

Employment Update

The importance of the material resources mitigates a succession of contracts

30th June 2020

Regarding the Supreme Court's Ruling of 3rd March 2020

In a procedure for dismissal based on concurrent succession of staff, the Supreme Court in a judgment dated 3rd March 2020 (Case of the Aena Tunnels joint venture; RCUD 3439/2017) decided whether the incoming company, which was obliged to deploy human and material resources to meet the purpose of the contract (*activity consisting of the operation and maintenance of the safety and control systems of the existing tunnels on the premises of Madrid Barajas airport*), was obliged to take the place of the applicant worker, since it had hired 17 of the 20 workers of the outgoing company, on the basis of the provisions of Article 44 in the Workers' Statute.

Both Judgment No 39 of Madrid of 9th June 2016 and the ruling of the Madrid Supreme Court of 9th June 2017, based on the existence of a "succession of employees", upheld the worker's claim, declaring that the dismissal was not appropriate and condemning the incoming company for the purposes arising from that classification.

However, the Supreme Court's ruling, revoking the previous two resolutions, **declares that no company succession took place**, which led to the termination of the plaintiff's employment contract, caused by the termination of the contract in which he was providing services, which was the object of the contract for a specific work or service, which linked him to the new company, in accordance with the provisions of Workers' Statute article 49.1. c).

The judgment recalls that the mechanisms of business succession provided for in Article 44 of the Workers' Statute are required to operate:

- a.- The transmission of assets and persons, since the object of the transmission must be "*an organized group of persons and elements that allows the exercise of an economic activity that pursues an objective of its own*".
- b.- Or, if the specific activity relies primarily on labour, let it be this (labour) that is transmitted.



What were the reasons that made the Supreme Court understand that there was no transfer of company?

1st. - That it was irrelevant that the incoming company had hired 17 out of the 20 workers of the outgoing company since it was not hiring the workforce.

2nd.- On the contrary, both the incoming and the outgoing company were obliged to deploy, in order to comply with the purposes of the contract, the material and personal means indicated in the operating manuals and in the tunnel regulations in force.

3rd.- In this regard, the incoming company made an investment in structural costs of 192,214.50 euros, without there being a transfer of the material means necessary for operation between the outgoing and incoming companies.

In conclusion, ratifying the previous Supreme Court jurisprudence, it is noted that the so-called "succession of employees", proceeds only when the business activity essentially pivots on the labour, so that the contract can continue with minimal personal and management changes, but is not admissible when the new contractor is also required to deploy the material means necessary for the contract to achieve its purposes, which occurred in the ruling that is the subject of our comments.

In the same way, when the activity is not essentially labour-based, it is not relevant that the incoming company hires most of the workers who were employed by the outgoing company when there has not been a transfer of the material means necessary for the operation between the two companies.

You can see the [Sentence](#) for more information.

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