

Establishment of a Right to a Special Payment through Conclusive Behavior of the Employer

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Decision

The Federal Labor Court was called upon to decide on the establishment of a right to receive a special payment through the conclusive behavior of an employer in its judgment of 13 May 2015 (Ref.10 AZR 266/14).

The plaintiff had been employed by the defendant as a site manager from May 1992 to November 2010 without a written employment contract. In each of the years from 2007 to 2009, he received an additional payment described in his salary statement as a “special payment” together with his normal December salary. These payments amounted to €10,000 in 2007 and €12,500 in both 2008 and 2009. The plaintiff then claimed that he was entitled to a special payment in the amount of €12,500 for 2010 as well. The Federal Labor Court – unlike the lower courts – allowed the plaintiff’s claim for a special payment for 2010 on the merits. The case had to be remitted to the Higher Labor Court of Saxony-Anhalt for a decision on the amount of this special payment.

In the court’s opinion, the plaintiff was entitled to assume that he could expect a special payment in subsequent calendar years due to the fact that the payment made each January had been described as a “special payment” in his respective salary statements and because it had been paid, without any reservations, in varying amounts at the end of each year over a period of three consecutive years. Since the defendant did not make the special payment conditional upon compliance with other requirements, the court thought that it could be assumed that the payment also constituted remuneration for work performed by the plaintiff. Accordingly, the fact that the plaintiff had left the defendant’s employment during the year was not a reason that would preclude the grant of the special payment.

Moreover, in the court’s eyes, the difference in the amounts of the payments made from 2007 to 2009 did not preclude the establishment of a claim to a special payment. In this regard the Senate diverged from the view that it had adopted in previous rulings. In its judgment of 28 February 1996 (Ref. 10 AZR 516/95), it had taken the view that the annual grant of payments in different amounts was an indication that the employer wished to decide each year “at its discretion” as to the amount of any special payment made.

Implications for Practice

This decision emphasizes just how easily an employer can become unintentionally bound to making special payments. Simply by repeating a payment, an employer can be deemed to be making an implied binding offer. Through conclusive behavior – usually in passively accepting the payment – the employee can accept such offer.

This is something that employers should bear in mind whenever they make special payments. However, the rulings of the Federal Labor Court make it difficult to formulate watertight clauses. Furthermore, the decision of the Federal Labor Court discussed here is a reminder that a clause providing for a special payment on a voluntary basis, which can be revoked at any time, will be considered lacking in transparency and thus of no legal effect. According to the court’s reasoning, if a person has no right to a benefit, the benefit cannot be revocable, i.e. only that which one is entitled to can be revoked. On the basis of this kind of hairsplitting by the highest labor court, employers would be well advised to take legal advice before agreeing on special payment provisions or making special payments.

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 Hagen Strippelmann on +49 221 33660-503 or by email to hstrippelmann@goerg.de. For further information about the author visit our website www.goerg.com.

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