[TERMINATION OF EMPLOYMENT CONTRACT]

Reduction of a golden parachute calculated by reference to a collective agreement

(Cass. Soc. March 16, 2016, 14-23861)

The severance payment can be reduced when its rate is provided by a collective agreement that is not the one applicable to the employer.

After the sale of a company that had employed a manager for 8 years, the purchaser hired this manager. The new employment contract recognized the former length of service with the company purchased and provided that the collective agreement of the company purchased would apply to calculate the severance payment.

After 3 months this manager was fired for an alleged gross misconduct. He sued in the labour courts. These courts decided that not only he could not be reproached with any gross misconduct, which triggered the payment of the severance payment as provided by the employment contract (K€288), but also that the employer had no grounds for dismissal, which triggered the condemnation of the employer to pay damages for unfair dismissal that the court evaluated at K€300. The Court determined the level of this condemnation by the consideration that the termination had been brutal and vexatious.

The employer brought the case to the Supreme Court to challenge the provision of the employment contract pertaining to the calculation of the severance payment. Based on the length of service, and on the rate provided by the collective agreement, this severance payment amounted to K€288. The mathematics of the calculation were accurate and could not be contested by the employer. But the employer argued that by referring to a collective agreement that is not the one applicable in the company, the parties agreed on a "contractual" severance payment and hence it could be reduced by the courts because of its very high amount.

The difference between a severance payment provided by the collective agreement applied by the company for all its staff, and the one provided by the contract is that the first one cannot be reduced, whatever the amount, whereas the latter may be reduced by the courts if it is "obviously excessive", pursuant to article 1152 of the Civil code.

In the case judged on March 16, 2016, the Supreme Court ruled that where the contract refers, for the sole calculation of the severance payment, to a collective agreement that is not the one applied by the employer, this is equivalent to a contractual severance payment. Hence it may be reduced by the courts if it is "obviously excessive".

The situation would have been different, namely it would not have been possible to reduce the severance payment, had the parties agreed that all the provisions of the collective agreement apply to the employment contract. This has previously been judged by a decision of the Supreme Court on November 9, 2011 (n°09-43528).

Anne CIRET