

Supreme Court opines on valid grounds for termination

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Introduction

In April 2017 the Supreme Court issued a decision concerning an employee's dismissal on the grounds of (among other things) recording a conversation with his supervisor – a regional director – without his consent. The Supreme Court reversed the decision of the first-instance labour court and ruled that the termination was lawful based on the fact that the employee had been handling personal business during working hours without authorisation and secretly recorded a conversation.

Facts

The employee had been late for a scheduled meeting and had not answered his supervisor's phone calls over the course of a couple of hours. The employee explained that he had been handling personal business during working hours.

The employer requested a written defence statement from the employee and subsequently issued him a warning regarding his behaviour. However, the employee refused to take the written warning.

The employee sent an email to a group of employees, including his supervisor and HR director, alleging that he had been the victim of mob-like behaviour. His email also stated that he had used a video camera secretly to record the meeting where his supervisor had tried to deliver the written warning and that he could use the recording as evidence "against any problem that may occur" in the future.

According to Article 133 of the Criminal Code (5237/2004), recording a conversation which is not public, by means of a sound recorder and without the consent of the other participating speakers, constitutes the offence of tapping and recording conversations between individuals and is punishable by up to six months' imprisonment or a judicial fine.

After requesting another written defence statement regarding his recent behaviour – including the recording incident – the employer terminated the employee's employment agreement with valid grounds. The employer did not file a criminal complaint against the employee.

The employee filed a re-instatement action which argued that the employer had terminated his employment agreement without valid grounds.

First-instance decision

At the end of the proceedings, the first-instance court accepted the case and ruled that the employee's behaviour did not constitute valid grounds for termination; thus, the termination was

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wrongful. In its decision, the first-instance court focused on the mobbing allegations of the employee and stated that such allegations did not constitute valid grounds for termination. The court ignored the fact that the employee had handled personal business during working hours and recorded a conversation without the consent of other participants.

The defendant appealed.

Supreme Court decision

In April 2017 the 9th Civil Chamber of the Supreme Court reversed the decision and dismissed the case.

In its decision, the Supreme Court stated that the employee had dealt with personal business during working hours without authorisation and secretly recorded the conversation with his supervisor, as proven by the employee's email. The court ruled that it would be unreasonable to expect the employer to continue the employment relationship under these circumstances and that the abovementioned behaviour constituted valid grounds for termination.

Comment

Decisions rendered by the Supreme Court in relation to labour law matters are final.

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