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All compensated – or maybe not?

Social compensation plan clauses under scrutiny (Federal Labour Court, decision dated April 25, 2017 – 1 AZR 714/15)

The works council must approve a waiver of claims in severance schemes. An exception only applies to settlements of the facts (German Tatsachenvergleich).

December 2017, Dr. Jan Tibor Lelley

In the case of the defendant employer, a redundancy payment was provided for in a social compensation plan (shop agreement). The plaintiff who had been dismissed for operational reasons reached a settlement with the company in the dismissal proceedings which included a redundancy payment. In addition, it was also agreed that the payment would cover all mutual claims arising from the employment relationship and its termination.

In his lawsuit, the plaintiff then demanded the difference between the redundancy payment in the social compensation plan and the agreed (lower) settlement amount. After both previous instances had dismissed the complaint, the successful appeal before the Federal Labour Court led to an annulment and remittal of the case.

As a lower instance, the Higher Labour Court of Munich had presumed that the provision of sec. 77 para. 4 sent. 2 Works Constitution Act (German BetrVG) did not apply here. In this case, a waiver of claims under a shop agreement would only be admissible with the consent of the works council. There is no waiver of rights under a shop agreement. It was a settlement of facts (German Tatsachenvergleich) in which only the factual conditions of the claim were disputed.

The Federal Labour Court initially ruled in favour of the Higher Labour Court to the extent that the works council was not required to participate in a settlement of facts. However, it is not a settlement of facts in this case, but rather a waiver of rights by the

parties to the proceedings. On the one hand, the – legal – applicability of the shop agreement had previously been disputed between the plaintiff and the defendant. On the other hand, the parties had expressly agreed in the wording of the compromise that mutual claims were “compensated” which did not eliminate the actual uncertainty about the conditions of a possible claim. Rather, the legal uncertainty of the claim’s existence was decisive.

The plaintiff’s request for payment does not constitute an unlawful exercise of a right as per sec. 242 Civil Code (German BGB). The conclusion of an agreement that violates sec. 77 para. 4 sent. 2 BetrVG alone does not create any assurance that the employee will not assert its ineffectiveness at a later date. Otherwise, the legally mandated irrevocability of a claim conveyed under works constitution law would be void.

Recommendation for practice:

The ruling clarifies that a settlement of the facts of claims arising from a shop agreement is admissible without the consent of the works council. At the same time, the Federal Labour Court underlines that other wording for waiving claims in social compensation plans is very risky for companies. A settlement qualifies only as a settlement of facts if the underlying dispute pertains to the factual existence of the claim’s conditions. The parties should clarify this in a compromise concerning (also) the waiver of claims in social compensation plans. For this purpose, it is advisable that the parties expressly include wording on the conditions of the claim. For example, the following passage could be used in the text of the settlement: “… the parties agree that there are no facts on which claims of any kind can be based with regard to their employment relationship and its termination.” Otherwise, the settlement can be understood as a waiver of rights in accordance with sec. 77 para. 4 sent. 2 BetrVG – and such a waiver is null and void without the consent of the works council. This can be used as an open flank to assert payment claims against companies, which should be excluded by the compensation clause in the compromise text.

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