

Employment Update

Corporate decisions in the event of absenteeism or punctuality at work

24th June 2019

Regarding the ruling of the Spanish High Court dated June 20, 2019

One of the always controversial issues raised in Human Resources departments is the legal treatment that companies can give to workers who are absent or unjustifiably delayed from work.

In its practical translation, if companies, apart from applying, where appropriate, the disciplinary regime provided for in the applicable collective agreement, may also partially deduct the wages corresponding to the time of work not completed and not subsequently recovered.

The recent ruling issued on June 20, 2019 by the labour Chamber of the National Court, in proceedings (orders no. 82/2019) followed in matters of collective conflict in the Contact Center sector resolves the question raised. In effect, the SAN rejects the lawsuit filed by the CGT Union requesting that the company's practice of deducting directly from the workers' monthly payslips the delays in the entry filing, and, consequently, the right of the workers to be paid the differences in remuneration that this practice could have caused to their detriment, be declared contrary to law.

Underlying the substance of the lawsuit were two important questions:

1st Question. If the worker could, on his own initiative, recover the hours or minutes of non-performance of services at any other time within the calendar year in question.

In this respect, the Court considers that the unjustified delay in returning to work does not generate a right for the worker to have his or her working day redistributed at a later date, since such irregular distribution of the working day is a business faculty as expressly regulated in the Sectorial Agreement.

On the contrary, the sentence underlines, it would imply making the worker's condition worse if he were to miss a few hours of work prior notice in order to take unpaid leave, as he loses his right to remuneration in relation to the worker who, without any justifiable reason, simply arrives late to his job.

2nd Question. If the company deducted from the payroll the assets corresponding to the time absent from work and also sanctioned, was it not in the presence of a fine for having covered up proscribed by article 58.3 of the Worker's Statute?

The sentence also rejects that such practice constitutes a fine of having, since the bilateral character of the work contract implies that the right to receive the salary is generated by the effective rendering of services. When there is no effective rendering of services by the worker, no salary is earned, beyond the legal or conventionally foreseen cases [paid leave or vacation (arts. 37 and 38 WS), or lack of effective occupation attributable to the employer (art. 30 WS)].

The Chamber rightly clarifies the implicit non-existence of the infringement of the principle 'non bis in idem' (which is not really mentioned), since the fact that the company punishes with warnings, suspensions of employment and salary, or with dismissals, the absences and delays of the workers, at the same time as it detracts from their salaries those that would have been accrued had there been an effective provision of services, does not imply a double sanction, since the deduction of salaries obeys the logical dynamic development of a bilateral contract such as that of work, without implying the



exercise of any disciplinary power, while the sanctions mentioned above obey the legitimate exercise of the disciplinary power provided for by law and by convention.

In conclusion, derived from the doctrine contained in the High Court Judgement that is the subject of this commentary and from the existing peaceful judicial doctrine, it may be asserted that:

1st. In the event of unjustified absences or punctuality at work, the company may deduct the assets corresponding to the period not worked (days or hours in which the work was not rendered), all of this except for the eventual provisions contained in the applicable Collective Bargaining Agreement, in order to the power or obligatory business possibility that the worker can recover the unfulfilled time in the period to be determined.

In this sense, it should also be remembered that the right to the remuneration of weekly rest days is generated during the effective work periods prior to their enjoyment, and there should be an adequate correspondence between the work done on the working days of the week and the paid weekly rest period.

2nd. Likewise, in the event of such absences or unjustified delays, the employer may apply the disciplinary regime provided for in the applicable collective agreement, in accordance with the classification of the offence committed.

3rd. And, as a final recommendation, that the business position adopted does not violate the principle of equality, that is, that when faced with similar facts or circumstances it applies the same solution. A priori it would be questionable whether, in the event of unjustified absences or delays, some employees would have their salaries deducted and others would not; and the same would apply to the sanctioning system that could be applied in a partial and discriminatory manner.

You can read the [full sentence](#) for more information.

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