicion of a serious breach of conduct. The situation cannot be considered any different in the case of contracts with apprentices since they are also based on mutual trust and cannot be upheld if this trust is irretrievably destroyed. What is interesting then is that the Federal Labour Court found that interrogation of the employee, which – unlike in the case of dismissal for cause – is a prerequisite for dismissal on suspicion, may take place without informing the employee in advance of the reason for the talk. An employer is therefore under no obligation to specify the various reasons for such a meeting when inviting an employee to a personal meeting. He may in fact confront the employee with his concrete suspicion at the beginning of the meeting and ask him to explain himself and dispel the suspicion. This leaves the employee – and that includes apprentices – with no time to prepare a response. As a result, the employee would not be able to plan a strategy for refuting the employer's allegations. This obviously reinforces the legal position of the employer considerably since it gives him the advantage of the element of surprise; the employer is not faced with a well prepared employee, possibly even able to present documentation to bolster his case, who can forcefully argue his case. Since various practitioners have in the past asserted that notification of employees of the reasons for such meetings in advance should be mandatory, this issue has now been legally clarified.

Legal Update

Note

This overview is solely intended for general information purposes and may not replace legal advice on individual cases. Please contact the respective person in charge with GÖRG or respectively the author Dr. Christoph Müller on +49 221 33660-524 or by email to cmueller@goerg.de. For further information about the author visit our website www.goerg.com.

Our offices

GÖRG Partnerschaft von Rechtsanwälten mbB

BERLIN

Klingelhöferstraße 5, 10785 Berlin
Phone +49 30 884503-0, Fax +49 30 882715-0

COLOGNE

Kennedyplatz 2, 50679 Köln
Phone +49 221 33660-0, Fax +49 221 33660-80

ESSEN

Alfredstraße 220, 45131 Essen
Phone +49 201 38444-0, Fax +49 201 38444-20

FRANKFURT AM MAIN

Neue Mainzer Straße 69 – 75, 60311 Frankfurt am Main
Phone +49 69 170000-17, Fax +49 69 170000-27

HAMBURG

Dammtorstraße 12, 20354 Hamburg
Phone +49 40 500360-0, Fax +49 40 500360-99

MUNICH

Prinzregentenstraße 22, 80538 München
Phone +49 89 3090667-0, Fax +49 89 3090667-90