Employment Update

Collective bargaining agreement applicable to multi-service companies without their own company agreement

13th July 2020

Regarding the High Court's Ruling of 11th June 2020

In multiservice companies without their own collective agreement, being subject to a sectorial agreement is a crucial aspect because in a context of deregulation of auxiliary companies, the choosing of the rules is the main element that determines the working conditions, among them singularly the salary, the working time, or the clauses of business subrogation in cases of succession of contracts.

As a general rule, the applicable criterion for determining the conventional rule which, in view of its personal and functional scope, constitutes the regulatory source of the employment relations of a company with its employees, is that of the main activity carried out by the company, regardless of the tasks performed by each of the workers on its staff, without this preventing the performance of various activities in the same company which, in certain cases, justify the coexistence of several collective bargaining agreements in view of the inclusion of such activities in different functional spheres

However, the Employment Division of the High Court, when dealing with the question of determining the agreement applicable in a multiservice company, points out that the principle of specificity governs, which in itself determines the absence of a predominant activity, so that the various activities that constitute the object of the company and are carried out with different organisation or in different work centres, determine the applicable agreement.

This introduction serves to comment on the recent **High Court Decision issued on June 11, 2020** (Case Serunión, S.A. RC 9/2019) which prosecuted a Collective Conflict affecting the workers of the company who, in the category of cook, kitchen assistant, waiter and assistant waiter, had been providing services in two work centres located in the residences that the Autonomous Body attached to the Department of Social Welfare of the Principality of Asturias "Residential Facilities for the Elderly of Asturias" (Establecimientos Residenciales para Ancianos de Asturias (ERA)) has in Pola de Siero and Sotrondio.

The question to be clarified was whether, as a multiservice company carrying out various activities, in order to determine the applicable agreement it was necessary to focus on the actual activity of the company, in the case of care for the elderly, or whether, on the contrary, the sectoral agreement governing the activity carried out by the workers within the framework of the contract should apply.

The background of the case was as follows:

a.- Since 17th May 2017, the company has been the successful bidder for the food, dining and cafeteria services, having been subrogated to the labour relations that the previous bidder, the company

Aramark, had in these services. According to the administrative specifications for the contracting by ERA of such services, the food service would include the management of purchases of food supplies and elements necessary for their preparation, the control of store rooms and the daily preparation of menus in the facilities affected by the activity, as well as kitchen and canteen equipment. The canteen service included the distribution of menus to diners and the cleaning of the facilities used;

b.- The company Serunión S.A. has as its corporate purpose various activities among which are included, according to its articles of association, the provision of hotel and food services to public and private entities, and the care, promotion, assistance, rehabilitation, social integration and all types of treatment for the elderly, or any others who suffer from diseases, physical or mental disabilities or economic shortages; through the management of residential homes in property or through any type of contracts or agreements with public or private entities, with express extension to home care.

c.- The Collective Bargaining Agreement for services of care for dependent persons and development of the promotion of personal autonomy is being applied to the workers affected by the conflict. This agreement was also applied by the previous company awarded the service.

First, the Decision of the High Court of Justice of Asturias of 23rd October 2018 upheld the claim for collective dispute filed by the CC.OO. Union, considering that the activity carried out by the workers in the residences (food services, dining room and cafeteria) fully fitted into the functional scope of the State Collective Restoration Agreement whose application was claimed, and whose remuneration was higher than that of the agreement that was being applied.

What has the position of our High Court been?

The Supreme Court, rejecting the main appeal filed by the multiservice company, confirmed the interpretation of the law made by the Decision of the High Court of Justice of Asturias, stating that the applicable agreement is that of the real and true activity carried out by the workers in relation to the provision of services carried out in the client company, i.e., in this case, the State Collective Bargaining Agreement for the Collective Catering Sector is applicable to them.

This solution does not affect competition in the labor market, as the Supreme Court has established the same unitary regulation for all workers who carry out the same work, regardless of the legal configuration of the employer, i.e. whether it is a company specializing in providing a single service or a multi-service company.

Finally, it should be noted that the High Court Decision also confirmed the application in all its aspects of the State Collective Bargaining Agreement for the Collective Restoration Labour Sector, with retroactive effect to the year prior to the presentation of the printed ballot (25-7-2018), a circumstance which, from the point of view of the wage differences between the two conventional texts at stake, is not a trivial consequence.

You can read the Decision on the following link.

For more information please contact:

Alfredo Aspra | Partner at Andersen
alfredo.aspra@es.Andersen.com

José Antonio Sanfulgencio | Of Counsel at Andersen
jose.sanfulgencio@es.Andersen.com