Legal Update
Labour Law

"One bad apple spoils the barrel"- Damages Arising from an Unlawful Strike

Pia Pracht

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In its judgment of 26 July 2016 (Federal Labour Court 26 July 2016 – 1 AZR 160/14), the Federal Labour Court ruled that the strike against the Frankfurt Airport called by the union that represents air controllers (*Gewerkschaft der Flugsicherung* – GdF) in the year 2012 was unlawful, and there is now talk of claims for damages in the amount of approximately € 5.2 million due to many flights having to be cancelled because of the strike.

The parties to the dispute were the trade union and the company that operates the Frankfurt Airport (Fraport). There had already been a collective agreement in place between the two parties, but parts of it had been terminated with effect as of the end of the year 2011. The following arbitration resulted in a recommendation that covered not only those aspects of the parts of the collective agreement that had been terminated, but also addressed those parts that had remained in effect. The Federal Labour Court considered the strike called to force acceptance of the recommendation illegal and found that claims for damages were justified, but only in respect of Fraport. The court rejected claims for damages brought by the airlines.

Implications for practice

The decision revolves around the violation of a clause in a collective agreement that prohibits both parties to the agreement from engaging in work stoppages, lockouts etc. The trade union breached that clause by striking to compel acceptance of the arbitration recommendation, which would also have affected that part of the collective agreement that was still in effect and covered by a no-strike clause.

Under established case law, a strike must be viewed in its entirety, which means that a single unlawful measure can make the entire strike illegal: "a bad apple spoils the barrel". The Federal Labour Court leaves no room for making any distinction on the basis of the relative weight of illegal demands since they can hardly be assessed objectively.

Furthermore, Fraport can also not be expected to accept the argument that the union would have gone on strike anyway without demands pertaining to that part of the agreement still subject to the no-strike clause ('lawful alternative behavior'). If that had been the case, the different objectives would, as the Federal Labour Court correctly pointed out, have made it a different strike. Acceptance of the argument of lawful alternative behavior would be tantamount to giving trade unions a license to engage in (partially) unlawful industrial action.

Conclusions

Despite the fact that the decision attracted considerable attention because of the impressive damages claimed, it did not come as a surprise. The Federal Labour Court continued to adhere to its position to the effect that an unlawful demand – in this case due to breach of a no-strike clause, the severity of which is immaterial here – makes the entire strike unlawful, thereby giving the employer legitimate grounds for claiming damages. This decision underscores once again that there are concrete limits to the right to strike anchored in the Basic Law (*Grundgesetz*) and will in the future discourage unions from promiscuously calling strikes without adequate preparation, not least of all because of the scale of damages at issue and explicit rejection of the argument of legal lawful alternative behavior that trade unions like to evoke.

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 Pia Pracht on +49 221 33660-524 or by email to ppracht@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