

Dismissal – easier said that done ...

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Cologne, 31.08.2015

Decision

The Düsseldorf Higher Labor Court ruled on the legality of the dismissal of an employee on 28 August 2014, whose employment was terminated with effect as of “the next possible date” (5 Sa 1251/13). The notice of dismissal contained neither mention of the effective date of termination of employment nor any reference to the period of notice required.

The court upheld the action for protection against dismissal brought by the employee, pointing out that a dismissal must be sufficiently specific. For example, the court ruled that a notice of dismissal must clearly indicate the date on which the employment relationship is to end. In the case at issue, the court found that this condition had not been met since the notice of dismissal mentioned neither a date for termination of employment nor was any reference made to the applicable period of notice. The present case also involved conditions for termination under a collective agreement. Due to the vagueness of the notice of dismissal, the court ruled that the dismissal was as such invalid.

Implications for Practice

The decision of the Düsseldorf Higher Labor Court shows what pitfalls can lie in store even in the case of a relatively simple notice of dismissal. In order to ensure the validity of a notice of dismissal, it is regularly necessary either to make express mention of the date of termination of employment or refer to the applicable legal or other basis for the definition of the length of the period of notice (e.g., statutory minimum or employment contract).

The decision of the Düsseldorf Higher Labor Court conflicts with a judgment of the Federal Labour Court of 10 April 2014, and an appeal is as a result now pending before the Federal Labour Court. Regardless of its outcome, however, it is strongly recommended that the applicable period of notice or the date of termination of employment be referred to in any notice of dismissal. The following sample formulation may be used:

“This is to advise you that your employment will be terminated effective as of the expiration of the applicable period of notice prescribed by [statute/contract/collective-bargaining agreement]. According to our calculations, termination will therefore take place with effect as of [date of termination of employment].”

In the event that the date of termination of employment indicated by the employer should prove to be incorrect, such a formulation would still make it possible to calculate the intended date.

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

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