

SUMMARY

2015/34 Employee who resigns for ‘good cause’; bears burden of proof in respect of the cause (LA)

<p>An employee of a company who is also a member of its Management Board has two capacities, that of employee and that of Board member, even where there is one single contract that covers the employee’s work in both capacities. As far as termination is concerned, each capacity is governed by its own set of rules. Therefore, if such an employee claims compensation for having had to resign with immediate effect for ‘good cause’, the court must assess each element of the ‘good cause’; according to the appropriate set of rules. It is generally the employee that bears the burden of proof that he or she had good cause to resign with immediate effect. The fact that the employee was (allegedly) unlawfully suspended does not satisfy that proof.</p>

Facts

The claimant in this case was a company that operates a private medical clinic (the ‘Company’). The defendant and counter-claimant was a minority shareholder of the Company who was also employed in two capacities: as a member of the management board and as a gynaecologist (the ‘Employee’).

On 31 January 2013, the Employee, observing the statutory notice period of one month,

resigned in both capacities with effect from 1 March. The majority shareholders responded on 6 February by (i) dismissing the Employee with immediate effect in her capacity as a member of the management board, (ii) replacing her by new board members and (iii) suspending her in her capacity as a gynaecologist, also with immediate effect. The reason was that she was suspected of harming, or being on the point of harming, the Company's interests, *inter alia* by illegally obtaining information on the Company's patients. When the Employee attempted to come to work the next day, she was ordered to leave the premises and was cut off from Internet access and her email account.

The Employee reacted the next day by resigning with immediate effect, i.e. 7 February, for 'good cause'. She alleged that, for reasons related to "morality and fairness", she could not continue her employment relationship with the Company. She substantiated the existence of this 'good cause' with the following: (a) she had been unlawfully and rudely suspended, (b) she had been asked to sign an illegal shareholder resolution and (c) the Company and its majority shareholder had submitted false information to the Commercial Register.

The Labour Law provides that an employee has the right to resign with immediate effect on grounds of morality and fairness, in which case (i) the employment contract ends immediately and (ii) the employee is entitled to compensation ranging between one and four months' salary, depending on length of service with the particular employer. In this case that compensation equalled two months of salary, being € 34,914.

The Company brought legal proceedings, claiming invalidity of the Employee's immediate resignation. The Employee counter-claimed for payment of € 34,914. The Company based its claim on the following arguments. First, the Latvian Commercial Law has special rules relating to the termination of the legal relationship between a company and its management board members. The rules of the Labour Law that govern termination of employment contracts do not apply to management board members. Therefore, the Employee's dismissal in her capacity as a management board member on 6 February was valid and therefore her immediate resignation one day later could only have related to her capacity as an employee, i.e. a gynaecologist. Secondly, inasmuch as the Employee's immediate resignation was based on reasons relating to her capacity as a member of the management board (illegal shareholder resolution, false information to Commercial Register), those reasons cannot constitute immoral or unfair behaviour by the Company in its capacity as employer. Finally, the Employee should have challenged her suspension rather than using it as a pretext for resigning for 'good cause'.

The court of first instance rejected the Company's claim and partially awarded the Employee's counter-claim. It reasoned as follows. In the event an employee resigns for good cause, it falls

on the employer to demonstrate that the employee's rights have been respected and that the facts on which the employee bases his or her 'good cause' are untrue. In this case, the Company had failed to produce evidence that the Employee had acted illegally. Therefore, her suspension was unlawful. There was no evidence that the Employee would have harmed the Company's interests had she been allowed to continue working until 1 March 2013. Ordering her to leave the Company's premises, cutting her off from Internet and email and accusing her of illegally collecting patient information were actions that harmed the Employee's reputation as a gynaecologist.

The Company appealed without success. It brought 'cassation' proceedings before the Supreme Court.

Judgment

The Supreme Court started by pointing out that the Employee had never challenged the legality of the Company's order by which she was suspended from her work duties. Consequently, that order was still in force and binding also on the court. Further, the Supreme Court indicated that the Labour Law provides for a special procedure allowing an employee to challenge an illegal order regarding suspension from work. Thus, the fact that the Company had suspended the Employee could not be used by her as a valid justification to immediately terminate her employment contract on the basis of conditions related to considerations of morality and fairness. In addition, the Court of Appeal, when hearing the case, had not paid attention to the fact that it was the Employee's failure to comply with the suspension order that had caused the order to leave the Company's premises, the subsequent refusal to let her in and her observation by security guards.

As to the other grounds indicated in the Employee's termination notice, i.e. that she had been requested to sign an illegal shareholders' decision on her revocation from the management board and that the Company and its majority shareholder had submitted falsified information to the Latvian Commercial Register, the Supreme Court indicated that these facts were not relevant in this case because they related to the Employee's capacity as a member of the management board and revocation of a person from the management board of a company is not something that is governed by the Labour Law.

Finally, the Supreme Court concluded that if an employee resigns for 'good cause', it is the employee him/herself who must prove the existence of that good cause, unless the reasons for the termination are related to discrimination by the employer.

On the basis of this line of argument, the Supreme Court cancelled the judgment of the Court of Appeal and sent it back to that Court for review.

Commentary

The Supreme Court delivered its judgment on 20 January 2015. Subsequently, the Court of Appeal heard the case for the second time. In a judgment of 29 April 2015, it satisfied the Company's claim and invalidated the Employee's termination notice. It is now the Employee who has brought cassation proceedings before the Supreme Court. Those proceedings are currently pending.

The Supreme Court's judgment is particularly important from three aspects. Firstly, it clearly indicates that where an employee acts in two capacities based on one employment contract (i.e. as the management board member and as an 'ordinary employee'), the role the employee playing in each case must be established to enable the correct choice of law (i.e. the Commercial Law or the Labour Law) that applies to the particular employment relationship. According to the Commercial Law, members of the management board of limited liability companies can be revoked from the board with immediate effect and, unless there are other individual contractual arrangements, the law does not oblige the company to pay to such management board members any severance or similar payments or to provide any other social guarantees.

Secondly, the judgment sends a message to employees that, if they are considering terminating their employment with immediate effect for 'good cause' with a view to collecting severance pay, they will be obliged to prove the existence of good cause. Until now the lower courts (as in this case) have usually considered that the employer must prove the employee did not have a valid reason for employment termination with immediate effect. Further, employees often were allowed to refer to reasons and considerations that they had not mentioned in their notice of termination. Thus, the employer could not be sure what new arguments it might have to rebut later on.

Thirdly, the Supreme Court noted that an employee who has been suspended from work cannot use that fact as a valid reason for resigning with immediate effect for 'good cause'. If the employee considers that his or her suspension is unlawful, then the Labour Law allows him or her to challenge the suspension in court and demand compensation for the full range of possible losses related to an unlawful suspension. It can be inferred that in cases where an employer exercises its legal right and issues an order or notice, the employee should challenge this - rather than relying on the actions of the employer as a reason to terminate the contract for 'good cause'.

Subject: Employment status

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Court: Latvijas Republikas Augstākās tiesas Civillietu departaments (Supreme Court of the Republic of Latvia, civil section)

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