

Legal Update

Labor Law

Speech is Silver, Silence is Gold

Dr. Frank Wilke

Cologne, 15.10.2015

Decision

The Federal Labor Court found in its decision of 23 July 2015 that the dismissal of a 63-year-old employee was discriminatory and thus invalid because the employer had mentioned the employee's "pension entitlement" as grounds for termination in its letter of dismissal (Ref. 6 AZR 457/15). Such mention was reason to assume that the employee had been directly discriminated against on the grounds of age. According to the court, the employer was unable to rebut this presumption by arguing that the volume of work had decreased significantly and that other employees who remained in employment were better qualified. The employer defended its reference to the employee's "pension entitlement" by arguing that it wished to formulate its termination letter in a "friendly" and "obliging" manner.

Implications for Practice

Once again we have confirmation that employers are best advised to avoid giving reasons when issuing a

notice of dismissal. Except in those cases where express reasons for termination are mandatory, such as in the case of the dismissal of trainees or pregnant women, or where a collective agreement necessitates the provision of a reason, it is always best to follow this advice. Since the employer's business was a small establishment, it did not fall within the scope of the Employment Protection Act (Kündigungsschutzgesetz – KSchG). Thus if it had not been for the unfortunate provision of a reason for termination, the termination would have survived judicial scrutiny without any difficulty. Since, except where the provisions of the Employment Protection Act provide otherwise, it is not necessary to specify reasons for termination, and, in principle, all that is required is that the termination be neither in bad faith nor unconscionable, the reasons advanced by the employer (decline in the volume of work and lack of qualifications on the part of the employee) would probably have helped to ensure the validity of the termination.

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. Frank Wilke on +49 221 33660-508 or by email to fwilke@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