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SETTLEMENT IN A LABOUR LAWSUIT AND UNEMPLOYMENT BENEFIT

“(...)”such a reduction does not obscure or alter the initial request for recognition of the just cause for dismissal”. In fact, “the reduction of the claim does not have, nor could it have, the virtue of altering the object and purpose of the Lawsuit”.”

By ruling of the North Central Administrative Court on 16 March 2018 in case no. 00313/16.0BEMDL, it was decided that the conclusion of a settlement in a legal action aimed at declaring the lawfulness of the termination of the employment contract with just cause, promoted by the employee, does not determine, without more, the loss of unemployment benefit and/or the return of amounts already paid by Social Security in this regard.

At issue was an employee who terminated her employment contract on the grounds of just cause, following which she took legal action against her employer seeking:

1. A declaration that the termination was lawful;
2. An order that the employer pay her €42,661.86 in compensation for length of service.

At the hearing of the parties, a **settlement** was reached with the following content, which in no way refers to the lawfulness/illegality of the resolution promoted:

"1) The Plaintiff reduces the claim to the sum of €15,000.00 (Fifteen thousand Euros), as global compensation for the amounts claimed.

2) The Defendant accepts the reduction of the claim and agrees to pay the claimant this sum."

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Once this settlement and the respective homologatory decision had been submitted to the Social Security, the latter decided to revoke the act awarding the plaintiff unemployment benefits “because the court decision makes no reference as to whether or not the dismissal was lawful” and subsequently “ordered the plaintiff to reimburse, within 30 days, the unemployment benefits which, following the said rejection, she considered to have been unduly paid”.

It was up to the court to assess this decision, and the **first instance court** held that, although the agreement mentions nothing about the existence of just cause for dismissal, it should be borne in mind that the employer agreed to pay the plaintiff compensation in the amount of €15,000.00, a circumstance that allows us to infer that the employer recognises that the termination was for just cause, although the term ‘compensation’ is used and not the indemnity referred to in article 396 of the Portuguese Labour Code.

The court also added in its decision that, according to article 399 of the Portuguese Labour Code, if the employee fails to prove the existence of the just cause invoked in court, then he will have to compensate the employer. And in this regard, even though the agreement reached contains a substantive reduction in the claim, it does not appear that the employee undertook to compensate the employer, a fact that also allows us to infer that the employer recognised that the termination was based on just cause.

It was therefore concluded that the act rejecting the plaintiff's subsequent claim for unemployment benefits should be annulled, as well as the act ordering the plaintiff to repay the unemployment benefits already paid.

This understanding was fully accepted by the **Northern Court**, which, in this context, argued that while it is true that the compensation requested as a result of the alleged just cause for dismissal was substantially reduced in the settlement, “such a reduction does not obscure or alter the initial request for recognition of the just cause for dismissal”.

“(…) expressly states that the Plaintiff reduced the claim “as global compensation for the amounts claimed”, which shows its relationship with the original claim for recognition of the just cause for dismissal”.

In fact, “the reduction of the claim does not have, nor could it have, the virtue of altering the object and purpose of the Lawsuit”.

The Court also added that “the judicially homologated settlement expressly states that the Plaintiff reduced the claim “as global compensation for the amounts claimed”, which shows its relationship with the original claim for recognition of the just cause for dismissal”.

Thus, the Social Security, when faced with a court settlement concluded and ratified in the context of a lawsuit aimed at recognising the lawfulness of the termination of the employment contract by the employee, cannot refuse to pay unemployment benefits on the grounds that there is no reference to the unlawfulness of the termination of the contract.

This understanding is an important step towards reducing the often-obstacles to the settlement of disputes between (ex-) employees and employers.

