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Leave without saving the PO without an order is not a reason for dismissal!

The Supreme Court of the Russian Federation, by Decision No. 13-KG20-1-K2 dated 22.06.2020, took the side of the employee, who did not wait for the vacation order, which required the approval of the management.

The employee went to court with a claim to cancel the order of dismissal and reinstatement at work, invalidation of the entry in the work book about dismissal, collection of wages for the time of forced absenteeism, compensation for moral damage.

The employee, being the deputy general director of the enterprise for finance and economics, was dismissed for absence from the workplace (absenteeism) for two days without good reason.

The situation was that the employee demanded from the manager to grant him two days of unpaid leave, due to certain family circumstances, namely a funeral. The employee received the verbal consent of the manager, after which the employee submitted an official application addressed to the manager, which was registered for the transfer and publication of the order. However, the employer decided to dismiss the employee due to a one-time serious misconduct, with the entry of this fact in the labor book. The employee, in addition to the requested two days, was on outpatient treatment for a week due to a mental disorder, and another two weeks on sick leave, which was documented.

The courts of first instance, appeal and cassation did not support the employee, but only pointed to the fact that without an official order on unpaid leave, the absence of an employee from the workplace is a disciplinary offense, and therefore the dismissal was lawful.

The Supreme Court sided with the worker in connection with the following. First of all, for the reason that the employee verbally agreed and submitted a corresponding written application two days before the onset of the disputable vacation. In this regard, even if the management changed its opinion and attitude, decided to refuse the employee his demands, it had enough time to convey the relevant information to the employee so that a situation would not arise when the employee was unlawfully absent from the workplace. Moreover, it was the verbal consent to leave that was common in the organization, and therefore other employees did not submit written leave applications at all.

In addition, the courts did not take into account the documentary evidence of a legitimate absence from the workplace in the following days.

The courts drew attention to the fact that the employee could not submit the original application, which, according to the employee, was handed over to the relevant employees for drawing up a vacation order. However, the Supreme Court drew attention to the fact that this fact, first of all, may indicate significant violations by the employer in the process of obtaining leave, as well as the adverse consequences of such violations cannot be assigned to the employee and deprive him of the right to grant leave without pay.

In addition, the Supreme Court once again pointed out that in cases of reinstatement of a person at work, if an employment contract with him is terminated at the initiative of the employer, the obligation to prove the existence of legal grounds for the appropriate termination of the employment contract with the employee, his dismissal, should be imposed on employer.

Thus, the Supreme Court of the Russian Federation, having returned this case for a new trial, pointed out the fact that even the absence of a written order on leave cannot be unequivocal evidence of absenteeism, the unlawful absence of an employee at the workplace, but, on the contrary, may indicate the existence of violations by the employer, his ambiguous attitude towards

the employee, abuse of the right.

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