

Supreme Court rules that borrowing money from customer is just cause for termination

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Facts

Background

First-instance decision

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Comment

The Supreme Court recently issued a decision concerning an employee's dismissal for borrowing money from their employer's customer. The Supreme Court reversed the first-instance labour court decision and ruled that the termination was lawful based on the fact that the employee had acted against the rule of integrity and honesty and damaged the employer's reputation.

Facts

The employee worked as a medical representative and went to another city in eastern Turkey for work, where, according to the employee, he ripped his trousers and needed to buy new pair. However, he had forgotten his wallet and had to borrow money from a customer of his employer, with whom the employee thought he had a friendly relationship. However, the employee was embarrassed to say that he needed to buy new trousers, so he said that he needed the money to pay for his accommodation.

The employer stated that the employee had borrowed money from the customer using the name of the company and another employee without the knowledge of either. Further, the employee had not paid back the money that he had borrowed when promised, so the customer had referred the situation to the company. This had resulted in damage to the employer's reputation in the eyes of a third party and constituted misuse of the employer's trust. The employment relationship had thus been terminated under Article 25/2-e of the Labour Act 4857 with immediate effect.

Background

Article 25/2 of the Labour Act non-exhaustively states that any violation of the rules of ethics and goodwill gives an employer the right to terminate an employment relationship based on just cause.

(1) Article 25/2(e) states that employee actions which do not comply with the principles of honesty and faithfulness to the employer – such as misuse of employer trust or stealing or disclosing an employer's trade secrets – give an employer the right to terminate an employment relationship based on just cause.

The employee filed an action which argued that the employer had terminated his employment agreement without just cause and requested his severance and notice payments.

First-instance decision

At the end of the proceedings, the first-instance court accepted the case and ruled that the employer's behaviour did not constitute just cause for termination; thus, the court found that:

- the termination was unjust; and

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- the employee was entitled to severance and notice payments.

The court focused on the fact that the termination did not comply with the termination as last resort principle and stated that the employer's allegations did not constitute just grounds for termination.

The first-instance court ignored the fact that the employee had:

- lied to his employer and the employer's customer;
- misused the trust built by the employer; and
- damaged the employer's reputation and trustworthiness in the eyes of the customer.

The employer appealed the decision.

Supreme Court decision

On 20 February 2014 the Seventh Civil Chamber of the Supreme Court reversed the decision and dismissed the case.⁽²⁾

In its decision, the Supreme Court stated that it was clear from the evidence in the case file that the employee had borrowed money from his employer's customer and been unable to prove that he had bought new trousers on the day of the incident. The customer had called the company and stated that the employee had borrowed money for accommodation expenses and asked if the company had paid his expenses to the employee.

More importantly, the employee had borrowed money from a customer using the company as a reference even though he had been aware of the fact that the company had paid the accommodation expenses. Further, he had not paid the money back in time and the company had been made aware of the incident by the customer.

The court ruled that the employee's behaviour constituted just cause for termination because it had clearly:

- placed the company in a difficult situation; and
- damaged the company's reputation.

Further, the court found that the employee's actions had contravened the rules of integrity and honesty and thus given his employer the right to terminate the employment relationship due to just cause without any doubt.

Comment

The Supreme Court made a similar decision on 14 June 2004, in which it stated that a customer representative who borrows money from a client's distributors clearly damages the client's commercial reputation, thus giving the employer the right to terminate an employment agreement based on just cause under Article 25/2 of the Labour Act without paying severance or notice payments.

In both decisions, the Supreme Court evaluated the disputes by departing from the common tendency of supporting the economically weaker party. These decisions are good reminders for first-instance and regional appeal courts to take employer rights into consideration. In cases where an employee strays from the required level of integrity and honesty and damages an employer's reputation in the eyes of its customers, forcing an employer to continue an employment relationship would have been a controversial approach.

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Endnotes

(1) If an employer terminates an employment agreement due to a just cause arising out of Article 25/2 of the Labour Act (ie, a termination based on just cause due to employee actions that do not comply with the principles of integrity and honesty), the employer can terminate the employment agreement with immediate effect without paying any severance.

(2) Decisions rendered by the Supreme Court in relation to labour law matters are final.

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