4th Study Commission – The motivation of an employee’s dismissal

Answers to the Questionnaire of 2015 from Sweden

1. Laws and Regulations

According to Swedish law there are two ways for an employer to bring an employment to an end; either the employee is dismissed and the employment is terminated at once, or the employee is given a notice to quit and the employment ends after a certain amount of time (notice period). The notice period is between two and six months depending on for how long the employee has been employed by the same employer.

The employer can only dismiss an employee because of personal reasons referring to that employee specifically. If the personal reasons are not so serious the employee could be given a notice to quit instead of being dismissed. An employee could also get a notice to quit because of lack of work. The term of lack of work is however referring to anything that doesn’t concern the employee personally. It could for example be a question of outsourcing when the employer wants to structure his business in another way.

2. Is there an obligation for the employer to give reason for the dismissal?

Yes, according to the Employment Protection Act the employer has an obligation to give reasons both if the employee is dismissed or has been given a notice to quit.
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 »?

According to the law the employer has to establish the facts on which the dismissal or the notice to quit is based upon. If the employee asks for a written statement the answer shall be given in that way. The information must be as clear as possible. It lies in the interest of the employer to give clear and detailed information. He can however summarize the situation. He is not obliged to state all the details from the beginning. The employer is allowed to specify the details if the dismissal or the notice to quit is brought to court.

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

No, if the employer gives a “false” reason he can’t later refer to the right one if that one is completely different. He can however refer to facts that are in line with the reason he has already given.

5. What is the nature of judicial review on the ground of a dismissal. Is it a marginal control or is it an unlimited jurisdiction?

It is a marginal sort of control as in any civil case. The court mustn’t base its judgment on any facts that hasn’t been referred to by a party.

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

The nullity of the dismissal?

The employer bears the burden of proof that the action he has taken (dismissal or notice to quit) is in accordance with the law. If he doesn’t succeed in doing that he loses the case. The dismissal could be declared as invalid if the employee has asked for that. But this has
nothing to do with the lack of reasons in itself – it is a matter of the rightness of the action itself.

An obligation to continue the contractual relationship (reinstatement)?

No, a court can never force the employer to take an employee back in any case. He can always pay an additional fee to avoid that. The amount of the fee depends on the length of the contractual relationship. But this has once again nothing to do with giving reasons.

Sanctions?

Yes, that is the only applicable sanction for not giving reasons. The amount can be about 500-1 000 Euros.

Civil sanctions provided by the law?

No, there aren’t such sanctions.

Financial sanctions (damages) for a wrongful dismissal?

Yes, if the employer can’t prove that the action was in accordance with the law he is liable to pay damages.