



EMPLOYMENT NEWS

September 2016

Serious cause and proportionality principle

According to Article 35 of the Law of 3 July 1978 on employment contracts, each party can terminate the employment agreement without notice period or termination indemnity for serious cause.

A serious cause is defined as the serious breach which renders the continuation of the professional relationship immediately and definitely impossible.

In a order rendered on 12 January 2015, the labour court of appeal of Liège had decided that the serious breach alleged to the worker, namely diverting advantages that were intended for the clients of her employer to her own benefit (i.e., bonus points for a value of € 55.00), was not reasonable, according to the proportionality principle, in comparison with the sanction of losing her job without notice or compensation.

In its appreciation, the labour court of appeal of Liège had added a condition to the law by pursuing a proportionality test between the serious breach committed by the worker and the consequences of the corresponding sanction.

In its decision of 6 June 2016, the Supreme Court challenged this position. According to the Supreme Court, by linking the assessment of whether it was possible for the employer and the worker to pursue their professional collaboration despite the occurrence of a serious breach (which is the legal criterion of the serious breach) to the criterion of the proportionality between this breach and the loss of employment, the labour court of appeal of Liège violated Article 35 of the Law of 3 July 1978.

From what supersedes follows that when assessing the existence of a serious cause, one should solely take into account the impact of the shortcoming on the relationship of trust that should exist between parties to the employment relationship and the impossibility or not to definitively continue the collaboration. The possible disproportion between the breach alleged to the worker and the consequences of the sanction of being dismissed for serious cause should not be taken into account by the judge.

* * *

For more information, please contact **Pierre Van Achter** at +32 (0)2 533 17 36 or pierre.vanachter@simontbraun.eu