

Employment Note

Lack of respect and consideration for co-workers

15th April 2020

Regarding the December 5th 2019 Ruling of the High Court of Justice of Aragon

There are many examples in the Employment Judicial Doctrine in so far as supposed and certain "jokes" towards co-workers, when the required and necessary trust is second to none after the transgressive behaviour, the disciplinary dismissal made by the companies has been declared appropriate.

Occurrences such as: calling a colleague "crazy bird" from their physical appearance (hairstyle) in public in the presence of other workers or humming the song of the cartoon character when she is present; uttering rude words and/or phrases; making objects or items of co-workers disappear (cups, glasses, Tupperware; food, etc.); keying a colleague's vehicle; creating a profile and user account on Facebook in the name of the company's managing director, without his knowledge or consent, using his personal data; pouring alcohol on the bottom of a colleague's work pants, then setting it on fire, etc.

Remember that this behaviour must be taken into consideration when evaluating:

- a.-** Respect for the dignity and honour of those who make up the company, a right which is protected by the Constitution;
- b.-** If offenses are involved, the tool used, since if offended in writing, the judicial doctrine understands that the expressions, which have been used, have had the opportunity to be reflected, and therefore cannot be justified as if it were a temporary heat or a "I didn't realize what I did" or "I did it without meaning it";
- c.-** The eventual forgiveness by the offended party;
- d.-** The educational level of the worker and the level of familiarity or trust with the aggrieved;
- e.-** The transgression of contractual good faith and abuse of trust are committed regardless of the value of what is suitable or taken;
- f.-** It is not necessary to appreciate the transgression of good faith that the worker acts with malice, which can be appreciated by mere inexcusable negligence.

Sometimes, the excuses proposed by the authors of the acts contrary to the due respect and consideration to other colleagues, refer to the fact that their receivers have to assume them (as it is usually expressed) "by sense of humour". Such a defensive argument is discarded by the Judicial Doctrine, as can be expected, which does not cover the violation of allegiance, loyalty and the duty of honesty towards the company and/or towards co-workers, under the pretext of acts allegedly committed by mockery or jokes.



The **High Court of Justice of Aragon issued a ruling on December 5th 2019** (Grupo Sallen Tech S.L.U. case; RS 599/2019) confirming the disciplinary dismissal of an employee with the professional category of engineer, who stole food from another co-worker in the company's canteen, as this was a reprehensible act that resulted in a lack of trust on the part of the company that violated good faith.

In order to reach this conclusion, the Social Chamber of the High Court of Justice emphasizes that circumstances such as these are of no importance to justify, on their own or in isolation, the unethical actions of the person who committed the infraction:

- i.-** The non-existence of damage to the company;
- ii.-** The lesser significance arising from the worker's personal misconduct;
- iii.-** And the lack of proof of the existence of a personal benefit to the worker.

As is established, the breach of the duties of good faith, allegiance, and loyalty implicit in all employment relations is sufficient for such qualification of origin.

Seriousness that occurs when the allegiance and loyalty that the worker must have towards the company is broken or the duty of honesty imposed by the service relationship is violated so as not to defraud the trust placed in the worker, justifying the fact that the company cannot continue to trust the worker who performs the abusive conduct or conduct contrary to good faith.

The theft of food from a co-worker constitutes a transgression of contractual good faith, which is qualified as a profoundly serious offence, and therefore punishable by dismissal.

The solution reached by the Aragonese High Court does not mean that the Labour Courts and Tribunals, when faced with cases of theft of little economic value, always end up with contractual extinctions. There are cases in the Judicial Doctrine in which the gradualism theory has been applied if other circumstances allow it.

Finally, it is noteworthy that breaches of contract related to acts or behaviour of workers against fellow workers, anecdotal years ago, are now increasingly prominent in the labour courts, in the different aspects of disrespect and consideration, offenses, harassment, theft, etc.

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

For more information, you can contact:

[Alfredo Aspra](#)
alfredo.aspra@AndersenTaxLegal.es

[José Antonio Sanfulgencio](#)
jose.sanfulgencio@AndersenTaxLegal.es

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