



THE COURT OF APPEAL RECALLS THE EMPLOYER'S MANAGEMENT POWERS IN MATTERS OF ECONOMIC DISMISSAL

The Court of Appeal recently reaffirmed the scope of the employer's management authority, in a decision rendered on February 22, 2024 (CAL-2022-00469).

On March 11, 2022, an employee appealed a labor court's decision, ruling out his request to declare unfair his dismissal for economic reasons.

The Court of Appeal namely recalled that:

- The employer benefits from the power of direction, in return for bearing all the risks alone;
- He is therefore the only one to decide on the company's economic policy, its internal organization, and the technical modalities of its operation, which he can adjust at his discretion at any time.
- The judge cannot substitute its judgment for that of the employer in assessing the appropriateness of the measures taken, regardless of their impact on employment.
- The employer is entitled to undertake the reorganization and restructuring measures he deems appropriate and to proceed with terminations with notice based on the operational needs of the company that result from these measures.
- The employer is always permitted to organize his company in a more rational manner.
- He has the right to terminate employees even if the financial situation of the company is healthy, for the sole purpose of increasing the profitability of its business, as the law does not require the existence of economic difficulties to justify a termination.

This being said, while terminating an employee for economic reasons, the employer has to prove:

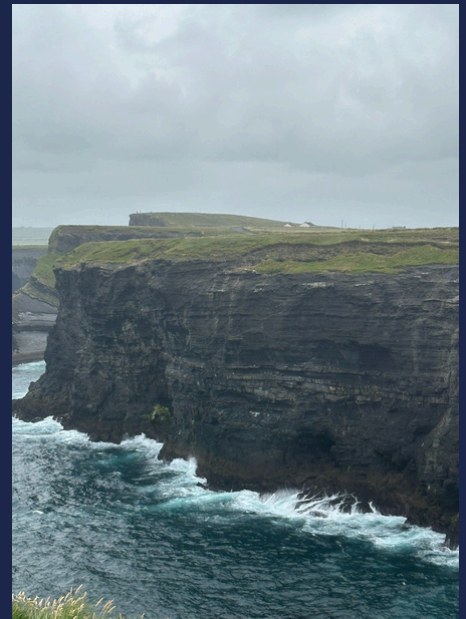
- that the company's reorganization/restructuring, claimed as a ground for dismissal is indeed real and founded;
- that it led to the suppression of the terminated employee's position and
- that the dismissal is directly related to the reorganization and not only constitutes a pretext.

In this case, it was established that before dismissing the claimant, the employer had hired another employee at a higher salary, in a position for which the claimant had the required skills.

To declare the dismissal unfair and overturn the first instance judgment, the Court of Appeal eventually recalled that "even if, in principle, an employer is not obliged to offer a dismissed another position within the company, the fact remains that he cannot be authorized to assign a new recruit to a position corresponding to the dismissed employee's abilities and who is paid at the same level or, as in this case, at a higher level."

For the Court of Appeal, the claimant's dismissal is not directly linked to the reorganization and restructuring of the company, which only constitute a pretext to dismiss the employee.

Linari law firm is of course available should you need any assistance regarding labour law or dispute resolution.



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