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Change in the employee's working conditions : Beware of abuse

The change of an employee's place of work at the same time as the implementation of a lay-off plan constitutes an abuse of the employer's power of direction.

The *Cour de Cassation* (French Supreme Court) upheld the decision of a Court of Appeals which had ruled that the dismissal of an employee for serious misconduct was unjustified due to an abuse of the employer's power of direction^[1].

In the case at hand, an employer informed on March 28, 2014 an employee who had been working as a waiter for 39 years of a change of his place of work, effective as from April 1, 2014.

This relocation implied that the employee would work at another site, located 1.3 km from his former place of work. When the employee refused the relocation, the employer dismissed him for serious misconduct on the ground of an unjustified absence from work.

The employee, considering that his refusal to be relocated was justified, decided to challenge his dismissal and brought an action before the Labor Court to obtain damages for wrongful termination.

The Court of Appeals initially considered that the employee could not rely on the contractualization of his place of work at a specific location. The change of place of work to an establishment located in the same geographical area as the former site could be imposed by the employer as part of its power of direction.

However, the Court of Appeals then noted that **the decision to relocate the employee coincided with a contemplated lay-off plan that was to be implemented as a result of the discontinuation of the business activity at the employee's original site and with the elimination of all jobs at this site.**

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The Court of Appeals, followed by the *Cour de Cassation*, thus considered that the sole purpose of the relocation of the employee, who had been working for 39 years on the initial site, was to avoid the payment of the indemnities provided for in the contemplated lay-off plan. This maneuver, therefore, constituted a misuse by the employer of its power of direction and thus made the employee's dismissal without real and serious cause.

It should be recalled that while the employer has the right to impose a change in the employee's working conditions within the framework of its power of direction, it will however be sanctioned in case of abuse in the implementation of this power. Abuse is revealed when the employer's decision is based on a reason that is not in the company's interest or has been implemented in conditions that conflict with the contractual good faith principle.

[1] Labor Chamber of the *Cour de Cassation*, September 29, 2021, No. 20-14.629

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