

Legal Update

Labour and employment

Federal Labor Court: Employees Cannot Enforce “Best Wishes” Through the Courts

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Cologne, 19th March.2013

An employer is under no legal obligation to close a letter of reference by thanking a departing employee for his or her contribution, by expressing regret at the employee’s departure or by wishing an employee all the best for the future (Federal Labor Court, judgment of 11 December 2012, 9 AZR 227/11).

Facts

The employee bringing the action in this case was the manager of a do-it-yourself retail outlet of the defendant. After termination of the employment relationship, the employee received a letter of reference in which the employee’s performance and conduct were described as above average, but the body of the letter ended with only the operational reasons for the employee’s departure from the company and “best wishes for the future”. The plaintiff was of the opinion that this closing formulation was also insufficient in particular in view of the overall positive tenor of the wording of the letter of reference, including the mention of the employee’s above-average performance and conduct. The employee brought an ac-

tion against the employer to have the letter of reference changed and petitioned the court to order that the letter be modified to include the closing formulation: “We appreciate his collaboration over the years and wish him all the best for his personal and professional future”.

Decision

The lower labor court was of the opinion that the demand for modification of the letter of reference was justified and allowed the action, but the Higher Labor Court dismissed it on appeal. The Federal Labor Court confirmed the decision of the appellate court, reasoning that no right exists to have expressions of gratitude and regret or best wishes for the future included in a letter of reference, even in the case of a detailed letter of reference. Statements as regards the personal feelings of an employer do not therefore constitute an essential element of a detailed letter of reference. Closing formulations that employers frequently use in letters of reference to express personal feelings such as gratitude, regret or wishes for the future are to be sure not “neu-

tral” in terms of evaluative connotation; to the contrary, they can serve to confirm or mitigate an employer’s objective statements as regards the conduct and performance of an employee. The court reasoned that this did not, however, in the final analysis give employees any right to any specific formulation. If the closing sentences of a letter of reference are not consistent with its content, an employee can at most require that the concluding sentences be deleted. This also holds despite the fact that it is common practice to end letters of reference that contain mention of above-average performance and conduct with corresponding closing formulations, but the court pointed out that there is also no legal basis for any right to such formulations.

Comment

The decision of the Federal Labor Court is to be welcomed since an employer cannot ultimately be forced to express personal sentiments that are actually not felt. One must concur with the Federal Labor Court’s opinion since such formulations are not “neutral” in terms of evaluative connotation and therefore mere linguistic

flourishes intended to decorate letters of reference. The very common formulation of gratitude and regret is often based on the fact that an employee has delivered the corresponding professional performance (gratitude) and also “earned” a positive personal assessment (regret and best wishes). Nevertheless, these desired formulations are an expression of personal feelings that – albeit subjective – need not necessarily accompany the corresponding objective evaluation. According to the court, acknowledgement of a right to such formulations would make letters of reference unduly abstract, which would no longer do justice to the unique nature of an employment relationship as a whole. It is essentially necessary to leave it up to employers to decide whether they want to express such feelings or not. However, the Federal Labor Court’s proviso to the effect that an employer may not include such closing formulations if they run counter to the objective content of a letter of reference is to be welcomed. This is already espoused by the doctrine of favorable formulation and clarity of content. Since the closing formulations of letters of reference can be very important to employees, the legal certainty produced by the decision is also to be welcomed.

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 himself: Felix Pott +49 221 33660-524 or fpott@goerg.de. For further information about the author visit our website www.goerg.com.

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