

CRITICAL REMARKS ON THE COLLECTIVE LABOR AGREEMENT IN THE SPHERE OF MACHINE BUILDING COMPANIES AND METAL PRODUCTION FOR THE YEARS 2016-2017

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Abstract

In this study we analyze the provisions of the collective labor agreement concluded in the sphere of machine building companies and metal production for the years 2016-2017. The analysis will reveal useful aspects that complement labor laws and also the offending clauses in the field of labor legislation. Study findings lead to the formulation of proposals with the purpose to improve collective bargaining in terms of reporting of the collective labor agreements to the provisions of the law.

Keywords: collective bargaining agreement, group of units, relations between collective bargaining agreement and law

JEL Classification: K12, K31

1. Preamble

During 2016, four collective bargain agreements were concluded at the level of groups of units².

The Collective Bargain Agreements in question include provisions that complete the labor legislation, but also clauses contributing to the materialization of the related legal matters.

The content of these contracts seems to be useful in setting an equitable climate for conducting the work relations and for establishing social peace at the unit level³.

The clauses that are to be found in the collective bargain agreements are of interests, on the one hand, due to their utility, and, on the other hand, regarding their relationship with the legal provisions in the sector, which have to be complied with.

Among the collective bargain agreements concluded during 2016 at the level of group of units, we shall analyze, during this article, the provisions of the collective bargain agreement concluded at the level of the group of units in the activity sector related to machine manufacturing and metallic works for 2016-2017.

I followed this approach because labor legislation is indispensable for business activities carried out by professionals.

2. The content of the collective bargain agreement in the sector related to machine manufacturing and metallic works for 2016 - 2017.

A. the collective bargain agreement mentioned includes a series of judicial provisions that correctly completes the labor legislation. Among these provisions, we shall mention as follows:

- establishing the minimum ranking coefficients of salaries for certain categories of employees within the units - Article 57 para. (2);
- establishing an additional rest day depending on the specific of activity (Machine Builder Day, Navalist Day, etc.) - Article 32 of the agreement;

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² It is about the Collective Bargain Agreement at the level of the group of operators in the public supply services for water and sewerage for 2016-2017, at the level of group of units within the National Associations of the Cultural Centers of Trade Unions in Romania for 2016-2017, at the level of the group of units in the sector of activity related to machine manufacturing and metallic works for 2016-2017 and at the level of group of units ISMB for 2016-2016. See the webpage: <http://www.mmunicipii.ro/j33/index.php/ro/dialog-social/info/protectia-sociala/dialog-social/952-ccm-grup-de-unitati>, accessed on November 19, 2016.

³ For the role of social peace within the collective bargain see Georgeta Codreanu, *Dialogul social și pacea socială*, Tribuna Economică Publishing House, Bucharest, 2007.

- establishing free days before legal holidays by setting some “bridges” with recovery on Saturday s - Article 35 of the agreement;
- the possibility for two husbands working in the same company to have their paid vacation during the same time, by granting the paid leave to the employee during the period of the treatment voucher - Article 43 of the agreement;
- granting the unpaid absence of leaving for 30 days (at one time or in parts) for the employees that have their admission exam into the university or doctor’s degree study - Article 50 para. (1);
- granting a paid absence of leave of up to 30 days for the students of the foremen school and doctor’s degree in sectors of activity useful to the activity of the group of units for which the collective bargain agreement was concluded, which attend these studies with the permission of the employer - Article 50 para. (2);
- an absence of leave of up to 60 days without payment during the academic year for the employees students that attend the first university - Article 50 para. (4);
- establishing free days for different personal needs of the employees, respectively the marriage celebration of the employee - 5 days, marriage of a child 2 days, birth of adoption of a child - 5 days, death of close relatives 1 - 3 days, moving into another lodging place, one time - 2 days - Article 52.;
- regulation of salary increases, including for seniority - Article 59;
- instruction related to the obligation for the company that involve the provisions of the collective bargain agreement to purchase a proper number of treatment vouchers and/or recovery rest in resorts and touristic centers, including to pay the cost of the transport voucher - Article 108 and 109;
- establishing humanitarian help for different needs of the employees - Article 110 and 111;
- an important issue regulated by social partners is also the **possibility of employment out of humanitarian reasons** within the limit of employer’s possibility and with the agreement of the representative trade union - Article 137 para. (2);
- the possibility of extending the prior notice by the employer at the reasoned request of the person notified or of the representative trade union or organization in case of dismissal out of reasons which the employee cannot be held liable for - Article 163;
- granting a compensation equivalent to one basic salary in case of dismissal out of reasons which the employee cannot be held liable for - Article 165;
- the possibility for the employees to be absent 4 hours a day during the period of prior notice to search for a job - Article 169;
- establishing the social criteria in terms of collective redundancies - Article 171 - 172. Thus, in the case of collective redundancies, in the situation of equality between employees after their professional assessment, will be made redundant employees who qualify for retirement and those who have a job. Also will be considered the following criteria: a) if both spouses work in the same undertaking will terminate employment only for a spouse, b) measures of dismissal will affect in the first time the employees who do not have children or other dependents and c) dismissal will not apply to the employees who are the sole supporters of families and to the workers who have at most three years until retirement upon request.

B. In the content of the collective bargain agreement we can also find certain clauses that have been criticized in terms of their relationship with legal provisions:

A first clause that is contrary to the law is the provision in Article 160 para. (2) of the agreement, where it is set that the “employee can request for the termination of his/her work agreement without prior notice if: a) the company did not pay his/her salary, except for the cases of force majeure; b) violent acts were conducted against him/her by the representatives of the employer”.

This clause in the collective bargaining agreement is not in accordance with the provisions of the Labour Code, which establishes in art. 81 para. (8) that “the employee may resign without notice if the employer fails to fulfill its obligations under the labor contract”.

The social partners have negotiated this clause in the collective bargaining agreement which ranks the employees in an unfavorable position because it was limited to only two situations able to resign without notice.

Certainly the situations listed by collective agreement are correct, but social partners have limited multitude of causes that would entitle the employee to resign without notice only at these two, which would put the employee in situations unfavorable in case of another reasons to justify dismissal without notice in addition to those provided by the social partners.

Also related to the dismissal⁴, is the Article 199 para. (2) which establishes that the “employee that is employed with another company has to submit his/her resignation in case that the other employer is a competitor or by the activity conducted in the new company is in unfair competition to the company where he/she is employed”.

This clause of the collective agreement raises a major problem: it is possible the applicability of that clause after passing a period of two years?

The parties have not taken into account the provisions of the Labour Code governing the non-compete clause, this provision is also to the detriment of employees.

Secondly, the social partners included in the collective bargaining agreement in art. 166 the list of disciplinary offenses.

As we have spoken previously, we consider that the decision of the employer to bargain collectively aspects of labor discipline is correct⁵.

Even if the legislator has determined that disciplinary offenses are found in Internal Regulation because this is closely linked to the prerogatives of power by the employer (regulatory, supervisory and disciplinary),⁶ the employer may transfer these issues in the area of collective bargaining, where considered that this is an argument in favor of social peace.

However, the exhaustive determination of disciplinary violations as parties decided under this collective agreement puts the employer in an unfavorable situation because if the employee commits an act that is not determined in art. 166 of collective bargaining agreement, he will not be penalized.

In fact, in question is the distinction between crime governed by the Criminal Code and disciplinary offense, disciplinary law constituted "little criminal". **If criminal offenses are established by the legislator exhaustively, any act that meets the legal requirements can be a disciplinary offense.**

Thus it indicated that the social partners, to add to the collective agreements or internal rules after listing the disciplinary offense the fact that any other facts that meets the conditions stipulated by law can be considered disciplinary offense.

Thirdly, in Article 166 of the agreement, the parties established as follows: “the company can dismiss the employees in case of severe disciplinary offences or repeated disciplinary offences established by collective bargain agreements in the companies depending on the specificity and activity of each of them, including in situations that are not considered as offences, if the employee: a) used false documents when getting employed”.

As a first issue related to the text quoted concerns the mention within the content of the article that the disciplinary offences are to be sanctioned even if they cannot be considered crimes. We consider that this provision should not have been found in the wording of the law as it cannot be challenged the fact that a disciplinary offence is sanctioned even though it is not a crime, but it affects the operations of the company. Although it is called the “little criminal”, as noted before, the disciplinary offence is not mistaken with the provisions of the criminal law.

Secondly, the provision in para. a) of Article 166 of the agreement brings about certain questions.

For the correct analysis of this provision, we hereby mention that in order to conclude the individual labor agreement, the employee has to present to its employer, in order to establish his/her personnel file, a copy of his/her ID document, copy of the education documents, medical certificate

⁴ For the legal regime of dismissal see Al. Țiclea, *Demisia. Teorie și jurisprudență*, Universul Juridic Publishing House, Bucharest, 2013.

⁵ See R. Ș. Pătru, *Contractele și acordurile colective de muncă*, Hamangiu Publishing House, Bucharest, 2014, p. 220-221.

⁶ See for developments I. T. Stefanescu, *Tratat teoretic și practic de drept al muncii*, Universul Juridic Publishing House, Bucharest, 2014, p. 232.

indicating that he/she is medically capable to exercise his/her position, a copy of the documents certifying his/her seniority etc.

The Labor Code establishes that if the legal provisions related to the issue of the medical certificate, are not complied with, the agreement is considered null and void⁷.

In the silence of the law on invalidity way we think it is a relative nullity because it can be covered by confirmation as determined by art. 57 para. (3) of the Labour Code, namely: "nullity of the individual labor contract can be covered by subsequent fulfillment of the conditions imposed by law."

We consider that the same sanction would be applicable in case of counterfeit the ID and education documents, as the individual labor agreement is concluded based on such documents, and in case that the employee does not provide correct data, he/she violates the very requirements of the job, which are related to the very nature of the individual labor agreement concluded, therefore, in this context, the sanction cannot be other than the relative nullity⁸.

If the employee counterfeits however a document which is not essential, which is not related to the validity of the individual labor agreement (for example a recommendation from his/her previous place of employment), the employer can really dismiss him/her.

The article analyzed imposes a question: can the employer choose between dismiss the employee or declare the contract void if the employee has presented false documents for employment?

We believe that the answer is negative, as in this situation prevails nullity because a contract with violating the conditions of substance and form is void and under invalidity contract is considered to be non-existent, so the dismissal is inapplicable where prevail avoid the contract.

In conclusion, in case that the employee counterfeits documents that are significant for the validity of the individual labor agreement (ID documents, education documents, medical certificate), the sanction is the relative nullity of the contract, and in case he/she counterfeits documents that are not related to the validity of the individual labor agreement, the sanction can be the disciplinary dismissal.

Therefore, the correct wording of the text in Article 166 para. a) is: "used false documents in the employment process, other than those whose counterfeit results in nullity of the individual labor agreement".

3. Conclusions

From the provisions of the collective bargain agreement analyzed, we can draw a series of conclusions, some of them useful in order to improve labor legislation.

First it is very important to establish salary coefficients, because of the silent of law in this field.

Another important aspect is the regulation of the rest time. The collective bargain agreements concluded in different levels, establish that the time of rest is not rigorously regulated by the legislator.

It is about an insufficient regulation, which sets a general term of 20 days which does not take into consideration the differences for seniority, as the law sets the same number of days for rest both for beginners and for employees with significant work seniority.

It would be indicated that in the Labor Code to have a careful regulation related to the number of rest days compared to the employee's seniority.

At current date, this issue is left to decide for the social partners' that regulate by collective bargain agreements, however, having in mind the reduced number of collective bargain agreements, it is not sufficient.

The collective bargain agreements and the need to establish certain paid free days in addition to the days of paid leave, for special needs of the employee. These provisions are set as a constant

⁷ Related to the nullity of the individual labor agreement, see also I. T. Stefanescu, *Tratat teoretic si practic, quoted book*, p. 310-314.

⁸ About the nullity of the individual labor agreement, also see A. Vidat, *Dreptul muncii, Note de curs pentru invatamantul la distant*, ASE Publishing House, Bucharest, 2015, p. 56-57.

concern of the provisions of the collective bargain agreements, therefore, we can draw the conclusion that an amendment of the labor legislation in this regard is needed.

Social criteria considered in collective redundancy is another judicious regulation of the social partners that complement statutory provisions.

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