Compensation scale for employees dismissed without real and serious cause (ruling n° 655 - 21-15.247)

11/05/2022

Ruling No. 655 FP-B+R

Dismissal

Public Hearing of 11 May 2022 Mr CATHALA, President Dismissal

Appeal N° 21-15.247 - Ruling No. 655 FP-B+R

FRENCH REPUBLIC ON BEHALF OF THE FRENCH PEOPLE

RULING OF 11 MAY 2022, DELIVERED BY THE SOCIAL CHAMBER OF THE *COUR DE CASSATION* (COURT OF CASSATION)

The company FSM, a simplified joint-stock company with sole shareholder, with registered office at[Adresse 3] , formerly known as Fives Stein Manufacturing, has lodged appeal No. H 21-15.247 against the ruling delivered on 15 February 2021 by the *cour d'appel* (Court of Appeal) (Social chamber, Section 2) *of Nancy*, in the dispute between the company itself and:

1. Ms [C] [O], domiciled at [Adresse 4],

2. Job centre of [Localité 6], with registered office at [Adresse 5],

respondents in the quashing procedure.

Parties intervening voluntarily:

1. Syndicat des avocats de France (SAF) [French Union of Lawyers], with registered office at[Adresse 2],

2. Syndicat d'Avocats d'entreprise en droit social (Avosial) [Union of Corporate Lawyers specialized in labour law], with registered office at [Adresse 1].

Ms [O] has lodged a cross-appeal against the same ruling.

In support of its action, the appellant relies on the single plea for quashing attached to the present ruling.

In support of its action, the appellant relies on the single plea for quashing also attached to the present ruling.

The case file was sent to the Prosecutor-General.

On the report of Mr Barincou, Judge, and Ms Prache, Judge Referee, assisted by Ms Safatian, Judge Auditor of the Documentation, Studies and Report service, the observations of SCP Célice, Texidor, Périer, lawyer of the company FSM, SCP Didier et Pinet, lawyer of Ms Grosjean, SCP Zribi and Texier, lawyer of Syndicat des avocats de France (SAF), Me Ridoux, lawyer of Avosial, the pleadings of Me Célice for the company FSM, Me Didier for Ms Grosjean, Zribi for SAF and Mr Ridoux for Avosial, and the advisory opinion of Ms Berriat, First Advocate-General, having deliberated in accordance with the law in the public hearing of 31 March 2022 in which Mr Cathala, President, Mr Barincou, Co-reporting Judge, Ms Prache, Co-reporting Judge Referee, Mr Huglo, Elder Judge, Ms Farthouat-Danon, Mr Schamber, Ms Mariette, Mr Rinuy, Pion, Ms Van Ruymbeke, Mr Pietton, Ms Cavrois, Ms Monge, Ms Ott, Judges, Ms Ala, Ms Chamley-Coulet, Ms Valéry, Judge Referees, Ms Berriat, First Advocate-General, and Ms Piquot, chamber registrar,

the Social Chamber of the *Cour de cassation* (Court of cassation), comprising, pursuant to Articles R. 421-1 and R. 431-5 of the Judicial Code, the above-mentioned President and Judges, having deliberated in accordance with the law, has delivered the present ruling.

Examination of its own motion of the admissibility of voluntary interventions, after notice the parties pursuant to Article 1015 of the Civil Procedure Code

1. According to Articles 327 and 330 of the Civil Procedure Code, voluntary interventions are only admissible before the *Cour de cassation* (Court of cassation) if they are made incidentally in support of a party's claims and are admissible only if the author has an interest in supporting said party for the preservation of their rights.

2. Since Syndicat des avocats de France (SAF) and Syndicat d'Avocats d'entreprise en droit social (Avosial) do not justify such an interest in this dispute, their voluntary interventions are not admissible.

Facts and procedure

3. According to the ruling under appeal (Nancy, 15 February 2021), Ms [O] was hired by Fives Stein Manufacturing, to whose rights FSM is subject, as a secretary from 15 September 1981.
4. A restructuring and downsizing project involving the removal of seven posts was implemented as of 27 March 2017.

5. By letter of 18 September 2017, the employee was summoned to a pre-dismissal interview, scheduled for 2 October 2017, and then dismissed for economic reasons by letter of 13 October 2017. The employee took reclassification leave, which started on 14 October 2017 and ended on 22 September 2018.

6. On 2 October 2018, the employee challenged her dismissal before the labour tribunal.

Reviewing pleas

On the main plea, attached hereto

7. Pursuant to Article 1014, paragraph 2 of the Civil Procedure Code, there is no need to rule by a specially reasonned decision on this plea, which is clearly not of a nature to the quashing.

On the plea of the cross-appeal

Statement of plea

8. The employee criticises the ruling for saying that Article L. 1235-3 of the Labour Code is not contrary to Article 24 of the European Social Charter and, consequently, for limiting the amount of damages for dismissal without actual and serious basis to EUR 48,000, when:

"1. Article 24 of the European Social Charter provides that, "With a view to ensuring the effective exercise of the right of workers to protection in cases of termination of employment, the Parties undertake to recognise [...] the right of workers whose employment is terminated without a valid reason to adequate compensation or other appropriate relief"; that provision has direct effect in domestic law in disputes between individuals in order to grant a right to individuals and not to require the intervention of any additional act in order to have effect in respect of other individuals; by holding, on the contrary, that, in order to apply the scale provided for in Article L. 1235-3 of the Labour Code in its wording resulting from Executive Order No. 2017-1387 of 22 September 2017 and, thus, to limit the compensation granted to employees, "having regard to the importance of the discretion left to the Contracting Parties by Article 24 of the Social Charter, similar to those of Parts I and III of the same text, the provisions of Article 24 of that Charter are not directly effective in domestic law in a dispute between individuals", the Court of Appeal has acted in breach of the above-mentioned provisions;

2. When an act of Union law requires national implementing measures, national authorities and courts may continue to apply national standards for the protection of fundamental rights, provided that such application does not compromise the level of protection provided for by the Charter, as interpreted by the Court, or the primacy, unity and effectiveness of Union law; therefore, the discretion left to the Contracting Parties by Article 24 of the Charter does not imply that they have the right to depart from the minimum requirements of that text; the mechanism for compensating an employee who has been dismissed without good cause under national legislation is compatible with that legislation only if it provides for reimbursement of the financial losses incurred between the date of dismissal and the ruling of the appeal body, the possibility of reinstatement of the employee and/or compensation in an amount high enough to deter the employer and compensate for the damage suffered by the victim; it follows that the scale provided for in Article L. 1235-3 of the Labour Code, in its wording resulting from Executive Order No. 2017-1387 of 22 September 2017, insofar as it provides for the allocation of a capped compensatory allowance that does not cover the financial losses actually incurred by the employee since the date of the dismissal and which has no real deterrent effect for the employer insofar as the compensation cannot exceed a predefined amount and the compensation granted to the employee thus becomes inadequate over time in relation to the damage suffered, does not allow the employee dismissed without good cause to obtain adequate compensation proportionate to the damage suffered that also has a deterrent effect vis-à-vis recourse to unlawful dismissals and thus contravenes Article 24 of the Revised European Social Charter; by ruling as it did, when the margin for manoeuvre left to the Contracting States did not allow the French State to waive the minimum requirements laid down in Article 24 of the revised European Social Charter on compensation for the employee dismissed without good cause, by setting a scale of compensation solely on the basis of the employee's length of service and the number of employees at the company, the Court of Appeal has, on the contrary, violated that text, together with Article L. 1235-3 of the Labour Code, in its wording resulting from Executive Order No. 2017-17 387 of 22 September 2017."

Court's response

9. On the one hand, under Article L. 1235-3 of the Labour Code, in its wording resulting from Executive Order No. 2017-1387 of 22 September 2017, applicable to the dispute, if an employee is dismissed for a cause that is not real and serious, the court may propose reinstatement of the employee at the company, with maintenance of the benefits acquired.

If either party refuses reinstatement, the Judge shall award the employee compensation at the employer's expense, the amount of which shall be between minimum and maximum amounts.

10. According to Article L. 1235-3-1 of the Labour Code, in its version of 24 September 2017 to 22 December 2017, Article L. 1235-3 is not applicable when the court finds that the dismissal is vitiated by one of the nullities provided for in paragraph two of this Article. In this case, where the employee does not request continuation of his employment contract or his reinstatement is impossible, the Judge awards him compensation, at the employer's expense, which may not be less than the salaries of the last six months.

The nullities referred to in the preceding paragraph are those relating to the violation of a fundamental freedom, acts of psychological or sexual harassment under the conditions referred to in Articles L. 1152-3 and L. 1153-4, discriminatory dismissal under the conditions provided for in Articles L. 1134-4 and L. 1132-4 or subsequent to legal proceedings, in matters of occupational equality between men and women under the conditions referred to in Article L. 1144-3 and in the case of denunciation of crimes and serious offences, or to the exercise of a power of attorney by a protected employee referred to in Chapter I of Title I of Book IV of Part Two, as well as the protection given to certain employees pursuant to Articles L. 1225-71 and L. 1226-13.

11. On the other hand, in Part I of the European Social Charter, "The Parties accept as the aim of their policy, to be pursued by all appropriate means both national and international in character, the attainment of conditions in which the following rights and principles may be effectively realised", then listed, including the right of workers to protection in the event of dismissal.
12. According to Article 24 of that Charter, "With a view to ensuring the effective exercise of the right of workers to protection in cases of termination of employment, the Parties undertake to recognise:

(a) the right of all workers not to have their employment terminated without valid reasons for such termination connected with their capacity or conduct or based on the operational requirements of the undertaking, establishment or service;

(b) the right of workers whose employment is terminated without a valid reason to adequate compensation or other appropriate relief.

To this end the Parties undertake to ensure that a worker who considers that his employment has been terminated without a valid reason shall have the right to appeal to an impartial body."

13. The Appendix to the European Social Charter states that, "It is understood that compensation or other appropriate relief in case of termination of employment without valid reasons shall be determined by national laws or regulations, collective agreements or other means appropriate to national conditions."
14. The aforementioned Article 24 is contained in Part II of the European Social Charter, which states that, "The Parties undertake, as provided for in Part III, to consider themselves bound by the obligations laid down in the following articles and paragraphs", which it contains.
15. Part III of the Charter states that, "[...] each of the Parties undertakes:

(a) to consider Part I of this Charter as a declaration of the aims which it will pursue by all appropriate means, as stated in the introductory paragraph of that part;

(b) to consider itself bound by at least six of the following nine articles of Part II of this Charter: Articles 1, 5, 6, 7, 12, 13, 16, 19 and 20 Articles 1, 5, 6, 7, 12, 13, 16, 19 and 20;

(c) to consider itself bound by an additional number of articles or numbered paragraphs of Part II of the Charter which it may select, provided that the total number of articles or numbered paragraphs by which it is bound is not less than sixteen articles or sixty-three numbered paragraphs."

16. It follows from Law No. 99-174 of 10 March 1999, authorising the approval of the European Social Charter, and from Executive Order No. 2000-110 of 4 February 2000 that France has chosen to be bound by all the articles of the European Social Charter.

17. Article I of Part V of the European Social Charter, which deals with the "Implementation of the undertakings given", provides that, "[...] relevant provisions of Articles 1 to 31 of Part II of this Charter shall be implemented by:

(a) laws or regulations;

(b) agreements between employers or employers' organisations and workers' organisations;

(c) a combination of those two methods;

(d) other appropriate means."

18. Finally, Part III of the Appendix to the European Social Charter states: "It is understood that the Charter contains legal obligations of an international character, the application of which is submitted solely to the supervision provided for in Part IV thereof", which provides for a system of periodic reports and collective complaints.
19. Subject to the cases in which an international treaty is at issue, for which the Court of Justice of the European Union has exclusive jurisdiction to determine whether it has direct effect, the provisions of an international treaty, duly introduced into the domestic legal order in accordance with Article 55 of the Constitution, have direct effect where they create rights of which individuals may avail themselves and, having regard to the expressed intention of the parties and the general scheme of the treaty invoked, as well as to its content and terms, they are not intended solely to govern relations between States and do not require the intervention of any supplementary act in order to produce effects on individuals.
20. It follows from the above-mentioned provisions of the European Social Charter that the Contracting States have intended to recognise principles and objectives, pursued by all appropriate means, the implementation of which requires them to adopt additional implementing acts in accordance with the detailed rules referred to in paragraphs 13 and 17 of the present ruling, the control of which they have reserved for the specific system referred to in paragraph 18 (Plenary Assembly, advisory opinion of the *Cour de cassation* (court of Cassation), 17 July 2019, Nos. 19-70.010 and 19-70.011; 1st Civ., 21 November 2019, Appeal No. 19-15.890, published).
21. The Court of Appeal was therefore right to hold that, since the provisions of the European Social Charter do not have direct effect in domestic law in a dispute between individuals, the invocation of Article 24 of the Charter could not lead to the application of Article L. 1235-3 of the Labour Code being disregarded and that the employee should therefore be awarded compensation set at a sum between the minimum and maximum amounts determined by that text.
22. Since the European Social Charter was adopted by the Member States of the Council of Europe, the second basis of the claim, based on principles derived from European Union law, is ineffective.

23. The plea is therefore unfounded.

ON THESE GROUNDS, the Court:

DECLARES INADMISSIBLE the voluntary interventions of Syndicat des avocats de France (SAF) and Syndicat d'Avocats d'entreprise en droit social (Avosial);

DISMISSES the main appeal and the cross-appeal;

Leaves each party to bear its own costs;

Pursuant to Article 700 of the Civil Procedure Code, dismisses the claims;

Thus decided by the social chamber of the *Cour de cassation* (Court of cassation), and pronounced by the President at the public hearing of the eleventh day of the month of May of the year two thousand and twenty-two.

President : Mr Cathala
Reporting Judge : Barincou, Judge, Ms Prache, Judge Referee, assisted by Ms Safatian, Judge Auditor of the Documentation
First Advocate-General, : Ms Berriat
Lawyer(s) : SCP Célice, Texidor, Périer - SCP Didier et Pinet - SCP Zribi and Texier

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