INDIVIDUAL NOTICE OF COLLECTIVE DISMISSAL BY AGREEMENT: IS IT NECESSARY TO REPRODUCE THE CRITERIA ESTABLISHED OR AGREED DURING THE NEGOTIATIONS?

The Supreme Court ruled, last March, judgment number 219/2016 resolved a relevant issue within the procedure of notification of an individual dismissal derived from the Bankia collective dismissal.

Further to a negotiation process with the legal representatives of the employees, Bankia reached an agreement to proceed to the collective dismissal to a maximum of 4,500 employees. This dismissal would be carried out by joining a compensated termination program, as well as, through direct appointment of the company, being possible, if necessary, to proceed to the amortization of the workplaces that the company deemed necessary applying the assessment criteria included in the aforementioned agreement in order to determine the affected employees.

Once the dismissal was notified to the affected employees, many of them filed individual claims stating basically two questions: i) if the dismissal letter should contain the selection criteria to which they were subject to and ii) if a copy of these dismissal letters should be delivered to the legal representatives of the employees.

In other words, the discussion consisted in establishing that if in case of individual dismissal derived from a collective dismissal with agreement, the dismissal letter must contain all the formal requirements regarding the objective dismissal stipulated in the article 53 of the Workers’ Statute, that is to say, if the dismissal letters received by these employees contained the enough information to be conformed to law.

The judgement concludes that “it appears to be reasonable to understand that in the individual notice of collective dismissal it is not necessary to reproduce the established or agreed assessment criteria during the negotiations” and, in accordance with such conclusion, the Supreme Court excludes “the need to explain the individual justification of the aforementioned notice, detailing the reference to the singular application of the selection criteria used in the collective dismissal procedure”.

In the specific case of the dismissal letters of Bankia, the judgement of the Supreme Court, despite having a divergent particular vote signed by several judges, understands that the information included in the letters is enough and conforming to law. Likewise, the Supreme Court understands that, although the individual notification did not specify the points obtained by the employee regarding the assessment criteria discussed, these criteria were of “general knowledge”.

While the criteria of this judgement softens all the requirements needed until this moment, we must take into account that it is the single decision ruled in this sense. Under our point of view, it would be convenient to specify the reasons of the dismissal in case of individual notices aiming to avoid the risk of deem the dismissal as unfair due to formal defects.
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The information contained in this note should not be regarded in itself as specific advice on the matter discussed, but only a first approach to the subject. Therefore, it is highly recommended that the recipients of this note search professional advice about their particular case before taking specific measures or actions.

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