

Damage Compensation: Employee's Responsibility of the Damage and Employer's Responsibility

Vojo BELOVSKI

e-mail: vojo.belovski@ugd.edu.mk

Abstract

Damage represents violation of someone's subjective right or their legal interests.

Damage towards the employer can be caused by one or many workers. In cases in which the damage is caused by one worker, we have exclusive responsibility on the part of the worker. In the second case, damage caused by many workers, every worker is responsible for their personal part in causing the damage. To match the caused damage of the employer, the legislature anticipates the damage and assigns the degree of guilt.

If the employee during work or related to work, intentionally or by his negligence causes damage to a third person, employer is charged to repay the same the damage and the employee will be charged to repay the employer for the damage he caused.

According to the General collective agreement for the private sector in the field of economy, it is regulated that in the employer's level, harmful activities of the employee are classified and the compensation is defined by the level of the damage that is caused, so as the way and conditions of reduction or forgiveness of the compensation can be determined.

There are complex relationships that occur between the employer and employee, in the situations where the employee is harmed or damaged during his work or related to work. First level refers to the employee who suffers the damage at work

or related to work. It is employer's duty to offset the damage according to the general rights of responsible damage offset.

Second dimension or second level of the employer's responsibility to the damage caused to the employee refers to all the actions that the employee can suffer as a result of violating the rights of the work terms. Example, terminated work-relation. If it is proved in the procedure that termination of the work-relation has occurred without the legal cause, the employer's responsibility is undeniable.

Key words: *guilt, increased danger, culprit, damaged, damage or harmful activities.*

Introduction

Before we start analysing the damage issue, the author wants to refresh reader's memory and knowledge with the term, "causing damage". He who will cause damage to another person is charged to compensation for the damage unless he proves that the damage was not caused by his action. So the basic definition of liability in this situation is "inflicting damage", or one of the main sources of binding-law (law of obligation) relations. To reach the damage responsibility, some of the elements are 1) culpability for causing the damage, or 2) objects or activities from which increased danger arises in damaging the environment, when it is to be reported regardless the fault.

To reach responsibility, or obligation relations concerning the cause of the damage, it is necessary to match the following assumptions must be the case: a) subjects of obligation relations, or wrongdoer and injured exist; b) damage is done; v) damage activities take place; g) purpose link which links the damage with the damage activities, a "causal nexus, can be proven" ; d) reason of personal responsibility, guilt, can be ascertained, or object or activity from which increased danger arises in damaging the environment – responsibility without guiltiness (objective responsibility) can be shown.¹

¹ According to the Article 141 of LOR:

What does the term, damage'' mean?

According to the Law of obligation relations, article 142, damage is "decreasing someone's property (casual damage) and deterrence of its increasing (lost benefit), violation of personal rights as well (immaterial damage). (Before the amendment of the law, this provision contained the following term "as well as inflicting of other physical pain on emotional pain or fright (immaterial damage).

According to article 9 of the LOR, named "Protection of personal right"

1) Any natural or legal person, despite the protection of property rights, has the right to protection of their personal rights under the law.

2) As personal rights, according to this Law, also means the right for live, physical and mental health, honour, reputation, dignity, name, privacy and family life, freedom, intellectual activity and other personal rights.

3) Legal persons have all the personal rights, except those which are related to the biological essence of the individual, particularly the rights to dignity and good reputation, name of company name, trade secret, freedom of the entrepreneurship and other personal rights of these people.²

In this manner, the damage is a violation of someone's subjective right or legal interest.³ According to the Law of Labor Relations:

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- 1) The one that with guilt will cause damage to other, is responsible to compensate;
 - 2) for the damage that is caused with object or activities from which there is increased danger of damage of the environment, the responsibility is without the matter of the guilt;
 - 3) for the damage without matter of the guilt, one is responsible in other cases provided with law;

² From the content to the Article 9 can be noted that the types of personal rights are not limited only according to the law, but there are also other personal rights of natural and legal persons;

³ For more see, PhD Kiril Cavdar, 2011, Law of Obligations – commentary, practice and a file registry, Akademik – Skopje, articles 141-156, p. 264-300;

Employees' responsibility for the caused damage

Article 156:

1) Employee who, in the work premises or in some other work related relation has caused on purpose or by negligence damage to the employer is obligated to compensate.

(2) If more workers cause any damage each of them is responsible for that part of the damage they caused.

(3) If for some worker it is not determine how much of damage he caused, all workers are equally responsible and compensate the damage in equal parts.

(4) If more workers caused damage by intentional criminal act, they are responsible for the damage jointly.

5) if the worker on work, or in action related to work, intentionally or with carelessness has caused damage to a third party, the employer is responsible to compensate to that third person, and the worker is responsible to compensate to the employer.

Labor law, as can be seen from the Chapter XI entitled "**compensation,**" gives a special place to civil damages and legal responsibility. From the provisions contained in this chapter, it can be noted that the legislature edited three very important complexes of relations within the employment. The first complex of relationships includes responsibility for the damage caused by workers against employer. The second complex relates to the employer's responsibility for damage to his worker or group of workers will be caused to third parties. An important complex of relationships is that complex that includes responsibility of the employer for damages that will be caused to the employee or damages which are caused while the employee is at work or damages that are caused with actions related to the work (Article 159 of the Labor Code).

The provisions of Article 156 of the Labor Code legislator regulates the issue of liability for the damage caused to the employer. Damages against the employer may be caused by one employee or more workers. In cases where

the damage is caused by a worker we have the exclusive responsibility of it.⁴ In the second case, namely when the damage is caused by multiple workers, each of them is responsible for the part of the damage that he caused. To be liable for damage caused to the employer, the legislature provides that the same damage can be caused with some degree of guilt. It requires the employee to have acted with intent (*dolus*) or gross negligence (inadvertently irresponsible, extremely negligence) or *kulpa lata*. And, as it is provided, when it comes to intentionally caused damage, the intent may be direct (*dolus direktum*) when an employee (or group of workers) wants the action and and wants the consequence or the damage. On the other hand, as another degree of guilt, the intention may be possible (*dolus eventualis*), which means the employee wants the action, and does not like the result, but he agrees with the consequence.

Regarding to the negligence (*kulpa lata*- severe fault), civil legal science teaches us, this degree of negligence is apparent in those situation where an employee in a particular situation and does not show minimum of the required attention. Gross negligence means that the worker does not show a minimum of attention that is expected from every person. Ordinary negligence (*kulpa levis*-light fault), on the other hand means not handled with care that is expected from a careful and thoughtful man. Under the required attention in legal working relationship means normal or usual care attention.

In accordance with Article 156, as outlined, if the employee intentionally or with gross negligence causes damage he will be responsible to compensate the damage. If the damage is caused by many different people, we have another type of responsibility, we have correlative responsibility. We have two types of correlative responsibility. Namely, if the damage is caused by many persons, and for each of them it can be determinate their part in causing the damage, each of them will be responsible for their part of the caused damage. For example:

The persons A, B, C and D are employees of the construction company "Spring" from Skopje. They have caused damage to the employer in amount of 1,000 euros. In assuming that the part in the damage of the person A is 15%, person B 25%, person C 30%, and to the person D 30%, they will

⁴ The worker, who gave goods without receiving money, caused damage to the employer and he must be held reliable to compensate, (VSRM Rev.1154/97 from 11.03.1999, 36.VIII/22)

response in the following amounts: person A 150 euros, person B 250 euros, and the persons C and D, each of them will give 300 euros.

The second modality, i.e. type of correlative responsibility, is a situation in which it is not possible to determine how much of the damage each individual worker caused. The legal solution for resolving of this case, is that each of them will pay same amount, in our case the employees A, B, C and D will each pay the amount of 250 euros in recompense.

Besides the above named two types of responsibility, exclusive and correlative, there is also third type, and that is solidary responsibility. Solidary responsibility is harder type of responsibility for the damage of the causers, while the damaged has always stronger guarantee that he will be compensated. The responsibility will be solidary if the workers intentionally caused damage in a criminal act. The injured part has right from each of the causers, to seek the entire compensation in reparation. Of course, the damaged, in our case the employer, is not entitled to cumulative compensation, which means that he will seek for compensation from every worker in turn. If one of the workers pays the entire damage, in that case the other coworkers are discharged. But, in this case the worker that has paid the entire damage, has right to seek recourse from the other workers that have part in causing the damage, which is specific and internal civil-legal relationship.

With the provisions for the responsibility of the workers for the damage, the second complex is also arranged, namely, damage that is caused to a third person. Specifically, if the employee at work or in a work-related action, on purpose or with gross negligence has caused damage to a third person, the employer is obligated to that person to compensate the damage, and the employee will be obligated to compensate to the employer. In the second complex, namely, the damage, that is caused to a third person in labor jurisprudence has always been questionable. The term third person means any individual who is not employed by the employer and any legal person as a subject in law. But the term of a third person, according to the position prevailing in labor jurisprudence, means an employee employed by the employer, but only if the damage is caused out of the working process, out of work or work-related.⁵

⁵ For this questions, and for the “third party” in working relations, see in LL.M Osman Kadriu “*Одговорност предузека за штету коју радник предузека*”

Lump -sum compensation

Article 157

If determination of the amount of damage would cause disproportionate costs, the recompense can be determined in a lump sum, under the condition these cases of harmful actions of the employee and the amount of the lump-sum compensation to be determined by a collective agreement.

In the area of labor relation, as it is rule in the entire civil legal area, causing of the damage means special resources of relations. With causing of the damage the question for the need to compensate the damage becomes relevant. There are three modes in compensation for the damage. The first modality, which is fundamental and important, is applied as a rule, and that is integral damage, i.e. reparation of the damage completely. So, the damage should be assessed in entire amount and compensated. The second modality refers to the lump-sum compensation which, as it provides the legislator with the provisions of Article 157 of the Labor Code.

Under the provisions of this article for applying the lump-sum compensation, it requires meeting specific requirements. They are related to the determination of the damage and if it would cause disproportionately high costs, damages can be determined in a lump sum, but only for the cases stipulated by the collective agreement. From the known legal sources for the regulation of the labor relations, in this case it also requires such a provision to be contained in the collective agreement. Regarding these cases, the legislator decide on the damaging actions of the employee that have caused the damage. In practice there have been cases, and we are confident that we will have in the future, to apply the modality for lump-sum compensation.

According to the General Collective Agreement for the private sector of the economy (Consolidation), June 2010, in the Article 44 is regulated; "With collective agreement in the employer level, are determined cases of adverse action on the employee who determines the amount of lump-sum compensation, and the manner and conditions for reduction or remission of the payment of compensation."

проузрокује трећем лицу", Master thesis, Faculty of Law, Belgrade 08.07.1992;

According to the author of this paper, if the cases of hurtful actions of the employee and the amount of the lump-sum compensation are not determined by the collective agreement on the employer level, Article 157 and 158 of the Labor Code are inapplicable.

Reducing compensation and forgiveness of the payment of compensation

Article 158

The manner and conditions for reducing or remission of the payment of the compensation may be determined with employees' collective agreement.

The update arising from the legal decision under Article 158 of the Labor Code are related to the compensation of the reduction of the duty as a worker of the damage against the employer. This update has two dimensions: 1) reduction of the damages and 2) remission of the payment of damages. And for the application of this provision or legal decision, there must be a solution determined by collective agreement. So, this opportunity is expected to be covered by a collective agreement.

Reduction or remission of the payment of compensation in comparison to the previous two modes, integral and flat fee compensation, represents a third modality with responsibility for the damage and its compensation. In labor jurisprudence and comparative law when it comes to reducing and eventually forgiveness of the payment of compensation, which is an obligation of the employee, some legally relevant circumstances are always appreciated. These features include: the financial situation of the worker that has caused the damage; material and financial circumstances of the employer and the degree of guilt.

According to the diction of the provisions of Article 158 and their meaning (*ratio legis*), the legislator doesn't underline the degree of guilt as a

condition for reduction or remission, that is not the case in other labor – law jurisdictions.⁶

Liability of the employer for compensation

Article 159

(1) If the employee has been caused damage at work or work-related, the employer is obliged to compensate the damage, according to the general rules of liability for compensation of damages.

(2) The liability of the employer for compensation concerns, also, the damage caused by the employer violations of the rights of the employee's employment.

Regulations contained in Article 159 of the Labor Code, as can be seen, edits a special complex of relationships within the legal labor relations. It is one of the complex relationships that occur between employer and employee when the employee causes him harm while he is at work or work-related. Without any doubt this complex relationship is very difficult and from this complex in practice was, is now and will have in the future, most disputes that get final epilogue in the court proceedings.

With the legal solutions contained in this chapter - Chapter XI, but when it comes to the damage caused to the worker, there is a distinction on the two levels and two dimensions on the caused damage. The first level concerns the harm that the employee suffered at work or work-related. The employer is

⁶ In comparative legislation as in labor law science, when it comes to reducing the compensation and forgiveness of the payment of compensation, a side from the other conditions, the degree of guilt or the type of negligence of the worker who has caused the damage to the employer, was always underlined. And concrete, for the intentional causing of the damage, the provisions for reducing and forgiveness of the compensation, cannot be applied. This opportunity, in some circumstances, from case to case, is provided only for damage caused with gross negligence. Otherwise, let it be underlined here, for the damage caused with simple negligence (*kulpa levis*) the worker is not held responsible. Normatively the liability for damage caused with simple negligence is not provided.

obliged to compensate the damage according to the general rules of liability for compensation of damages. When it comes to the legal regulation of this complex relationship we also have notes that have double legislation. We have the provisions of the labor laws and decisions contained therein, on one hand, while on the other hand, in these cases, provisions of the Law on Obligations are also applicable. As is known in the law, especially in civil law, until the adoption of the Law on Obligations of legal regulation of relations resulting from inflicting damage we called and we had applied the general rules of property law.

The second dimension (level) of the employer's liability for damage caused to the worker refers to those damages that the worker may suffer as a result of violation of labor rights. Numerous are the cases and situations that mention that the employee suffers an injury to the rights that are acquired by the time of the establishment of employment, so long as it lasts. Just as an example, termination of employment. If in the procedure it is determined that termination of employment is without legal basis, then we have illegal termination of employment. The liability of the employer is undeniable.⁷

In order for this section of the paper to be more complete, the author clarifies the provisions of ZOO about "obsolescence" of claims of compensation.

With the obsolescence of this right, the need to require forced fulfillment of the obligation from Article 349, paragraph 1 of the ZOO, stops.

According to Article 365 of the ZOO "paragraph (1) the claim for compensation of damages expires in three years when the victim became aware of the damage and the person who committed the damage. Paragraph (2) in any case this requirement expires five years from the damage occurred."

In this manner, we can distinguish subjective and objective terms. Subjective terms is three years, while the objective term is within five years from the day when the damage occurred. But there are different limitation

⁷ For complex matters, issues and dilemmas regarding termination of employment and responsibility for the damage, see PhD. Osman Kadriu: "Liability for damages due to unlawful termination of employment", "Academics", Skopje, 2001;

periods if the damage was caused by an criminal act (see Article 366 of ZOO).⁸

⁸ Excerpt from a Collective Agreement of the employer:

COMPENSATION OF DAMAGE

Article 90

The employee who, at work or for work-related action, on purpose or with severe neglect will do harm to the Company is obliged to pay compensation.

The term cause damage to the Company includes:

- Devaluation of the asset, ie the value of the property of the Company;
- Not allowing the asset to progress (ie, lost profit);
- Damage caused within the scope of his duties or outside of them;
- Damages made with the use of a motor vehicle that is owned by the Company;
- Damage to the inventory owned by the Company;
- Damage on the reputation of the Company;
- Material or immaterial harm to the Company of any kind;

If the damage was caused by a number of workers, each worker is responsible for part of the damage caused.

If for any worker cannot be determine the portion of the damage caused, it is considered that all workers are equally responsible and compensate the damage in equal parts.

If more workers caused the damage by intentional criminal act, they are jointly liable for the damage.

If a worker, while he is on work or for work-related purpose or by gross negligence has caused damage to a third party, the employer is obligated to that person to compensate the damage, and the employee is obliged to compensate the employer.

Article 91

The Chief Executive Director or another authorized person by him, initiates proceedings for the determination and payment of damages.

The employer may decide not to establish a procedure for the recovery of damages and through committee, but directly to request compensation through the court if at the time he found out about the damage the employee is no longer employed in the Company (the employer).

If the amount of damage cannot be determined, or if the employer decides not to begin a procedure for the determination and payment of the damages and he seeks redress before a competent court, the Commission shall determine the damage.

Commission under paragraph 3 of this Article shall be established by the CED or an authorized person. The Commission consists of a Chairman and two members.

The Commission shall determine the existence of damage, the circumstances under which it occurred and its height.

The author of this paper has decided to make a comparative analysis of the legislation for the issue of compensation in the newest Labor Relations Law of the Republic of Croatia, with one in the Labor Relations Law of the Republic of Macedonia. This is because Republic of Croatia (as the newest member of the EU) in their law, has integrated and agreed each directive from the European Union, i.e. the same are integrated in their national legislation.⁹

Article 92

The existence of damages and the amount thereof, and the responsibility for its perpetration, shall be determined by the CED or an authorized person primarily based on written documentation, and if this is not enough, with the employee statement and questioning witnesses or other evidence proposal by the Commission.

The amount of damage is determined based on the price list of the accounting value of the damaged item, and if that is not possible, the Commission assesses the damage with the help of experts.

If the CED or an authorized person determines that the employee is materially responsible, decides on the amount of damage.

If the CED or an authorized person determines that the damage is not caused by the employee, or that he is not responsible for the damage, the employee is released from the obligation of compensation.

Article 93

Decision on compensation is adopted by the CED or an authorized person by him.

Against the decision to the employee compensation, which is at that time employed in the Company, has the right to appeal to the Authority of management within 8 (eight) days of the receipt of the decision.

If the employee, after the decision on compensation, within 30 days has not compensated the damage, then the CED or an authorized person shall initiate proceedings before the competent court.

Article 94

Chief Executive Director or an authorized person by him, may, in cases of justifiable reasons, release the employee, in whole or in part of the payment, in the following cases:

- If previously, he hasn't caused any damage to the employer;
- If the damage is in a small-scale;
- If damage is done to protect the health and property, and
- If the damage is done even though the employee has done everything to prevent it.

Article 95

The employer is liable for the damage that the employee has caused to individuals or legal entities in the work or work-related. The employer may require the employee's compensation for the payment if the worker has done the damages intentionally or with gross negligence.

⁹ 14 INDMNIFICATION

After the analysis – comparison, the opinion of the author, i.e. he establish that the solutions in our Labor Code (regarding to the object of the analysis of this

Responsibility of employees for damage caused by the employer.

Article 107

- (1) A employee at work or in connection with work deliberately or due gross negligence causes damage to the employer, is obliged to compensate the damage.
- (2) If the damage is caused by several employees, each employee is responsible for that part of the damage that he/she caused.
- (3) If it cannot be determined which part of the damage is caused by each employee, it's believed that all employees are equally liable and shall compensate the damage in equal parts.
- (4) If several employees intentionally have caused damage with criminal offence, response for the damage in solidarity

Predetermined compensation of damage

Article 108

- (1) If determining the amount of damages would cause disproportionate costs, for certain harmful acts of the damage, can be provided in advance.
- (2) The harmful acts and compensation referred to paragraph 1 of this Article, can be provided with collective agreement or with the rulebook.
- (3) If the damage is caused by wrongful act referred to paragraph 2 of this Article, bigger from the determined amount of compensation, the employer may request compensation of the amount of suffered and ascertained damages.

Recourse responsibility of workers

Article 109

A worker at work or in connection with the work, either intentionally or due to gross negligence causes damage to a third party, and the damage is paid by the employer, the employer is obliged to reimburse the amount of compensation paid to a third party.

Reduction or exemption of duties of workers compensation for damages

Article 110

The collective agreement, the rulebook or the employment contract may establish the conditions and methods for reducing or exempting a worker from damages.

Employer's responsibility for damage caused to a worker

Article 111

- (1) If a worker suffers damage at work or in connection with the work, the employer must compensate the worker for the damage under the general rules of mandatory law.
- (2) The right to compensation referred to in paragraph 1 of this Article shall also apply to damage caused by the employer the employee's violation of labor rights.

See the newest Labour Law of the Republic of Croatia, which has entered into force on 07.08.2014 year.

paper) in accordance with the directives of E.U. which derives from the equivalence of the solutions in our Labor Code with the Labor Code of Republic of Croatia.

In this part we can conclude that the Macedonian legislator committed harmonization (alignment) with the directives of E.U.

Concluding observations

In order to get to the responsibility of causing the damage, which includes worker's responsibility and liability for damage to the employer, one of the element is: 1) **the existence of fault** for causing the damage, or 2) the existence of **objects** or **activates** of implying increased risk of harm to the environment, when he is responding **regardless of fault**. Legislator regulates three very important complexes of relationships within the employment relationship. The first complex of relations refers to the responsibility of the workers of the damage done against the employer. The second development concerns the liability of the employer for damages from his worker or group of workers will be caused to other people. Third, and important complex of relations is the one that relates to the liability of the employer for damages which from him or his organ will be caused to the employee, i.e. for the damage which is caused to the employee during work or in work-related.

For responsibility of the employee, when is caused damage to the employer is required that damage to be committed intentionally or with serious negligence, but not caused by ordinary negligence (*kulpa levis*- light guilt) are not handled with care that required especially careful and **considerate man**.

Solidary responsibility is always tougher kind of responsibility for the pest in the responsibility for the damage while the victim (creditor) is always a stronger guarantee that the damage will be able to be repaired. The responsibility will be solidary if the workers caused damage with deliberate criminal act. The injured party has the right of any of the pest to require full reparation i.e. the entire fee.

When it comes to the damage caused to the employee, there is a distinction between two levels in two dimensions of the caused damage. The

first level refers to the damage suffered by the employee at work or work-related. The employer has duty to compensate the damage according to the general rules of liability for compensation.

The second level of the employer's responsibility for damages caused to the employee refers to those damages that the worker may suffer as a result of violations of employment as all illegal termination of employment, unpaid wages and benefits and other injuries to the rights of the employee by the employer.

With particular respect to the assembly of RM, as legal representative of the legislature and the professional bodies of the government and the district Ministry, it is necessary to consult and hear the opinions of expert in order to establish a consistent legal system (in this area) to keep in order their wellintented and expert suggestions, so they would not be brought into situation of permanent amendments and creating confusion in this area.

Recommendation to the legislator is to design a consistent law on labor relations, compliance with Conventions of the ILO (International Labor Organization) and the European Union (taking account of our customs, traditions and rights acquired In the past), how they could be users of this law (lawyers, attorneys, courts, union, non-governmental organizations and others) and those who are directly related (employers and employees), once, for a long time, they know their rights and obligations of employment and seek their authentic – (true) implementation – (application in practice).

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Contribution:

1. Form

Lawsuit for the compensation of damages which the employer caused violating the wrights of the worker that come from the labor relationship – compensation of damages that comes from the illegal firing of the employment contract (article 159 line.2 from labor relationship law).

The responsibility for compensation of the employer refers, also, including the damage that the employer caused violating the wrights of the worker that come from the labor relationship.

Lawsuit

The Plaintiff was employed in the firm of the defendant in terms of undefined time, the work place was-----starting from-----
-----year. With Decision numb. _____ year, the plaintiff
employment contract was canceled numb. _____ from year.

Proof: The Decision

With The Final decision of Primary court
_____ P.No. _____ Year confirmed with
the decision of the Appeal court _____, Gz.No.
_____ year, this decision that refers to the defendant was
overturned as unlawful, because it was determined that the plaintiff did not do
any violations of the working order and discipline which represents Teft
according to article 89 line 1 section 5 from Labor relationship law.

In the time line from _____ to _____ year.
The plaintiff was out of work with no income.

Proof: indisputable fact.

According to Article 102 par. 2 from Law of Labor, “Besides coming
back to work, the employer is bound to pay off the worker wage paid which

usually would be paid off if he was employed, according to the law, collective agreement and the employment contract, reduced with the amount of the income that the worker achieved with his work, after the employment was terminated. According to par.159 from Labor relationship law“ If any damage is induced referring the worker during work time or anything related to work, the employer is bound to recover the damage, according the general rules of liability for damages. This Liability for damages refers also to the damage that the employer caused violating the wrights of the worker that come from the labor relationship.

This case is about violating the wrights of the worker that come from the labor relationship.

The Plaintiff, thus claims for compensation that refers to the defendant has submitted _____ year. Thou the defendant did not acted according to the claim in the legal limit of 8 days, prompted this lawsuit.

The compensation is _____ denars that can be determined from the Confirmation No. _____ Year, issued from the defendant accountancy

Proof: Confirmation

Consequently the plaintiff suggest, title court after holding a hearing, to put the proposed proofs and decide:

Judgment

The LAWSUIT is accepted.

The defendant is OBLIGATED _____ to the plaintiff for recoverable damages that comes from the illegal firing of the employment contract, in the form of unrealized income, for the period from _____ to _____ year, to pay him of total _____ denars, with a simple interest calculated from _____ to _____ year, until the day of the pay of, within 15 days after the receiving of this decision, under the fear of enforced collection.

The defendant is OBLIGATED to offset to the plaintiff the costs of this procedure in the amount of _____denars, within 15 days after the receiving of this decision, under the fear of enforced collection.

Plaintiff:

For the plaintiff

Authorized person

Lawyer. _____

2. Judgement for the cases where the employer caused a violation of the rights of the employee's employment - for unlawful recall of employment contract. (Article 102 of the Work Code)

JUDGEMENT

The revision of the plaintiff is ADOPTED.

The decision of the Appellate Court in Bitola ROZH.br.245 / 10 and the decision of the Primary Court in Bitola RO.br.349 / 09 of 05.02.2010, were MODIFIED AND ADJUDICATE:

The plaintiff's claim H. C. of B, is ADOPTED.

The decision of the culprit - Director General of the Sugar Factory "November 4th" AD B. nr.04-2951 / 1 of 01.10.2009 year, is CANCELED AS UNLAFULL, because with these decision the plaintiff became a denounce of the contract of employment for violating on work discipline and order and decision of the Board of Directors of plaintiff No. 02-3170 / 3 from 16.10.2009 year that the plaintiff's complaint rejected as unfounded.

Defendant IS OBLIGATED to return the work with all employment rights on the job that matches their qualifications and to reimburse the costs of the proceedings in the amount of 38,140.00 denars. MKD is within 8 days of receipt of the conviction.

Explanation

The Primary Court in Bitola with the decision RO. no. 349 / 09 from 05.02.2010, rejected as unfounded the claim with which the plaintiff sought to invalidate the decision of the Director General of the culprit nr.04-2951 / 1 year from 01.10.2009 for providing the cancellation of employment contract due to breach of the work order and discipline and the decision of the Board of culprit n.02-3170 / 3 from 16.10.2009 year that the objection of the plaintiff's claim and refused to oblige the defendant plaintiff returned to work on all employment rights on the job that matches their qualifications, and to

reimburse the costs of the proceedings in the amount of 22,940.00 denars. Court ordered plaintiff to reimburse the defendant the costs of the proceedings in the amount of 21,940.00 denars in within 8 days after receipt of the judgement.

The Appeal Court in Bitola with the decision ROZH. Nr.245 /10 from 11.05.2010 decided to dismiss the complaint of plaintiff and to confirm the decision of the Primary Court Bitola RO. Nr. 349/ 09 of 05.05.2010

Court of Appeal in Bitola with the decision ROZH.nr.245 / 10 from 11.05.2010, decided to dismiss the complaint of plaintiff and to confirm the decision of the Primary Court Bitola RO.nr.349 / 09 of 05.02.2010.

Against the secondary decision the plaintiff filed an appeal due to essential violations of the provisions of the civil procedure and incorrect application of substantive law, and seek the draft revision to be adopted, and the first instance decision to be refused in a way that the plaintiff's claim to be fully adopted, the previous decision to be cancelled or to have a re-trial at first instance court.

The defendant filed an answer to the revision, which refutes the allegations outlined in the appeal and proposed to be rejected as unfounded.

Supreme Court of the Republic of Macedonia, upon examination of the records of the case, the allegations in the appeal and the response to the appeal, examining it appealed conviction pursuant to Article 377, paragraph 3 of the Law on Civil Procedure, found:

The revision is based.

Revisionist statements are based on incorrect application of substantive law.

Namely, the lower courts found that the plaintiff was employed by defendant as a machinist for the steam boiler in RE ENERGY with a decision no.04-2951 / 1 from 01.10.2009, from the General Director of the defendant. The plaintiff got fired and the employee cancelled his the employment contract due to breach of work order and discipline in accordance with article 2, paragraph 1, item 37 of the Rules of the work order and discipline and

Article 239 paragraph 2 of the Labor Law, for participating in organizing a illegal strike. Therefore his employment was terminated with a notice period of one month. The explanation of the decision stated that the plaintiff participated in organizing the strike that was not organized under the law, that the illegal strike which started on 17/03/2009, which was established by a decision of the Appellate Court Bitola ROZH.No.733 / 09 from 07.09 .2009, with the strike which conviction was denied as contrary to the Labor Law. Dissatisfied with the decision of refusal, the plaintiff filed an appeal to the appellate authority of the defendant, or to the Board, claiming that the plaintiff had such striking finding that the strike was legal, and objected to the limitation and the procedure for cancellation pursuant to Article 94 of the Labor Law. At the moment, when the primary court brought the final decision that prohibited the strike, the plaintiff stopped the strike together with the other strikers and informed the defendet as an employer that they have stopped the strike.

Upon the appeal of the defendant to the Appellate Court - the Board of Directors on 16.10.2009 came to the decision, by which the plaintiff's complaint was rejected as unfounded. Plaintiff was a member of the Strike Committee as a Chairman of the Strike Committee and he was involved in the strike until its completion or termination of the strike.

Based on the facts, the lower court brought a decision on granting the dismissal of the plaintiff on the basis of Article 239 paragraph 3 of the Labor Law and confirmed the decision of the Board for the illegal grounds for organizing the strike, that was confirmed with decision on the Appellate Court in Bitola. Because the plaintiff was a member of the trade union and chairman of the strike committee, and was one of the organizers of the strike, the lower court found that he was justify fired.

The Supreme Court of the Republic of Macedonia found that the lower courts have applied the substantive law incorrectly, having in mind the factual situation that the plaintiff elaborate in the revision.

Having in mind the provisions of Article 239 paragraph 3 of the Labor Low, as well as the right to strike from the beginning and with its extension of 17.03.2009 that was organized by the trade union in which the plaintiff was a member of the strike committee, is not a gound to believe that the plaintiff was also an organizer of the strike. The strike was organized by trade unions, while the strike committee managed the strike. The strike was found inadmissible by

the decision of the Appellate Court in Bitola ROZH.No.733 / 09 from 07.09.2009, because it was not organized in accordance with law. Therefore, the court found that, the plaintiff, as a member and chairman of the strike committee, can not be considered as an organizer of the strike from 16.03.2009 that was extended from 17/03/2009.

Given the above, the subsequent revision is adopted, the judgment of the lower courts are transformed, the request of the plaintiff is adopted, in accordance with Article 387 paragraph 1 of the Law for Civil Procedure.

According to Article 148 and Article 160 paragraph 2 of the Law for Civil Procedure the court obliges the defendant to reimburse the plaintiff's costs of the proceedings in these amounts: the writing of the claim amount of 3900.00 denars, the writing of the authorization amount of 1300.00 denars, for court fee lawsuit and the decision on the amount of 1.200,00, denars, to represent the plaintiff on three main hearing for each amount of 4680,00 denars, the writing of the appeal amount of 5850,00 denars , for the writing of judicial appeal fee amount from 2400,00 dennars, the writing of the appeal amount of 5850,000 denars and court fee for the appeal amount of 2400,00 denars, or a total amount of 38140,00 denars.

Decided in the Supreme Court of the Republic of Macedonia on 29.02.2012 under the Rev2.br.898/2010th.

President of the board- judge

Safet Aliu s.r.

For the accuracy claims: The secretary

3. Judgment for compensation of the damage to the employee caused at work or work-related (Article 159, paragraph 1 of the Labor Code).

Primary Court Skopje I as the first instance court, represented by the judge _____ on 26.09.2006 per day, 2006 brought the next public release:

JUDGEMENT

The claim of the plaintiff, Z.K. form, is PARTIALLY accepted.

The defendant DG “Beton” AD Skopje is obligated to pay to the plaintiff compensation for suffered non-material damage and for physical pain in amount of 80,000.00 denars: for suffered fear amount of 50.000,00 denars and for suffered mental pain and lowering of the bodily activity amount of 130.000,00 denars, all with interest in accordance ZVSK, as well as to pay the compensation of material damage amount of 5586,00 MKD and to reimburse expenset that have arisen during the proceedings in the amount of 37.340,00 denars, all within 8 days after receipt of the judgment.

Larger claim of the plaintiff for the difference of the requested amount _____ is rejecting as unfounded.

From the explanation

The plaintiff in the lawsuit and in the court hearing, through his attorney said that on 26.11.2001 at the Dam Facility “Lisiche-Veles” accident happened on the work place, which caused damage to the plaintiff that was an employee of the defendant in the working position PC. The injury (broken left forearm and injury on the chests) was made as a result of preforming dangerous activity or in correlation with dangerous object - icing bucket used for climbing the aggregate to the mixer. The defrosting of the bucket was made with heating the bucket, and during the hitting of the bucket, the machine has turned on injured the plaintiff, lift him up, and during his fall he

got the injuries. After the injury of the plaintiff, the paramedics were immediately called and he was taken to the hospital in Veles (for this there is a document). In the hospital in Veles was made X-Ray and was found out that the plaintiff has fracture on the left wrist, and the injury from that type is considered as hard physical injury. Because of this the plaintiff has suffered material and immaterial damage.

Evidence attached.

Costs requested.

The defendant in the answer to the lawsuit and from the claim in lawsuit has disputed this, arguing that the named violation of the plaintiff has not occurred as a result of performing a dangerous activity and or in correlation with a dangerous object because the machine at the time was not in function. This case is nothing more than an accident and the amount of immaterial damage is not determinate according of the plaintiff's injuries. Moreover the defendant is insured in accident case - accident with contract (policy) for insurance nr. 401500059 between the defendant ADOE "QBE Macedonia"-Skopje, and the right to compensation may exercise the insurer.

Evidence suggested.

Costs requested.

The court, after hearing both sides, and having in mind the following evidences: witness statement of I.A., has read the files of the defendant no. ____ from 13.12.2004, the statement of S.S., X-Ray finding for the plaintiff (and other overall medical documentation), evaluated the evidence in accordance with Article 8 of the Law for Civil Procedure and came to the following facts:

The plaintiff was employed by the defendant on the work assignment as PC worker. Specifically his assignment is taking samples of material to the laboratory, but when is needed he also works as general worker. By order of his immediate supervisor A.I., at that day 26.11.2004, he worked as a general worker in concreting _____.

The court found that the claim is partly based of the following reasons:

According to the Article 159 of the ZOO “the damage occurred as a result of performing a dangerous activity and or in correlation with a dangerous object unless it is proved that they were not the cause of the damage.

According to Article 160 from the same law for dangerous items the holder is responsible, and the damage from dangerous activities is in responsibility to the person that works with it.

In this case the Court considers that the machine that carries huge amounts of sand is a dangerous subject but the court finds that a dangerous activity is also the way in which is performed the manual humbling of the sand. The statements of the complainant and of the witness A.I. showed that after the leakage of the sand, the bucket was going up with enormous volume sand. With the fact that this is done in exceptional conditions in winter, like the witness A.I. said, it's completely clear that the sand is lacking alone. Namely as the witness A.I. said and was decisive with his claim, the person that is on that position, is humbling until the needed quantity of sand pass away because it has wetness, and then verbally communicate with the person which is up to confirm that the bucket can be taken up. All this I s dangerous because sometimes there's always an option, the person which is down to be not heard or to be wrongly heard.

According to Article 204 paragraph 1 of the Labor Law (Official Gazette 80/93 _____ “if an employee suffers damage at work or work-related is obliged to compensate the damage according to the general principles of liability for damages”. (This provision is almost identical to the provision of Article 159 paragraph 1 of the Labor Law of 2005- author's note).

In the present case, as stated above, the case is about dangerous object or dangerous activity, so the employer is obliged to compensate the plaintiff.

Pursuant to the Art. 189 of Law of Obligations (Official Gazette 18/01) for suffered physical and mental pain due reduction of bodily activity, fear, damage to the reputation, honor, freedom and the rights of the individual, death of a close person, the court will decide on fair compensation, especially in cases where the pain and the fear and their duration justify this, no matter of the compensation and her absence.

According to the type and the nature of the suffered injury and their

duration to the plaintiff, the court found that it is fair to set the compensation in amount of 80.000 denars instead of the requested amount of 200.000 denars, because the requested amount is very high.

When the court decided that the amount is 50.000 denars, he had in mind the suffered fear at the moment of the accident, as well as fear of the consequences which he felt in the time of the immobilization that happened after the previous performing of the fixing of his arm (he felt the pain twice, because of the reposition of his arm and the need of a second immobilization). Never the less the court finds that the requested amount is very high, and refused the difference in 150.000 denars.

The court, when deciding in the amount of 130.000 denars for suffered psychological pain and for decreased bodily activity, bear in mind that in this case the injury limits the plaintiff in some activities that require two healthy hands, but never the less set the compensation in this amount because the requested amount is set very high and doesn't correspond with the injury.

According to article 266 form Law of Obligation and in accordance with Article 1 from the ZVSZK, the court made a decision that the interest of all amounts regarding immaterial damage will be from the day of the court decision – 26.09.2006.

In the time, when the court has brought his decision, he was aware and take into consider the fact that according to the defendant this was a case of an accident and that the plaintiff can be reimbursed from the policy, but found that the policy covers only cases of accidents with deadly consequences or permanent disability or death from disease, and not for the grounds in this case.

The court decided that the cost for the trial, according article 148 of the Law on Civil Procedure, and obliged the defendant to compensate the plaintiff for the costs that have accrued during the proceedings in an amount of 37.340.00 denars, relating to: the cost for the writing an lawsuit 3.900,00 denars, for attending on tree court hearings 4.680.00 for every hearing (in accordance of article 8 of AT for cases over 100.000,00 denars). For the forensics 8.000,00 denars and for court fee 5.700,00 denars.

The court dismiss the larger demand for the reimbursement of the cost, in a diference with 49.160,00 denars, because the court adjudicated the

decision with the success of the dispute.

PRIMARY COURT IN SKOPJE I

X II. No.4536/05 from 26.09.2006

This decision is confirmed with the decision of the Appellate Court in Skopje.