Collective bargaining decisions that can be detrimental

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Concerning the Castile La Mancha Supreme Court Ruling of 22 March 2017

In our review of the judicial doctrine, we came across the summary of the Castile La Mancha Supreme Court Ruling of 22 March 2017 (RS 531/2016) on the interpretation of a Collective Bargaining Agreement, which stated:

> *"Nullity of Article 38 of the 2015-2017 Collective Bargaining Agreement for the hotel sector in the province of Ciudad Real, which regulates the night-shift differential. Said article establishes a night-shift differential for less hours than those stipulated in Article 36 of the WS [Worker's Statute], which states that the night shift is* ***from 10 at night to 6 in the morning*** *and must be subject to a specific remuneration, unless the salary has been based specifically on work qualified as night work because of its nature or is compensated by rest periods. The provision in the agreement restricts the scope of the night shift for the purpose of perceiving specific remuneration by limiting it to* ***3 to 6 in the morning****".*

The question that immediately comes to mind after reading this synopsis of the Supreme Court Ruling is this: why was a reduction of the hours technically considered the "night shift", a decision detrimental to the workers, agreed to during negotiations? It could certainly be because of the negotiating framework itself and the reciprocal concessions that social and business stakeholders made in this or other articles of the agreement.

Furthermore, the synopsis also leads to the question of the extent to which such a decision or concession is legal. The answer, in our opinion, is clear: social stakeholders have no problem ceding on a matter at odds with what is stipulated in the WS because they can easily challenge its illegality once the agreement is signed while applying the remaining articles.

Remember that article 85.1 of the WS underscores that *"**in compliance with the law**, collective agreements may regulate labour-related matters and matters of an economic and trade union nature and, in general, any others that affect employment conditions and the relationship between workers and their representative organisations with the employer and business associations"*. And the questions that quickly come to mind are:

On the one hand, by application of the criteria governing regulatory sources and the legislative hierarchy in our Labour Law, is it feasible for collective agreements to establish more favourable conditions for workers?

And, on the other: what does "*in compliance with the law*" mean? Does the right to collective bargaining make it possible to regulate working conditions at odds with the provisions stipulated in the WS? Can the negotiating parties pejoratively restrict or limit the rights recognised by legal provisions?

The answer to these questions is quite simple: the validity of collective and individual agreements that are harmful or detrimental to the worker compared to the rights recognised by legal provisions cannot be recognised.

To this end, and in view of the case analysed, the scope of the night shift (from just 3 to 6 in the morning) violates the regulation in the WS (from 10 at night to 6 in the morning), a legal provision that is binding in nature, the Castile La Mancha Supreme Court confirmed the nullity of the conventional provision in question to the detriment of workers, in the same terms as those expressed by the Social Court.

Here it should be noted that, although the employment contract and the collective agreement are instruments which regulate the employment relationship, it is nevertheless clear that, according to the tenor of Articles 3.1.c) and 85.1 of the WS, their respective regulatory provisions cannot establish less favourable conditions than those recognised by law nor contravene the tenor of said law.

We are witnessing the so-called supplementary relationship that covers those situations in which the law is configured as a rule of **relative mandatory law**. That is, in these cases the WS sets minimum conditions and allows them to be improved, but not worsened, by collective agreement. On the other hand, the collective agreement, respecting the limits imposed by state law, can improve the legal regulation, establishing conditions more favourable for workers than those the regulation stipulates.

This notwithstanding the stipulations of **absolute mandatory law**, which are those provisions that can neither be improved nor worsened nor, ultimately, altered in any way, neither by collective bargaining nor by individual negotiation (for example, the one that stipulates that the time limit for actions against dismissal expires after twenty business days –Art. 59.3 WS).

In short, in order to apply the principle of minimum standards, by no means should a comprehensive comparison (or compensation of rights or benefits) between the legal provision that stipulates these minimums (in our case, Art. 36.1 of the WS) with the conventional provision that regulates the different aspects affected by these minimums (Art. 38 of the 2015-2017 Collective Agreement for the hotel sector of the province of Ciudad Real, in the subparagraph that reduces the night shift to 3 to 6 in the morning, instead of maintaining or improving the hours of 10 at night to 6 in the morning) be applied.

It seems, then, crucial to negotiate without giving up social rights that “lack in good faith” and approve and subscribe to a reduction of the minimum rights affirmed in the WS in order to, on the other hand, access other possible improvements or working conditions.

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