

SUMMARY

2015/51 An order to perform other work can constitute harassment, even if the work falls within job description (CZ)

The employer is authorised to assign work that is within the agreed type of work set out in the employment contract to employees, in accordance with the employer's needs. However, at the same time, the exercise of this right must not be used to intimidate the employee in 'revenge' for the employee having defended his or her rights previously.

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Facts

The plaintiff in this case was employed by a state high school, the defendant in the case.

His contract described his position as 'high school teacher' without specifying the subjects he was to teach. In practice, he was only assigned to teach English. In August 2010, the school dismissed him (for the first time). He challenged the dismissal in court and was successful. The court held that the dismissal was void. Accordingly, the plaintiff returned to school to teach again. However, the defendant assigned him to teach engineering subjects, physical

education and civic education. Since the plaintiff did not have the teaching qualifications for any of these subjects, he refused to teach them and stopped going to work when these classes took place. This resulted in a second dismissal in October 2011, for serious breach of his work obligations.

The plaintiff claimed the notice of termination was void, arguing that the defendant had refused to respect the previous court decision and that he had been asked to teach subjects in which he had no qualifications.

The court of first instance upheld the action, holding that the defendant had breached its obligations by requiring the plaintiff to teach engineering, physical education and civic education instead of English, which was the subject he had taught before his first dismissal. The court considered the school's behaviour to have been biased and to constitute harassment.

On appeal, the appellate court reversed the first instance court's judgment. It held that the plaintiff was obliged to perform work within the agreed type of work, i.e. all types of work falling within the job description of 'high school teacher'. By refusing to teach technical subjects, the plaintiff was in serious breach of his obligations.

Disagreeing with the appellate court's decision, the plaintiff filed an extraordinary appeal to the Supreme Court. He argued that the appellate court had failed to address the finding of the first instance court that the decision to assign technical classes to him was biased and harassing. He also argued that the right of a school to assign work to a teacher within the agreed job description (in this case 'high school teacher') must always be limited by the individual's professional qualifications in the subjects to be taught. The defendant thus could not authorise the plaintiff to perform an educational activity other than teaching English.

Judgment

The Supreme Court reversed the judgment of the appellate court, nullifying its decision and returning the case back for further proceedings. It justified its decision as follows:

Given that the plaintiff had agreed to the type of work described as a 'high school teacher', the defendant had the right to assign to him all work corresponding to this definition – i.e. not only English, but also technical subjects.

On the other hand, if the defendant penalised the plaintiff for seeking judicial protection of his rights following his initial dismissal in 2010, its decision to assign technical classes to him would be considered harassment and contra bonos mores. Therefore, if the defendant's

decision to dismiss the plaintiff a second time was based on objectives other than those mentioned (i.e. his refusal to teach technical classes), the dismissal would be void.

Commentary

Although the agreed type of work was 'high school teacher', the plaintiff only used to teach English. Out of the blue, however, the defendant started asking him to teach engineering, physical education and civic education, in which the plaintiff had no professional qualifications. Even though this newly assigned work was formally included in the plaintiff's job description, it is notable that the defendant did not ask him to do this kind of work until after he had successfully claimed avoidance of his first notice of termination. Therefore, the defendant's actions could be considered as harassment and the appellate court is required to address this. If the defendant's actions were meant to penalise the plaintiff, the new work schedule would be invalid and the plaintiff would not be in breach of his obligations by failing to attend his classes.

Although employers are authorised to assign work to their employees within the agreed scope, they are not permitted to exercise this right in a way which harasses the employee or which abuses their authority to assign work.

Comments from other jurisdictions

Germany (Dagmar Hellenkemper): In Germany, Section 612a of the Civil Code provides that the employer may not discriminate against an employee in an agreement or by means of a measure, on the basis that the employee has exercised his rights in a permissible way.

This prohibition against victimisation would cover the above case. However, the applicable scope ends if the Court determines that the employer had a legal right to take the measure in question. In the case at hand, the Court would only have found the employer at fault if the instruction to teach engineering and physical education was the unlawful exercise of a right. This would depend on the details of the case which – unfortunately – were not given. If the teacher was not qualified at all (in terms of formal qualifications) to teach these subjects, the assignment would be unlawful and might even have serious consequences for the school, quite apart from the fact that the teacher would not have to obey the instructions. If, on the other hand, the teacher was qualified to teach these subjects, but had only taught English for the past few years (simply as a matter of convenience), assigning those subjects to him might be considered the lawful exercise of the employer's right.

The Netherlands (Peter Vas Nunes): Implicitly, the Czech courts seem to take the view that a teacher who has been hired as a "high school teacher" and who has for many years taught

exclusively one subject in which (s)he is qualified, may perfectly well be required to teach totally different subjects for which (s)he is unqualified, if the instruction to do so is not tainted, for example by harassment. I doubt whether a Dutch court would take such a strict approach.

Subject: Miscellaneous, harassment

Parties: Ing. I. J. (employee) – v – Střední odborná škola lesnická a strojírenská Šternberk, příspěvková organizace

Court: Nejvyšší soud České republiky (Supreme Court of the Czech Republic)

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