

LEGAL UPDATE LABOUR AND EMPLOYMENT LAW

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Federal Labour Court: Providing notice of termination by registered letter delivered to the addressee's letter box – what legally applies here?

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Unfair dismissal proceedings often hinge on whether the notice of termination was received by the employee in good time. For years employers have relied on registered letters delivered to the addressee's letter box as a secure form of delivery. A recent decision by the Federal Labour Court (Bundesarbeitsgericht, BAG) has, however, clarified that this method harbours significant uncertainties. The judgment sets new practical standards and forces employers to critically evaluate their strategies for effective delivery of notices of termination.

Outline of the issue

Delivering notices of termination in employment law is a critical step on which the success of unfair dismissal proceedings relies to prove delivery to the recipient. Evidence of delivery is decisive, in particular, for notices of termination subject to deadlines, such as extraordinary termination, where notice must be given within two weeks (section 626 (2) of the German Civil Code (BGB)). Employers have multiple delivery options, including commissioning a lawyer,

courier service, using one of the employer's own employees or sending by registered letter. The registered letter delivered to the addressee's letter box seems at first glance to be a cost-effective, practical solution, but actually harbours significant risks. If the employer chooses to send by registered letter delivered to the addressee's letter box, receipt of the notice of termination is determined by section 130 (1) sentence 1 BGB. A new judgment of the BAG dated (31 January 2025 – 2 AZR 68/24) made it clear that with this delivery method evidence of delivery must fulfil strict requirements which are often underestimated. Without precise documentation, in particular a copy of the delivery note, receipt cannot be proved to the level required by the courts which may result in the dismissal being invalid. This presents a challenge for the employer to fulfil the complex requirements of delivery without taking any legal risks.

Judgment of the BAG dated 31 January 2025 – 2 AZR 68/24

In its judgment dated 30 January 2025 (case no.: 2 AZR 68/24) the BAG clarified that merely sending a notice of termination by registered letter delivered to the addressee's letter box combined with a delivery status of "delivered" is not sufficient evidence to prove the letter was actually received by the recipient/employee.

In the actual case at hand, the employer sent notice of termination to an employee and as evidence to prove that the notice of termination had been received relied on the proof of posting and the online Deutsche Post delivery status showing as "delivered". However, the employee contested receiving the letter. The BAG rejected the employer's appeal on a point of law and confirmed the decisions of the lower courts. It held that without an additional delivery note or other proof such as witness statements receipt by the employee could not be proven. The burden of proof lies with the party terminating the contract. The proof of posting would only be evidence that the notice of termination was posted, but not for its receipt, for example. The delivery status also does not provide sufficient proof of receipt, as it lacks information such as the name of the recipient and other details about the delivery.

The court stated that the delivery note would in fact be required to provide evidence of receipt. This is an internal Deutsche Post proof of delivery which also identifies the tracking number as well as the time, specific address for service, the delivery date and the signature of the receiving Deutsche Post employee. The employer was not in a position (any longer) to access this document, as it is only available for a certain period of time.

As a result the BAG held that the employment contract had not yet come to an end due to a lack of evidence proving that the notice of termination had been received.

Practical relevance and conclusion

This judgment has far-reaching consequences for employers and has sparked debate about secure dismissal procedures. In practice, this means that merely sending a registered letter delivered to the addressee's letter box no longer counts as reliable evidence, in particular if the recipient contests receiving the letter, as frequently occurs in unfair dismissal proceedings.

We therefore recommend that ideally notices of termination are personally handed over at the employee's place of work in the presence of witnesses. Alternatively, fully documented delivery carried out by a courier is a secure method of delivery.

If the notice of termination is still sent by registered letter delivered to the addressee's letter box, a replica of the delivery note should be requested from Deutsche Post without delay after delivery and be documented.

This can be requested by telephone (0049 228 4333112) or by email (kundenservice@deutschepost.de).

Else the lack of evidence of receipt of the notice of termination may result in the unwanted continuation of the employment contract and back pay.

If you require any further information on this topic please contact us and we will be happy to help.

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 Lilofee Stark on +49 30884503 242 or by email to lstark@goerg.de. For further information about the author visit our website www.goerg.com.

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