THE RUEFUL EMPLOYEE

HEADNOTE An employee who resigns from his employment in writing without notice may normally not claim thereafter that the resignation was invalid.

FACTS The plaintiff's employer had fallen behind with payment of the plaintiff's salary. The latter then resigned for cause. Nevertheless, the employer was then sued for payment of the former employee's salary a few months thereafter – for the time after the employee's resignation. The plaintiff submitted that the resignation was invalid, claiming that cause for the resignation did not exist. Both the Labor Court and the Higher Labor Court before which the plaintiff brought proceedings dismissed the action.

DECISION The Federal Labor Court also dismissed the plaintiff's appeal (Judgment of 12 March 2009, Case Ref.: 2 AZR 894/07). The Federal Labor Court first of all referred to the principles of law involved in resignation from employment without notice. According to the Court, section 626(1) of the German Civil Code (Bürgerliches Gesetzbuch – BGB) requires the existence of cause. This applies equally to both employers and employees. Cause for resignation may exist, for example, if an employer is in arrears with payment of an employee's salary. In the absence of cause, resignation without notice is invalid. An employer may also invoke invalidity on such grounds before the courts.

In the case of the present decision, however, the actual existence of cause was not at issue, for the employer had accepted the resignation without protest. This, according to the Federal Labor Court, meant that the plaintiff could no longer claim that the resignation was invalid. The Court reasoned that it would be contradictory to resign from employment on the one hand and then want to claim subsequently that the termination was invalid on the other hand. Such conduct would be in violation of the principles of good faith.

COMMENT The decision of the Federal Labor Court is at first glance not surprising. It would violate the sense of justice to allow an employee to rely on the absence of cause within the meaning of section 626(1) of the German Civil Code months after resigning from employment.

The outcome of the above-mentioned judgment is, however, less obvious than it might seem at first glance. An employer may not always rely on the validity of a resignation. The courts have already repeatedly been called upon to deal with actions involving resignations. Employees frequently contest resignations after the fact, claiming that they were put under pressure by their employers. The right of rescission has been affirmed in cases in which an employer has – in the absence of cause – indicated an intention to terminate an employment agreement (with immediate effect). The possibility of rescission has in the past also been affirmed in the case of fraudulent misrepresentation. For example, an employer may be acting illegally if he "pushes" a long-time employee to resign but fails to inform the employee of significant legal disadvantages connected with resigning (e.g. shorter periods of notice, loss of severance benefits) in breach of good faith. Rescission in the case of a mere error as regards the existence of special protection against termination (e.g., for mothers-to-be and the severely handicapped) is, however, unproblematic.

Suits involving the validity of resignations will regularly have a "special" background. Employees have occasionally claimed that they were legally incapacitated when they submitted their resignation ("temporary insanity"). Such a case was brought before the Munich Labor Court. The plaintiff claimed that she was insane when she submitted her resignation due to mobbing and sexual harassment and expanded the statement of claim to include pecuniary damages and damages for pain and suffering. Although it is very difficult to provide proof of legal incapacity, it may be advisable for an employer to accept a moderate severance settlement despite prospects of a good outcome before the courts. This is because continuation of the action entails the danger that disputes settled through a hearing of evidence may flare up again and unnecessarily have a negative effect on an otherwise good work environment.