



INFO-LETAK br. 7

D&P je dobio značajnu presudu za poslodavce u pogledu isplate uvećane zarade za prekovremeni rad

Advokatska kancelarija Doklešćić & Partneri dobila je značajnu presudu Drugog osnovnog suda u Beogradu („*Sud*“), u kojoj je Sud prihvatio argumentaciju i stav da se rad duži od punog radnog vremena može smatrati prekovremenim radom samo ukoliko su kumulativno ispunjeni uslovi predviđeni članom 53. stav 1. Zakona o radu („*Zakon*“).

Naime, članom 53. stav 1. Zakona propisano je da je na zahtev poslodavca, zaposleni dužan da radi duže od punog radnog vremena u slučaju: 1) više sile, 2) iznenadnog povećanja obima posla, kao i 3) u drugim slučajevima kada je neophodno da se u određenom roku završi posao koji nije planiran.

U ovom radnom sporu zaposleni (tužilac) je podneo tužbu protiv poslodavca (tuženog) zahtevajući, između ostalog, isplatu uvećane zarade po osnovu ostvarenih časova prekovremenog rada u utuženom periodu.

Međutim, prilikom odlučivanja o pravnoj osnovanosti tužbenog zahteva Sud je našao da je isti neosnovan, pri čemu je svoj stav obrazložio činjenicom da tužilac nije dokazao postojanje zahteva poslodavca za radom tužioca u periodu dužem od punog radnog vremena, kao ni postojanje više sile, iznenadnog povećanja obima posla, te neophodnost izvršenja neplaniranog posla u određenom roku.

Takođe, Sud je u prvostepenoj presudi istakao i to da se pri ovakvom stanju stvari, odnosno kada nisu ispunjeni uslovi predviđeni članom 53. stav 1. Zakona, časovi rada koje je tužilac ostvario preko punog radnog vremena, moraju isplatiti zaposlenom, ali samo kao redovan rad, odnosno bez uvećanja predviđenog članom 108. stav 1. tačka 3) Zakona.

U tom pogledu, Sud je prihvatio i potvrdio stav i argumentaciju advokatske kancelarije Doklešćić & Partneri da u konkretnom slučaju zaposleni nije ostvario prekovremeni rad, već rad duži od punog

NEWSLETTER no. 7

D&P wins landmark judgment for employers regarding payment of the increased salary for overtime work

Law firm Doklešćić & Partners has won significant verdict of the Second Basic Court in Belgrade (the “*Court*”), in which the Court accepted argumentation and pleading that work beyond the full-time working hours may be considered as an overtime work only if the conditions determined in Article 53 Paragraph 1 of the Labour Law (the “*Law*”) are cumulatively fulfilled.

Namely, the Article 53 Paragraph 1 of the Law prescribes that at the employer’s request, an employee is obliged to work beyond the full-time working hours in the event of: 1) force majeure, 2) a sudden increase of volume of work, as well as 3) in other cases, where it becomes necessary to complete an unplanned work within a specific deadline.

In this labour dispute the employee (plaintiff) has submitted the lawsuit against the employer (defendant) in which he, inter alia, claimed payment of the increased salary for overtime working hours in relevant period.

However, while deciding on the legal ground of plaintiff’s claim the Court has found that this claim is unfounded because the plaintiff did not prove the existence of the employer’s request for employee’s work beyond the full-time working hours, nor the existence of force majeure, a sudden increase of volume of work and necessity of executing of unplanned work within specific deadline.

Also, the Court has stated in the first-instance verdict that in this state of matter, or in the situation when the conditions determined in Article 53 Paragraph 1 of the Law are not fulfilled, the working hours which the plaintiff achieved beyond full-time working hours must be paid to the employee, but only as regular work - without salary increase determined in the Article 108 Paragraph 1 Item 3) of the Law.

In this regard, the Court has accepted and confirmed the pleading and argumentation of the Doklešćić & Partners law firm that in this particular case the employee did not achieved overtime work,

radnog vremena za koji se ne isplaćuje uvećana zarada.

but work beyond full-time working hours for which should not be paid increased salary.

U toku je postupak po žalbi tužioca u ovoj parnici pa za sada ostaje otvoreno pitanje da li će navedenu argumentaciju i stavove potvrditi i Apelacioni sud u Beogradu.

The plaintiff has submitted an appeal and the case is still pending before second instance court, so for now remains an open question whether the Appellate Court in Belgrade shall confirm these argumentations and pleadings.

Za više informacija o ovome kontaktirati / For more information about this please contact:

Tara Ristić
Associate - Dokleštic & Partners
tara.ristic@dokleštic.law
T. +381.11.414.33.60

Dr Slobodan Doklešić, adv.
Partner - Dokleštic & Partners
slobodan.dokleštic@dokleštic.law
T. +381.11.414.33.60