DUAL SCALE OF RIGHTS UPHELD WHEN BASED ON OBJECTIVE AND REASONABLE GROUNDS - SAGARDOY

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Category: Employment

The *Audiencia Nacional* Employment Chamber judgment of 25 February 2009 confirmed in Spain the legality of the dual scale of rights (mainly in relation to salary) regulated by the current CLH (Tierra) collective bargaining agreement.

Monopoly

This matter originated from issues affecting the State-owned company CAMPSA, which lost its oil monopoly under Law 34/92 and was forced to adapt to the oil sector legislation under European law, intended to open to competition.

This substantial change of circumstances resulted in the creation of a number of new entities. The most important of these was CLH (Tierra), whose main activity is the distribution of liquid hydrocarbons in Spain through the management of oil pipelines.

The new situation led to the need to adapt a collective bargaining agreement which, due to the employer's advantageous status as a monopoly, had been granting very generous rights (including relating to salary, functional inflexibility, etc), which were found to be incompatible with the demands of a competitive market.

In view of this, collective dismissals were carried out and a new agreement was concluded. The terms of which made a distinction between the rights applicable to "privileged" workers - hired during the days in which it enjoyed a monopoly - and those who had joined later.

The agreement was challenged by a trade union before the employment tribunal and was eventually held to be lawful on 5/3/2007 by the Fourth Chamber of the Supreme Court, which held that a dual scale which was necessary to enable CLH to adapt to new circumstances was neither abusive nor discriminatory.

Román Gil, de Sagardoy, explica el reciente juicio del Tribunal Supremo, de la Sala Cuarta de lo Social, que confirmó la legalidad del continuo uso de la doble escala salarial llevada a cabo por la petrolera CLH, a condición de que su uso sea siempre conforme con circunstancias objetivas y razonables. La introducción de esa doble escala salarial tuvo su origen en el convenio salarial acordado después de la privatización de la empresa, por lo cual, y en nombre de la competitividad, se pagó menos a los trabajadores que se incorporaron de manera posterior.

New challenge

The recent judgment issued by the *Audiencia Nacional* relates to a subsequent trade union challenge of the company's current collective bargaining agreement (although the challenge was brought by a minority trade union, the majority trade union joined in and, as such, was signatory to the agreement which is now under challenge).

In this instance the claimants argued that the dual scale of rights was no longer lawful in view both of the company's situation and of certain Supreme Court case law which they believed to apply.

Following a trial in which the company was represented by Juan Antonio Sagardoy, the Audiencia Nacional held that the circumstances leading to the confirmation of the previous collective bargaining agreement still applied. Amongst them were the need to adapt to the competition while respecting, on a personal basis, more advantageous terms for "older" employees, in addition to the ability to have a new collective bargaining agreement with rights conferred by a previous one, and concluded that the dual scale was based on objective and reasonable grounds.

It is worth adding that in CLH's current collective bargaining agreement, just as in the case leading to the Supreme Court judgment of 30/10/2008 relating to Repsol's dual scale and whose reasoning coincides with that of the *Audiencia Nacional*, it is not a projection of remuneration differences into the future but the maintenance, on a personal basis, of the terms applicable to certain workers (increasingly fewer in number) and the establishment of a single common system to guarantee the company's viability.

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