

SUPPORTING BUSINESS

EACH CLIENT HAS ITS OWN PREFERENCES, NEEDS AND EXPECTATIONS. WE ARE HERE TO ADJUST TO THEM AND SUPPORT THE CLIENT'S BUSINESS.

INFO-LETAK br. 09/2016

Važna odluka Apelacionog suda u Kragujevcu u radnom sporu povodom zakonitosti aneksa UoR

Doklešić & Partneri je dobio važnu presudu Apelacionog suda u Kragujevcu koji je uvažio našu argumentaciju i prihvatio naš stav – **poslodavac je taj koji ima suvereno ovlašćenje da odlučuje o svojoj organizaciji rada, a ne njegovi zaposleni ili sud.**

U ovom radnom sporu je poslodavac (tuženi) zaposlenom ponudio izmenu ugovorenih uslova rada radi premeštaja na drugi odgovarajući posao, a zbog potreba procesa i organizacije rada.

Osnovni sud u Kraljevu je prilikom odlučivanja o zakonitosti ovog aneksa ugovora o radu u prvostepenoj presudi **stao na stanovište da su razlozi za ponudu aneksa ugovora o radu morali da omoguće sudu da oceni opravdanost poslovne odluke poslodavca** da zaposlenog premesti na drugo odgovarajuće radno mesto, i pored toga što je poslodavac u svemu u skladu sa Zakonom o radu ispoštovao proceduru i uslove propisane Zakonom o radu.

Budući da po oceni prvostepenog suda ponuđeni (i zaključeni) aneks ugovora o radu nije omogućavao sudu da ispita opravdanost premeštaja zaposlenog na drugo radno mesto, sud je poništio predmetni aneks kao nezakonit.

U postupku po žalbi protiv ovakve prvostepene presude, istakli smo da je prvostepeni sud bio ovlašćen samo da ceni zakonitost premeštaja zaposlenog na drugo radno mesto, a ne i opravdanost i celishodnost takve poslovne odluke poslodavca.

Istakli smo i da svako postupanje trećih lica, pa i suda, kojim bi se nametala obaveza poslodavcu da na određeni način uredi svoju poslovnu organizaciju, da zaposli jednog ili drugog zaposlenog, da odlučuje o radu zaposlenog na jednom radnom mestu ili drugom radnom mestu, ili kao u ovom slučaju, da procenjuje da li postoji poslovna potreba za premeštajem zaposlenog na drugo odgovarajuće radno mesto,

NEWSLETTER no. 09/2016

An important decision of the Appellate Court in Kragujevac in the employment dispute about the legality of the annex to EA

Dokleštic and Partners obtained an important verdict of the Appellate Court in Kragujevac who accepted our arguments and confirmed our pleading – the employer is the one who has the sole authority to decide on its organization of work, and not its employees or the court.

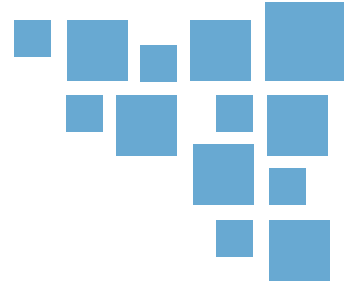
In this employment dispute the employer (defendant) offered to an employee change of the agreed working conditions based on the transfer to another appropriate working position, due to the needs of the process and the organization of work.

Basic Court in Kraljevo has, while deciding on the legality of this annex to the employment agreement in the first instance verdict, taken the view that the reasons for the offer of annex to the employment agreement **had to be such to allow the court to assess the justifiability of business decision of an employer** to transfer an employee to another appropriate position, irrespective of the fact that the employer has, in accordance with the Labor Law, observed the procedure and terms stipulated by that Law.

Given that in the view of the first-instance court offered (and concluded) annex to the employment agreement did not allow to the court to examine the justification of transfer of the employee to another position, the court annulled the annex as unlawful.

In the appeals procedure against this first-instance judgment, we argued that the first-instance court was authorized only to assess the legality of transfer of the employee to another position, and not the justification and prudence of such business decision of the employer.

We also noted that any acts of third persons, including the court, to impose an obligation for an employer to arrange its business organization in a certain way, to hire one or the other employee, to decide on the work of an employee in one position or the other position, or as in this case, to evaluate whether there is a business need for transfer of an employee to another appropriate position,



predstavlja svojevrsno pravno nasilje i uzurpaciju suverenih prava poslodavca. Stoga, prvostepeni sud je ulazeći u ocenu opravdanosti potrebe za donošenje odluke o raspoređivanju zaposlenog grubo prekoračio svoja zakonska ovlašćenja u okviru kojih **može isključivo da ceni zakonitost raspoređivanja zaposlenog na drugo radno mesto, a ne i opravdanost (odnosno celishodnost) takve odluke.**

Odlučujući o podnetoj žalbi Apelacioni sud u Kragujevcu je uvažio našu argumentaciju i našao da sud nije ovlašćen da ispituje opravdanost i celishodnost odluke poslodavca u vezi sa raspoređivanjem zaposlenog sa jednog na drugo odgovarajuće radno mesto, već samo ispunjenost formalno-pravnih i materijalno-pravnih uslova prilikom donošenja takve odluke. Takođe, ukazujući na razloge svoje presude kojom je preinačio prvostepenu presudu u korist tuženika Apelacioni sud u Kragujevcu je pravilno ukazao i na to da Ustav Republike Srbije garantuje slobodu preduzetništva i samostalnost poslodavaca da prema svojim potrebama i u skladu sa svojom poslovnom politikom organizuje rad i strukturu zaposlenih, a da pritom sud nije ovlašćen da ceni celishodnost i opravdanost poslovnih odluka poslodavca.

is a sort of legal violence and usurpation of sovereign rights of the employer. Therefore, the first-instance court had grossly overstepped its legal authority by entering into an assessment of the justification of the business need for a decision on the transfer of an employee, given that the court **can only assess the legality of the transfer of an employee to another position, and not the justification (i.e. prudence) of such decision.**

Deciding on submitted appeal the Appellate Court in Kragujevac accepted our arguments and found that the court is not authorized to examine the justification and prudence of the employer's decision concerning the deployment of an employee from one to the other appropriate position, but only the fulfillment of the formal and material legal requirements when making such decision. Also, when explaining the reasons for its judgment, by which it reversed the first instance judgment in favor of the defendant, the Appellate Court in Kragujevac has properly pointed out that also the Constitution of the Republic of Serbia guarantees the freedom of entrepreneurship and the autonomy of employers to organize their work and structure of their employees according to their own needs and in accordance with their business policy, whereby the court is not authorized to evaluate prudence and justification of the business decisions of the employers.

Za više informacija o ovome kontaktirati



Ljubinka Vasković

ATTORNEY AT LAW - DOKLEŠTIC & PARTNERS

ljubinka.vaskovic@dokleštic.law
T. +381.11.414.33.60

For more information about this please contact:



Dr Slobodan Doklešić

PARTNER - DOKLEŠTIC & PARTNERS

slobodan.dokleštic@dokleštic.law
T. +381.11.414.33.60