# Collective dismissal and the existence of a group of trading companies

September 8th 2017

**Re the Decision of the Supreme Court of 19 July 2017**

The Supreme Court has declared a collective dismissal procedure (CDP) due to financial and organisational reasons null and void because the company had not provided the financial statements of the other companies in the group of which it is part.

It is the presiding judge who has issued us with the decision handed down on 19 July 2017 (SD 14/2017) by the plenary session of the Labour Chamber of the Supreme Court (made up of 12 magistrates with an address by its president, Mr. Gullón Rodríguez), declaring the collective dismissal of 16 March 2016 by car sale and purchase firm Nueva Automoción S.L. (Nuasa) and which saw its whole workforce (21 employees at its cites in Badajoz, Don Benito and Mérida) lose its jobs, null and void.

According to the company, it had been running at a loss for a number of years and had lost the Seat concession that it had held until February 2016; hence its decision to cease operations and the subsequent dismissal of its entire workforce. A decision on the termination of these positions was made after the consultation period ended without agreement.

Worker representatives filed a claim with the SCJ of Extremadura calling for the annulment of the dismissals, with the result that the Court dismissed the claim and declared that the collective dismissal was in accordance with the law, dismissing the existence of the group of trading companies of which Nuasa was supposedly part, the existence of which had been defended by the petitioners.

However, upon examination of the appeal in cassation filed by the employees against the decision of the SCJ of Extremadura, the Supreme Court pointed out that the existence of the group could be deducted from the documents contained in decisions, ruling in their favour and recognising the existence of the group of companies. In doing so, it has upheld in part the request contained in the appeal to add a new proven fact, which must read as follows:

"The defendant, Nuasa, S.L., is made up of a group of companies (Centrowagen SL, Distribución y Ventas SL, Servicios Empresariales Fisebasa SL, Colcar Alquiler de Vehículos sin Conductor SL, Km 0 Multimarca SL) domiciled in Spain that operate in the same sector, with debtor or creditor balances with Nuasa, S.L., without the financial statements of these companies being provided during the consultation period for the collective dismissal or at any time before said period ".

The Court then recalled the decision that Article 4, section 5 of Royal Decree 1483/2012, which approves the regulations on collective dismissals, states that the financial documentation of the company that initiates the procedure must be accompanied by the financial statements of the other companies in the group when these are domiciled in Spain, operate in the same sector and have debtor or creditor balances with the company that wishes to proceed with the collective dismissal.

Starting with the premise, then, that there indeed exists a group of trading companies, that not for employment purposes or companies in the group, the decision extracts the appropriate consequences from the legal reality described in relation to the legal requirements that should be met when a company that is part of a trading group carries out a collective dismissal and which are contained in said Article 4.5 of RD 1483/2012, which reads as follows:

"When the company that initiates the procedure is part of a group of companies and has an obligation to prepare consolidated financial statements, these statements must be accompanied by the consolidated annual financial statements and management reports of the dominant company in the group, duly audited, in the case of companies required to have their accounts audited, during the period specified in section 2, whenever there are debtor or creditor balances

with the company that initiates the procedure. If there is no obligation to prepare consolidated financial statements, in addition to the financial documentation of the company that initiates the procedure referred to here, this documentation must be accompanied by the financial documentation of the other companies in the group, duly audited, in the case of companies required to have their accounts audited whenever these companies are domiciled in Spain, operate in the same sector and have debtor or creditor balances with the company that initiates the procedure ".

Given that the accounts of the other companies in the group that had been requested previously by the employees (during the consultation period and in the claim itself) had not been provided, the High Court has commented that from the failure to provide the required documentation it is clear that it affects the necessary information that employees must have in order to determine if the economic and organisational causes cited by the company to perform the collective dismissal with justification exist.

In short, by not conducting the consultation period under the terms specified in Article 51.2 of the ET and given that Article 124.11 of the LRJS establishes the declaration of invalidity of the business decision as a direct penalty for such blatant non-observance, the DSCJ of Extremadura should be cancelled and the collective dismissal that entered into force on 16 March 2016 declared null and void. Finally, it should be remembered that the DSC states that according to art. 51.2 of the ET, the main purpose of the consultation period is to ensure that the worker representatives have information that is sufficiently illustrative to reveal the reasons for the dismissals and to be able to address the consultation period in an appropriate manner.

For the Supreme Court, *"(…) that aim of providing the information required to enter the consultation period with minimum guarantees or, more fundamentally, to learn, using documentation, about the real financial position of the company on which the dismissals are based, was not met",*

Since the company ceased providing the documentation stipulated in a preceptive manner in Article 4.5 of Royal Decree 1483/2012. This documentation highlights the following sentence:

*"(…) no doubt it is relevant, inasmuch as when the companies in question are part of a trading group and the requisites stipulated in the regulations are met (…), the financial statements of the other companies in the group must be provided precisely in order to learn about the real position from which it adopts the collective dismissal decision in view of the possible existence of debtor or creditor balances or diverse economic ties between them as reflected in the financial accounts to be provided".*

Thus, we witnessed the resolution of an important legal issue (which provided justification for the decision being deliberated on, voted on and handed down at a plenary session of the Chamber) embodied in the practical legal recommendation, before proceeding with a CDP on financial and organisational grounds, confirming whether or not the company is part of a group of companies for trading purposes, since in such a case the financial statements of the other companies in the group must be provided.

Finally, it states that despite the comprehensive jurisprudential doctrine provided (without a dissenting vote) and even existing regulations (Article 4.5 RD 1483), the report by the Prosecution Service, in the procedure of cassation, considers the appeal filed by the employees inadmissible.

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