

“Drugged Driving” – Dismissal of a Truck Driver for the Use of Drugs

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In its judgment of 20 October 2016 (6 AZR 471/15), the Federal Labour Court ruled that the use of amphetamines and methamphetamines can justify immediate dismissal of a truck driver even if it is not certain that the driver's performance was actually impaired while at work.

Decision

The decision involved an action brought against a shipping company by a truck driver who had been employed by the former. The plaintiff had ingested amphetamine and methamphetamine on a Saturday while off work and then worked the early shift on the following Monday. On the day thereafter, he was controlled by the police after work and subjected to a saliva test, the results of which were positive. The plaintiff then phoned his employer and said that he would not be able to make his next regular run because he could not find his driver's licence and the police had informed him that he was not allowed to drive. Since no replacement was available, the employer convinced the plaintiff to drive the scheduled run anyway, but the excuse given by the driver had made the employer suspicious. He questioned the driver, who then admitted what had happened. The Federal Labour Court upheld the validity of immediate dismissal without notice.

Implications for practice

The recent decision of the Federal Labour Court confirmed the court's established case law to the effect that a breach of secondary duties can constitute reason for dismissal since the existence of such obligations means that employees must avoid situations that would make

them unable to perform their duties or endanger others if they did. The court thereby built on its ample case law regarding driving under the influence of alcohol (most recently Federal Labour Court decision of 20 March 2014 – 2 AZR 565/12) and created legal clarity as regards cases involving the use of drugs. When weighing the respective interests of the parties, the Federal Labour Court also found itself unable to rule in favor of the employee, in particular because of the seriousness of the driver's transgression.

What also makes this decision important is that the Federal Labour Court saw a second breach of duty in the employee's failure to mention the saliva test and misrepresentation of the police control, which would already in and of itself have justified immediate dismissal. The Federal Labour Court also emphasised more than in the past the employee's duty to keep damages to a minimum. In that regard, the Federal Labour Court is therefore consistent in concluding that the plaintiff cannot mitigate his responsibility by arguing that the traffic control involved the “private sphere”. This is convincing in view of the considerable time it takes for the body to metabolise drugs and the fact that the plaintiff was scheduled to drive the morning after the drug control in combination with the dangers associated with the use of drugs in general, which can entail implications under criminal law (see § 315c(1) no. 1 a) of the German Criminal Code (*Strafgesetzbuch* – StGB)).

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. Kevin Lukes on +49 221 33660-534 or by email to klukes@goerg.de. For further information about the author visit our website www.goerg.com.

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