

NJORD case law news: The Senate adopts a judgment in a case on the characteristics of bossing in employment relationships

In the judgment of 29 June, 2023 in case No. SKC-261/2023, the Civil Cases Department of the Senate of the Republic of Latvia assessed the issue of the features of bossing in employment relations. In the main case, the employee, a company manager, brought an action against her employer for a declaration that the employer's actions and orders were unlawful, for a finding of a breach of the principle of equal rights (bossing) and a breach of the prohibition on creating adverse consequences, for the compensation for moral damages and for the unpaid wages. In parallel with the main proceedings, both parties had been a subject of a number of other proceedings, including the dismissal of the employer's action for termination of the employment agreement and the granting of the employee's counterclaim for annulment of the suspension order, reinstatement of the employee and the obligation on the employer to provide the employee with fair and equitable remuneration, the invalidity of the employer's order for the imposition of a standstill period, the declaration of a breach of the prohibition on the infliction of adverse effects and compensation for the non-pecuniary damages.

As the employee's trade union did not give its consent to the termination of the employment agreement with the claimant when the employer abolished her workplace, the employer brought an action for termination of the employment relationship before the court and the action was upheld by the Regional Court, terminating the employment relationship. In the light of the judgment of the Regional Court, the applicant brought an action for a declaration that the defendant's conduct was unlawful and that the order was void, for the declaration that the defendant had infringed the principle of equal treatment (bossing), and for a declaration that there had been a breach of the prohibition on the creation of adverse effects and for the compensation of the damages for loss of earnings and for the non-material damages.

The main indications of bossing are the failure to allow the applicant to work when she was required to undergo a compulsory medical examination, followed – by a safety briefing, after which she was sent on paid annual leave against her will. On the other hand, after the leave, the applicant was not provided with a pass to open the office door like other employees, initially – she was left without a pass at all, then – only with a pass with a time limit, and she was left without a computer and the access to information and communication with the company.

The judgment of the Court of First Instance upheld the action in part: the defendant's action in refusing to allow the applicant to work was declared unlawful, the order for leave was declared invalid, the defendant was ordered to pay the applicant's wages and compensation for non-material damages (to a lesser extent than the applicant had requested in her application). In the appeal, the Regional Court dismissed the claim, finding that the defendant had carried out a job reduction which had led to the abolition of several jobs in the company, including the applicant's.

However, the Senate, while examining the case within the cassation appeal, came to the conclusion that the judgment should be set aside, stating that Article 432, part five of the Civil Procedure Law requires a reasoned treatment of the first instance court's judgment, therefore it is important to mention why the higher instance court disagrees with the reasoning of the lower instance court's judgment. The Senate refers to the principle of *pacta sunt servanda*, stating that if the employer invokes the exceptional circumstances of the Employment Law under which the employee may not be employed (idleness, suspension, etc.), in such a case the employer has the burden of proving the occurrence of those circumstances.

In the case of psychological terror or bossing or mobbing by an employer, the principle of equal rights is violated, as one employee is treated worse by the employer than other employees, which qualifies as a violation of Article 7, part one and Article 28, part two of the Employment Law. Therefore, in such a case, the provisions of Article 29, part eight of the Employment Law apply by analogy and the employee is entitled to similar protection as the employee against whom the principle of non-discriminatory treatment has been infringed. Mobbing and bossing can also take the form of, *inter alia*, the long-term non-employment of an employee, resulting in alienation of the employee from the team and a decline in professional skills and possibly motivating the employee's own departure.

In the present case, the Senate concludes that, in dismissing the action, the Court of Second Instance had failed to state and assess why it did not agree with the findings of the Court of First Instance that the employer had been using mobbing and that the employee had been unlawfully dismissed, particularly in view of the fact that the application was accompanied by several pieces of evidence supporting the applicant's arguments which the Court of Second Instance failed to take into account. The Senate finds that the Court of Appeal misapplied Article 28, part two, Article 51, part two, Article 74, part one and two of the Employment Law and failed to carry out a comprehensive examination of the circumstances of the case and an assessment of the evidence, which justifies setting aside the judgment and referring the case back to the appellate instance for reconsideration.