Compensation for work relocation. The details are important

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Analysis of the judgment of the High Court of Justice of Galicia of 7 April 2017 in relation to the need to pay particular attention to the wording of all types of document capable of giving rise to disputes when applied in practice

On the question of work relocation article 40 of the Statute of Workers Act provides that when relocation has been notified it takes effect, without prejudice to its being challenged, on the date stipulated in the notice, which means the employee relocated cannot as a general rule refuse to move, and the effects of the employer's decision, including compensation for expenses, apply from that time.

To improve on this statutory minimum some collective labour agreements, in addition to travel expenses of the employee and his or her family and furniture removal, also provide for compensation for relocation. This is the case, for example, of article 28 of the Collective Agreement for the Iron and Steel Industry in the province of A Coruña which provides:

> *"Relocation.- This is defined as the definitive assignment of an employee to a work location of the employer other than that in which he or she has been working, and which requires change of normal residence.*
>
> *The employer may definitively transfer employees to a different location for economic, technical, organisational or production reasons or due to the state of the employer's operations having served notice on trade union representatives.*
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> *In the event of relocation the employee shall be given 30 days' prior notice in writing. The relocation must be notified to employees' representatives at the same time as the employee affected.*
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> ***The employee shall receive compensation equivalent to 35% of annual gross earnings for ordinary time at the time of the change of workplace, 20% of the same at the beginning of the second year and 20% at the beginning of the third year, always on the same initial basis.***
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> *In this event payment shall be made of the travelling expenses of the employee and his or her family, furniture removal and three days' living expenses for each person travelling who is a family member living with the person being relocated".*

The question considered by the judgment of the High Court of Justice of Galicia of 7 April 2017 (ref. RS 4651/2016; Maessa Case) was whether, as argued by the claimant and upheld by Employment Court nº 2 for Ferrol, it was irrelevant that the employee was no longer working for the company in 2015, the year of the third payment of compensation for relocation, as this was "deferred compensation", or whether, as argued by the employer, the compensation had lost its raison d'être and was no longer payable as the employee had left the company on grounds of permanent disability declared in March 2014.

The background to the case was:

1.- On 15 November 2011 the company informed the employee he was being transferred to Sestao with effect as of 29 December 2011, although the relocation did not take effect until 19 February 2013.
2.- The employee was in a state of temporary disability from 7 December 2011 to 25 September 2013 and worked in Sestao from 19 February to 5 March 2013.
3.- The claimant was declared in a state of permanent total disability from 18 March 2015.
4.- According to the wording of the collective agreement and based on the employee's gross annual earnings the three payments of compensation should have been:

> Compensation equivalent to 35% of his annual gross earnings for ordinary time at the time of the change of workplace (15-11-2011). The judgment of the High Court of Justice of Galicia of 12 June 2015 ordered the employer to pay 9,108·04 €.
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> 20% of his annual gross earnings at the beginning of the second year. The judgment of Employment Court nº 1 of Ferrol of 25 September 2015 ordered the employer to pay 5,204·59 €.
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> And 20% of annual gross earnings at the beginning of the third year. The judgment of Employment Court nº 2 of Ferrol of 17 July 2016, confirmed by that of the High Court of Justice of Galicia, ordered the employer to pay 5,204·59 € plus interest for late payment at 10%.

This is an unusual case. Having worked for just 15 days at his new location, would it not be unjust enrichment on the employee's part if he received the three installments of the compensation?
Is it not more legally correct to say that if he was in a state of permanent total disability in March 2014 he cannot receive compensation due to be paid in 2015?

The decision of the Galician High Court of Justice upholds the wording of the collective agreement, rejecting the exclusion of the deferred compensation payment on the contract being extinguished while the payments were being made, and orders payment to be made in full amounting to a total of 75% of annual gross earnings for ordinary time at the time of the relocation. The legal argument of the High Court of Justice is clear in this regard:

> *"And in this case the claimant's application is clearly supported by the wording of the collective agreement, as after the employee's relocation from Ferrol to the new workplace in Sestao - Vizcaya -* ***the right to compensation for relocation automatically arises, regardless of the fact that it was to be paid over three years - and the agreement does not release the employer from payment in the event of the employee ceasing to work for it*** *- as has happened in this case - as the parties which negotiated the agreement did not agree such an exclusion, and it is clear that if the agreement does not require the employee still to be working for the company in order to receive the compensation, it is not open to the interpreter of the rule to impose consequences different from those wished by the parties which negotiated the agreement, and hence the application and interpretation of the agreement by the lower court may not be regarded as incorrect or not in accordance with the law".*

Hence after the relocation the employee affected is entitled to the full compensation, even if in the short- or medium term he leaves the company voluntarily or suffers from permanent total, absolute or great disability.

Thus cases might arise in which, if the employee has not been with the company for a long time, and if the collective agreement is in similar terms to that examined here, the employee accepts the relocation in order to receive the compensation (a total of 75% of annual gross earnings) and then leaves the company shortly afterwards instead of opting for redundancy pay of 20 days pay per year of service.

In the case under examination, apart from the living and other expenses the company paid, the employee finally received 19,517·22 € as compensation for relocation having worked at the new location for 15 days.

It is thus essential, to avoid situations such as this, for collective agreements to contain adequate provisions on compensation and the grounds for its exclusion if the employment is terminated by the employee shortly afterwards, as it was clearly not the employer's intention to pay compensation for working only briefly at the new location requiring the change of place of residence. This is because in the event of a disputed interpretation of a section of an agreement the literal meaning may prevail over other interpretations however viable they may seem.

For further information, please contact

Alfredo Aspra
alfredo.aspra@AndersenTaxLegal.es

José Antonio Sanfulgencio
jantonio.sanfulgencio@AndersenTaxLegal.es