



NEWS, LATEST, CURRENT TOPICS

RETURN OF THE COMPENSATION STIPULATED IN ARTICLE 366 OF THE PORTUGUESE LABOUR CODE

“(...) in order to rebut the presumption in Article 366(4) that the employee accepts the dismissal when he receives the full amount of the compensation.”

By Judgment of the Supreme Court of Justice no. 7/2024, of 21 June, issued in case no. 474/21.6T8MTS.P1.S1, case law was established stating that: *"In order to be able to rebut the presumption of acceptance of the dismissal contained in paragraph 4 of article 366 of the Portuguese Labour Code (Law no. 7/2009 of 12 February, as amended in the meantime), the totality of the compensation received by the employee must be returned by the latter until the respective precautionary procedure or action to challenge the dismissal is initiated, which is the meaning of the expression 'at the same time' contained in paragraph 5 of the aforementioned article 366."*

At issue in the case was a collective dismissal, in the context of which the Employer (Defendant in the case) paid three employees (Plaintiffs in the case) the compensation referred to in Article 366 of the Portuguese Labour Code (henceforth, just the CT), as well as the credits due as a result of the termination of the employment contract. As a result, the employees, not being in agreement with their dismissal, returned the sums they had received as compensation to the Employer and then filed the appropriate special action to challenge the collective dismissal.

Accordingly, the Supreme Court of Justice was called upon to answer the question of **what is the deadline for the return of compensation received in the event of collective dismissal (article 366 of the CT), dismissal for extinction of the labour post (article 372 of the CT, which requires article 366 of the CT, among others, to be applied to this type of termination of the employment contract) and dismissal for unsuitability**

AUTHORS



LÍDIA SILVESTRE
Lawyer



JEANNETTE PLANCHE
Lawyer

(article 366 of the CT, applicable ex vi article 379 n.º 1), i.e. the deadline, in the words of Article 366(5) of the CT, for "the employee to hand over or make available, in any way, the full amount of the compensation paid by the employer" - in order to rebut the presumption in Article 366(4) that the employee accepts the dismissal when he receives the full amount of the compensation.

After navigating the wide disparity of jurisprudential solutions given to this issue - both by the Courts of Appeal and by the Supreme Court of Justice itself - as well as the divergent doctrinal positions produced over time, the Supreme Court of Justice dismissed, from the outset, the position according to which a employee who does not agree with his dismissal must immediately return the compensation he has received, especially since, it says, *"the expression 'simultaneously' means that the aim pursued by the legislator in drawing up the rule - the 'ratio legis' - is realised in the simultaneous performance of two acts: the return of the totality of the compensation and another associated act, and not in the immediacy of that return."*

In this analysis, the Court explains that there is no point in giving the employee six months to legally challenge the collective dismissal if, in the end, when he receives, for example in his bank account, the compensation that the employer is obliged to make available to him as a condition of the lawfulness of that same collective dismissal, he has to decide in a few days whether or not to challenge it, because in those few days he will have to return the compensation received.

Therefore, the Court considered that the understanding according to which the employee only has to repay the amount received as compensation when he challenges the dismissal in court or requests a judicial suspension of the dismissal, is the most coherent with the period he legally has to make such a decision.

"(...) the understanding according to which the employee only has to repay the amount received as compensation when he challenges the dismissal in court or requests a judicial suspension of the dismissal, is the most coherent with the period he legally has to make such a decision."

Furthermore, it considers that this is also the understanding that best guarantees certainty and predictability - dispensing the case-by-case decision of how many days it would be reasonable for the employee to make the repayment -, the most in line with respect for the right of access to justice and the most faithful to the teleology of the provision.

The Supreme Court of Justice thus concluded that the time limits for initiating the procedure or action should serve as a limit for the restitution of the compensation, so that the employee can have the necessary time to seek advice and consider whether or not to challenge the dismissal, bearing in mind that this is a situation that always has an impact on his/her life and is difficult to manage, and that there is no justification for any reduction of this period.

