

Legal Update

Labour and Employment

Notice to terminate – Specific mention of date of termination

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Headnote

Notice to terminate is effective if specific and unambiguous. This will regularly be the case if an employee can tell when the employment will come to an end.

Facts

In the case of an employee who had joined a company as an industrial clerk in 1987, the required period of notice reflected the corresponding time of service. Insolvency proceedings were initiated on 1 May 2010 and an insolvency administrator appointed after the employer-company became unable to pay its debts. The insolvency administrator decided to completely shut down the company and dismiss all employees. The plaintiff bringing the action received notice of dismissal on 3 May 2010. The notice stated that her employment would come to an end “as of the next possible date”. The letter did not, however, contain mention of a specific date, but

it did refer to the legal periods of notice under § 622 of the Civil Code (*Bürgerliches Gesetzbuch* – BGB) and § 113 of the Insolvency Code (*Insolvenzordnung* – InsO). In particular, it was mentioned that § 113 of the Insolvency Code limits the period of notice to three months in cases in which a longer period of notice would otherwise – in the absence of insolvency – have applied by operation of law, a collective agreement or an employment contract. The employee then brought an action against the insolvency administrator before the Labour Court.

Decision

Both the first instance labour court and the Higher Labour Court granted the employee’s motion, ruling the dismissal invalid due to the fact that it was insufficiently specific. The insolvency administrator then appealed this decision to the Federal Labour Court, which ruled in his favour in the final instance (Federal Labour Court, judgment of 20 June 2013 – 6 AZR 805/11, press re-

lease). The court found that the dismissal of 3 May 2010 – with three months' notice – was effective as of 31 August 2010. The Federal Labour Court did to be sure refer to the requirement that the notice of dismissal contain specific information, but did not – despite the omission of a specific date for termination of the employment relationship – have any misgivings in the present case, for the notice of dismissal did mention the legal periods of notice and, in particular, the relevant three months' notice pursuant to § 113 of the Insolvency Code. According to the court, that meant the employee could easily have determined the date of termination of her employment on the basis of her length of service.

Comments

The decision of the Federal Labour Court is to be welcomed since it creates legal certainty and does away with the possibility of exaggerated claims arising from ostensibly insufficient precision in the formulation of notices of dismissal. In the case decided by the Federal

Labour Court, it was in any case obvious that the intention of the insolvency administrator was to serve notice to terminate as soon as possible, i.e., with three months' notice as allowed by § 113 of the Insolvency Code. The notice of dismissal was sufficiently specific since the employee could without any great effort determine the date of termination.

It is, however, important that it be at least possible to determine the date of termination of employment. As a result, mention should in any case be made of the applicable provisions of law. In order to comply with requirements concerning the necessary degree of precision of information contained in notices of termination on the one hand and to express the intention to terminate without any ambiguity on the other hand, the use of the following formulation is recommended:

"This is to inform you of the termination of your employment with us as of the next possible date, which we determine to be [date of termination] on the basis of [law/the collective agreement, employment contract]."

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: 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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