

Employment Update

Disciplinary dismissal due to simulation in clocking in

27th January 2020

Regarding the Judgment of the Supreme Court of Andalusia (Granada Court) of 19th September 2019

A.- Approach to the dispute:

The origin of the question raised lies in the disciplinary dismissal of one of the company's workers due to irregular behaviour detected in her workday record.

More specifically, the facts of which she was accused consisted in having simulated, repeatedly and continuously, to be providing services in intervals of time in which she was actually absent from the work centre, using the entry and exit *strikes* that another colleague made on her behalf, from her computer and using her own access codes.

It is worth noting that the worker herself not only pretended to be providing services, but also, on the days when she was at the work centre, she took advantage of the time spent by her colleague in and out of the work centre, in order to simulate that she was at her work station during intervals of time when, like her, she was not at the centre either.

In view of these events, the company dismissed both workers for breach of contractual good faith under the provisions of article 54.2 (d) of the Employment Act, with the additional aggravating circumstance that both took advantage of the trust that the company had placed in them, since both were alone at their workplace, without the daily, continuous and permanent presence of their area manager.

B.- Court Decision:

The origin of the worker's dismissal is declared. The appellant argues that her failure to comply with working hours should not have led to her dismissal, but to the suspension of her employment and salary on the ground that the offence was wrongly classified. The company based its decision on the breach of contractual good faith provided for in Article 54(2)(d) of the Employment Act, while the appellant sought to have her conduct classified as a serious (and not very serious) breach under the terms of the applicable collective agreement.

This plea was rejected by the Court, since it considered that the conduct described "*involves, in addition to fraud, a serious and culpable breach of contractual good faith*". In this sense, the Court argues that the essence of the worker's breach is not the damage caused, but rather the breach of good faith and due loyalty, since good faith is inherent to the employment contract, generating reciprocal rights and duties, translating into the duty of mutual loyalty between employer and employee.

For all these reasons, the Supreme Court considers that there is no reasonable alternative to expelling the worker because he or she has forgotten the necessary loyalty and trust that the employment relationship entails and has broken the loyalty that is the essential element of the employment contract.

C.- Legal-practical considerations of interest:



In the first place, it must be taken into consideration that the legislator, when incorporating the new legal precept, only established the obligation of the company to implement the daily working day register, without indicating what the legal consequences would be that could arise, as is the case here analysed, from the possible non-compliance that could arise on the part of workers when carrying out their working day register.

Hence, the importance of the recent ruling issued by the Andalusian Supreme Court, as one of the first judicial decisions on the registration of working hours, declaring the dismissal of a worker who fraudulently registers his working hours to be appropriate in order to make the company see that he is complying with his daily working hours, when in fact he was not present at his workplace.

Consequently, the judgment set out here is of particular interest in that:

a.- The Supreme Court of Justice confirms the sentence of the Court of First Instance, declaring the disciplinary dismissal of the worker who, repeatedly in time, deceives the employer in the working day registered;

b. - the dismissal of workers for conduct related to deception in the registration of their working day constitutes a transgression of good faith in the contract (art. 54.2.d of the Employment Act), without the gradualist theory being applicable.

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

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