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The Supreme Court establishes that companies cannot dismiss workers without a 'prior hearing'

Ruling No. 1250/2024

The Supreme Court has ruled that, in cases of disciplinary dismissal, companies are required to guarantee a prior hearing procedure before proceeding with the termination of the employment contract.



What you need to know

- Previously, it was considered that, except in cases specifically provided for by law and/or collective agreement, it was not necessary to grant a prior hearing to workers in the event of disciplinary dismissal.
- The Supreme Court has now ruled that, although Spanish law does not specifically regulate the prior hearing as a necessary requirement for carrying out a disciplinary dismissal, Spain's ratification of ILO Convention 158 (hereinafter, the "Convention") introduced such an obligation. Therefore, in addition to the cases already provided for by law or collective agreement (for instance, a disciplinary dismissal of a workers' representative), it will be necessary and prudent to carry out a prior hearing procedure in all cases of disciplinary dismissal.
- Article 7 of the Convention allows for a waiver of the prior hearing only in exceptional situations where it is not "reasonably possible." However, this must be assessed on a case-by-case basis, as this exception cannot be used as a pretext to avoid complying with the worker's right to defense.





(I) What practical conclusions can we draw from this ruling as of now?

There has been a radical shift in jurisprudence, and we believe that, from this point forward, a prior hearing must be a mandatory and necessary requirement for carrying out a disciplinary dismissal, complying with all legal guarantees. If this requirement is omitted, we would be facing a declaration of improper dismissal, unless there are grounds for nullity, in which case it would be considered null and void.

It is important to highlight that, in our opinion, the prior hearing procedure would not be required in cases of dismissal for objective reasons.

The ruling has yet to resolve, given that it was not the subject of the lawsuit, what the consequences would be regarding the classification of the dismissal for all those circumstances that could occur between the communication to the worker of the opening of a prior hearing process and the possible dismissal, such as a request for a reduction in working hours for legal custody or a temporary disability.

(II) Does this apply to disciplinary dismissals carried out before the publishing of the ruling?

According to the new doctrine of the Supreme Court, it can be argued that this new obligation does not apply to dismissals carried out prior to the publication of this ruling.

(III) Could the provisions of Article 55.2 of the Workers' Statute be applied by analogy to remedy the non-observance of this requirement?

Although the ruling does not address this issue, we do not want to conclude this Informative Note without making this reflection. Article 55.2 of the Workers' Statute provides for the possibility of 'remedying' a dismissal if the formal requirements established in Article 55.1 of the Workers' Statute are omitted, including, among others, the omission of the prior hearing for union delegates.

This article establishes that, if the formal requirements of the disciplinary dismissal are not met, a new dismissal can be carried out, remedying the unobserved requirements, within a period of twenty (20) days from the first dismissal, keeping the worker on the payroll during these days and paying the corresponding wages for these intermediate days. By analogy, and even more so in the period of legal uncertainty in which we will find ourselves after the publication of this novel ruling, we believe that, if necessary, we could rely on this provision to carry out this 'prior hearing' for the worker and comply with this new requirement, if it has not been done previously to the dismissal and if we are within the time frame allowed by the norm.

Nevertheless, we recommend always following this procedure. However, if, due to any circumstance such as oversight or negligence, and until this process is fully established in our dismissal procedures, we may attempt to rectify the situation by relying on the provisions of Article 55.2 of the Workers' Statute.



(IV) Conclusion

From this point forward, a prior hearing must be conducted for all disciplinary dismissals, as the failure to do so will at least result in the dismissal being deemed unfair (or null and void if there are grounds for nullity).

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