

[TERMINATION OF EMPLOYMENT CONTRACT]

Requalification of temporary missions into employment contract: the employer must indemnify the unemployment agency

(Cass. Soc. November 18th, 2015, 14-16437)

A worker had been temporarily placed by an outsourcing company for several successive missions within a user company. The worker obtained that the Labour Court requalify the termination of the relationship with the user company into a termination without fair cause of a permanent employment contract. The Supreme court considers it entails the duty for the employer to indemnify the unemployment agency for the benefits paid to the worker.

Under French law, temporary forms of labour, whether they are under fixed term employment contracts, or through an outsourcing company, can only be used in a strictly limited number of cases. Similarly, the successive use of such labour forms is limited (renewable twice in some cases – see Nomosocial September 2015 - unless it is for a replacement).

In the present case, a worker had been assigned by an outsourcing company to work from 2001 until 2008 for the same user company. Throughout this period of time, the worker remained the employee of the outsourcing company but exclusively worked for the user company under several successive mission contracts.

The worker filed a suit before the Labour Court after the user company terminated the stream of mission contracts. In his complaint, the worker argued that he was in fact hired under a permanent employment contract by the user company. The worker's claim succeeded before the court of appeal.

The court acknowledged that a permanent employment contract had existed between the worker and the user company and therefore found that the termination of the stream of missions was a dismissal without *faute* cause. Indeed, the user company, which had merely put an end to the last mission contract with the outsourcing company, had not complied with the procedural and justification requirements normally applicable for the dismissal of an employee.

Subsequently, the French unemployment agency ("*Pôle Emploi*") which had been paying the worker unemployment benefits, filed a case against the user company (now considered as the true employer) in order to obtain an indemnification for the benefits paid.

Indeed, under French law, an employer who dismisses without fair cause an employee can be held liable for the benefits the unemployment agency subsequently pays to the dismissed employee (L.1235-4 of the French Labour Code). This liability only applies to employer of more than 11 employees, if the employee had at least two years of seniority.

To fight off the unemployment agency claim, the user company argued, to no avail, that the provision establishing a liability applied only in case of dismissal without fair cause and not in case of requalification of mission contracts construed as an unfair dismissal.

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