Ruling no 245 of 26 February 2020 (18-22.556) – Cour de cassation (*Court of cassation*) - Labour Chamber
ECLI:FR:CCAS:2020:SO00245

Workers' health: a "serious risk" assessment may be triggered in the user undertaking by the Committee for hygiene, safety and working conditions of the temporary employment undertaking under strict conditions.

Only the french version is authentic

Employee representation

Dismissal - Partial quashing

Summary

According to the applicable Article L. 4614-12 and Article L. 1251-21 of the Labour Code, construed within the context of Section 11 of the Preamble to the Constitution of 27 October 1946, Article 31, § 1 of the Charter of Fundamental Rights of the European Union and Article 6, § 4 of Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work, there is an obligation for those who employ workers to ensure that their right to health and safety is assured, under the vigilance of staff representative institutions whose mission is the prevention and protection of the physical or mental health and safety of workers.

With regard to employees of temporary employment agencies, the responsibility to protect their health and safety is shared by the employer and the client company, as guaranteed by Article 8 of Council Directive 91/383/EEC of 25 June 1991. This directive supplements measures to encourage improvements in safety and health at work for workers under a fixed-duration or temporary employment contract. Despite the shared responsibility, it is primarily incumbent on the client company to take all necessary measures to ensure this protection in application of Article L. 1251-21-4° of the Labour Code. Consequently, it is up to the client company's committee for hygiene, safety and working conditions (*Comité d'hygiène, de sécurité et des conditions de travail*, CHSCT) to ensure vigilance towards all the establishment's employees placed under the authority of the client company, in application of Article 6 of the aforementioned Directive 91/383.

However, if the CHSCT of the temporary employment agency finds that employees made available to the client company are subjected to serious and existing risk, as defined in the applicable Article L. 4614-12 of the Labour Code, and the client company

has not taken any measures, and its CHSCT has not exercised its rights under the said article, it may, under the constitutional requirement of the workers' right to health, call upon an accredited expert in order to assess the reality of the risk and the possible means of remedying it.

Appellant(s): CHSCT IDF Manpower France

Respondent(s): Manpower France, simplified joint-stock company under French law

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Facts and Procedure

1. According to the contested order (President of the tribunal de grande instance de Nanterre - *Nanterre Tribunal of First Instance*,1 August 2018), ruling in interim proceedings, the committee for hygiene, safety and working conditions of Manpower France (CHSCT) voted in a 16 April 2018 deliberation to request an expert assessment relating to the serious risk allegedly encountered by its temporary employees working for Feedback (the client company). Manpower France challenged this decision before the President of the tribunal de grande instance (*Tribunal of First Instance*) and, before the Cour de cassation (*Court of Cassation*), submitted an application for a priority preliminary ruling on the issue of constitutionality relating to the interpretation of Article L. 4614-12 of the Labour Code.

2. By decision of 5 June 2019 (Labour Chamber , no 18-22.556), the Cour de cassation (*Court of cassation*) said there was no reason to refer the question to the Conseil constitutionnel (*Constitutional Council*), in the absence of established case law for this provision.

Reviewing pleas

On the plea for cross-appeal, appended hereafter

3. Pursuant to Article 1014, Section 2 of the Code of Civil Procedure, there is no need to issue a specially reasoned decision on this plea, which is not of a nature to warrant the quashing.

But on the main appeal plea

Statement of plea

4. The CHSCT objected to the order to quash the CHSCT's deliberation to appoint an expert to assess a serious risk whereas *"the mission of the committee for hygiene, safety and working conditions is to contribute to the protection of the physical and mental health and safety of the establishment's workers and of those placed at its disposal by an outside company. Its mission also is to contribute to the improvement of the working conditions of these employees and to ensure compliance with the legal requirements in these matters. Since the working conditions of temporary workers, even when they are exclusively placed at the disposal of client companies, also are under the responsibility of the temporary employment agency, it follows that the CHSCT of the temporary employment agency may call upon an accredited expert, under the conditions of Article L. 4614-2 of the Labour Code, when a serious risk is*

found in the establishment where the temporary employees are working. By holding that the CHSCT of Manpower France - Ile-de-France was not qualified to vote for an expert assessment on the possibility of a serious risk that would affect temporary employees working with Feedback, the tribunal de grande instance (Tribunal of First Instance) violated Article L. 4612-1 and Article L. 4614-12 of the Labour Code."

Court's response

In view of Article L. 4614-12 and Article L. 1251-21 of the Labour Code, construed within the context of Section 11 of the Preamble to the Constitution of 27 October 1946, Article 31 § 1 of the Charter of Fundamental Rights of the European Union and Article 6 § 4 of Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work:

5. Section 11 of the Preamble to the Constitution of 27 October 1946, as well as Article 31 § 1 of the Charter of Fundamental Rights of the European Union, guarantee every worker's right to health and safety.

6. According to Article L. 1251-21 4° of the same code, for the duration of the mission of the temporary workers placed at its disposal, the client company is responsible for health and safety at work.

7. The applicable Article L. 4614-12 of the Labour Code sets out that the committee for hygiene, safety and working conditions may call upon the services of an accredited expert when a serious risk is observed in the establishment, whether or not revealed by an accident at work, an occupational disease or a disease of an occupational nature.

8. Article 6 § 4 of the aforementioned Council Directive 89/391/EEC of 12 June 1989 provides that when workers of several undertakings are present in the same workplace, the latter must cooperate together to implement provisions relating to safety, hygiene and health. In relation to the nature of the activities, they must coordinate their actions with a view to protect against and prevent occupational risks. They must also inform each other of these risks and inform their respective workers and/or the workers' representatives.

9. This imposes an obligation on those who employ workers to ensure that their right to health and safety is guaranteed, under the watchful eye of worker representative institutions whose mission is to prevent risks and protect the physical or mental health and safety of workers.

10. With regard to employees of temporary employment agencies, the responsibility to protect their health and safety is shared by the employer and the client company, as guaranteed by Article 8 of Council Directive 91/383/EEC of 25 June 1991. This directive supplements measures to encourage improvements in safety and health at work for workers under a fixed-duration or temporary employment contract. Despite the shared responsibility, it is primarily incumbent on the client company to take all necessary measures to ensure this protection in application of Article L. 1251-21-4° of the Labour Code. Consequently, it is up to the client company's committee for hygiene, safety and working conditions (*comité d'hygiène, de sécurité et des conditions de travail*, CHSCT) to ensure vigilance towards all the establishment's employees placed under the authority of the client company, in application of Article 6 of the aforementioned Directive 91/383.

11. However, if the CHSCT of the temporary employment agency finds that employees made available to the client company are subjected to serious and existing risk, as defined in the applicable Article L. 4614-12 of the Labour Code, and the client company has not taken any measures, and its CHSCT has not exercised its rights under the said article, it may, under the constitutional requirement of the workers' right to health, call upon an accredited expert in order to assess the reality of the risk and the possible means of remedying it.

12. In order to set aside the temporary employment agency CHSCT's authority to appoint an expert within the client company, the president of the tribunal de grande instance (*Tribunal of First Instance*) held that temporary workers are entitled to be represented only by the CHSCT of the client company, and that therefore the CHSCT of Manpower France was not qualified to vote for an expertise.

13. By ruling in this way, the tribunal de grande instance (*Tribunal of First Instance*) the aforementioned texts, as the client company must be implicated since the existence of a serious and existing risk for temporary workers was invoked, as well as the inaction of the client company and its CHSCT, which had the duty of vigilance.

ON THESE GROUNDS, the Court:

DISMISSES the cross-appeal;

QUASHES AND SETS ASIDE the order issued on 1 August 2018, between the parties, by the president of the tribunal de grande instance of Nanterre (*Nanterre Tribunal of First Instance*), delivered in interim proceedings; but only in so far as reversing the Manpower France CHSCT's deliberation of 16 April 2018 that decided to have recourse to an expert.

Returns the case and the parties to the status existing prior to the said ruling and refers them to the president of the tribunal judiciaire of Paris (*Paris Tribunal of First Instance*);

President: Mr Cathala
Reporting judge : Ms Pécaut-Rivolier
Advocate-General: Ms Berriat
Lawyer(s): SCP Thouvenin, Coudray et Grévy - SCP Thouin-Palat et Boucard