

**[TERMINATION OF A CONTRACT]**

***Settlement possibilities are limited after a mutually agreed contractual termination***

*(Cass. Soc. 25<sup>th</sup>, March 2015, 13-23.368)*

**Any settlement following a mutually agreed contractual termination and pertaining to the termination itself or an element of the termination agreement is void. It is therefore only possible to settle afterward on issues pertaining to the performance of the contract (i.e.: overtime payment, paid holidays, bonuses, etc.) which were not dealt with in the termination agreement.**

While mutually agreed contractual terminations are often praised by employers as a non-conflictual and rapid way out for ailing employment relationships, this latest decision confirms that employers should carefully consider the context before opting for it.

In this case, the employer and the employee had initially entered into a mutually agreed contractual termination on July 22<sup>nd</sup>, 2009. Neither party used its' withdrawal right during the cooling off period and the agreement was eventually approved by the administration on August 12<sup>th</sup>, 2009. The expected termination date was set on August 31<sup>st</sup>.

However, in the meantime, the employee claimed that he could challenge the validity of the termination. He argued that his consent had been vitiated by the pressure of the employer which had removed any responsibility he had in order to force him to resign.

The employer agreed on a settlement and, on August 28<sup>th</sup>, put a signed settlement agreement on deposited to a bailiff – who noted that the document was postdated on his report! The settlement agreement provided that the employee renounced to any claim he might have had based on the mutually agreed termination of his employment contract in exchange for an indemnity of € 114,000.00.

On the same day, the employer summoned the employee to a pre-dismissal interview set on September 8<sup>th</sup>. The employee was dismissed for serious misconduct on September 11<sup>th</sup>. The employee brought an action before the labour court to obtain payment of the settlement indemnity.

To avoid payment of the settlement indemnity, the employer argued that the settlement was void on the ground that it had been signed before the disciplinary dismissal – which, in its' opinion, superseded the mutually agreed contractual termination of the contract. Its' position was rejected by the Court of Appeal which held that the employer itself was barred from invoking this ground of relative nullity.

Ignoring this argument, the supreme court quashed the appeal judgment on the ground of an absolute nullity ground : the settlement agreement aimed at bypassing the provisions of article L.1237-14 of the Labour Code which provides for a specific material jurisdiction of the Labour Court for disputes arising from mutually agreed termination (note : within 12 months of the termination).

Thus, any agreement which is meant to settle a dispute arising from a mutually agreed contractual termination itself, or its' content (i.e.: issues pertaining to the performance of the contract and dealt with in the agreement) is void. This ruling confirms the position of the French supreme court (see: Cass. Soc. 26-03-2014, 12-21.136).

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