Topic: «The motivation of an employee’s dismissal»
Slovenia

[1] Laws and Regulations

Employment Relationship Act (ZDR-1)

[2] Is there an obligation for the employer to give reasons for the dismissal?

Under Employment Relationship Act there are two sorts of dismissal

- ordinary cancellation of the employment contract
- extraordinary cancellation of the employment contract

In both cases the employer is obliged to give reasons for the dismissal.

The employer may ordinarily cancel the employment contract if a justified reason exist for ordinary cancellation. What are justified reasons for ordinary cancellation is stipulated in Article 89 of Employment Relationship Act. Reasons shall be the following:

- business reason (redundancy)
- reason of incompetence
- reason of misconduct
- unsuccessful completion of a probationary period
- incapacity to carry out the work under the conditions set out in the employment contract owing to disability in accordance with the regulations governing pension and disability insurance or with the regulations governing vocational rehabilitation and the employment of disabled persons,

The employer may extraordinarily cancel the employment contract with a worker if the worker:

– violates a contractual or any other obligation arising from the employment relationship and the violation has all the characteristics of a criminal offence,

– intentionally or by gross negligence violates the contractual or any other obligations arising from the employment relationship,

– has submitted false information or proofs on job requirements as a candidate in a selection procedure,

– for at least five days in succession has failed to turn up for work and fails to inform the employer of the reasons for his absence though he should and could have done so,

- is prohibited by a final judgement from carrying out certain works within the employment relationship, or has been imposed an educational, safety or protection measure or a sanction for a minor offence on the basis of which he cannot carry out the work for more than six months, or if due to serving a prison sentence must be absent from work for more than six months,

– refuses the transfer and the actual performance of work with a transferee employer,

– unjustifiably fails to return to work within five working days after the cessation of the reasons for the suspension of the employment contract,

– fails to respect the instructions of the competent doctor and/or competent medical commission during a period of being absent from work because of illness or injury or in this period pursues a gainful activity or leaves his place of residence without the approval of the competent doctor and/or medical commission.

[3] If so, is there an obligation on the employer to specify the reasons for dismissal, so that the employee knows exactly why he lost his employment, or is it sufficient, for the employer, to give a general motive pattern like « incompetence »?

The employer has obligation to specify the reasons for dismissal, so that employee knows exactly why dismissal is given to him.

Prior to ordinary cancellation for reasons of incompetence or misconduct and prior to extraordinary cancellation of the employment contract, the employer must acquaint the worker in writing with the alleged violations or the alleged incompetence and give him the opportunity to defend himself within a reasonable time period, which may not be shorter
than three working days, unless circumstances exist due to which it would be unjustified to expect the employer to provide the worker with such an opportunity. The worker may also be notified via e-mail to his e-mail address provided by and whose use is required by the employer.

[4] If the employer doesn’t give the real reasons for the dismissal to the employee, can he still invoke them in court?

No, employer can't invoke another reason in the court for dismissal. Court is bound to reasons (facts) given in dismissal. If reason given in dismissal was for example stealing the products of employer and court finds aut that this reason is not proved, employer can't invoke new reason in the court, for example that worker was violent against his superior.

[5] What is the nature of judicial review on the ground of a dismissal:

- Is it a marginal control, ie that the court can not substitute its opinion for that of the employer regarding the advisability of dismissal or is it an unlimited jurisdiction, which means that the judge may substitute its assessment for that of the employer and give the decision that should have been made?

Labour courts have full jurisdiction in the cases of dismissals. They can establish illegality of cancellation of the employment contract for the reasons of procedure or for substantial reasons.

[6] What are the consequences on the employer for not giving reasons or for giving inadequate reasons:

- The nullity of the dismissal?
- An obligation to continue the contractual relationship (reinstatement)?
- Sanctions?
- Civil sanctions provided by the law?
- Financial sanctions (damages) for a wrongful dismissal?

Consequences for not giving reasons or for giving inadequate reasons are nullity of the dismissal, obligation of employer to reinstate employee in his previous position and to pay him all the lost salaries for the time of unemployment.
But even in the case that court has established that dismissal is illegal, court may establish, upon a proposal made by the worker or employer, the duration of the employment relationship, but for no longer than until the court of first instance makes a decision, recognise the worker’s years of service and other rights under the employment relationship, and grant the worker adequate compensation in the maximum amount of 18 monthly salaries of the worker as paid in the last three months prior to the cancellation of the employment contract. Termination of employment contract on the basis of a court judgement is possible if court also establish that with regard to the circumstances and the interests of both contracting parties the continuation of the employment relationship would no longer be possible.

(1) A fine of between EUR 3,000 and EUR 20,000 shall be imposed on an employer – a legal person, a sole proprietor or a self-employed person – if:

15. he cancels the employment contract in contravention of Article 85 and the third paragraph of Article 89 of this Act,

16. he fails to inform the trade union, the works council or the workers’ representative in writing on the intended ordinary or extraordinary cancellation of the employment contract (first paragraph of Article 86),

17. he fails to express in writing the ordinary or extraordinary cancellation of the employment contract (Article 87) or fails to serve on the worker the notice of ordinary or extraordinary cancellation of the employment contract in accordance with Article 88 of this Act,

18. he carries out the procedure of giving notice to a larger number of workers for business reasons contrary to Articles 98, 99, 100, 101, 102 and 103 of this Act,

20. he gives notice of extraordinary cancellation of the employment contract in contravention of the second paragraph of Article 109,