



The claim that additional pay is voluntary may be ineffective if there is a contractual arrangement - Labour Law

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GRP Rainer Lawyers and Tax Advisors in Cologne, Berlin, Bonn, Dusseldorf, Frankfurt, Hamburg, Munich, Stuttgart and London - www.grprainer.com/en conclude: That is what the Federal Labour Court ruled (File number: 10 AZR 177/12). The judgement came in a dispute between an employer and an employee. The employer had paid his employees, who were under an employment contract, additional voluntary benefits such as a Christmas bonus. The employer argued that these payments were made without a commitment for the future and should be considered on a case by case basis. The employer did pay a Christmas bonus from 2004 to 2008. He also claimed that these payments were expressly made with a further explicit notification that they constituted no future obligation. When in 2009, the employer paid no Christmas bonus due to financial circumstances, the employee filed an action.

After the Labour Court as well as the State Labour Court ruled for the plaintiff, the Federal Labour Court dealt with the employer's appeal and dismissed it in the end. In its reasons, the Court explained that the employee is entitled to a Christmas bonus under the employment contract. According to the Court, the choice of the word "granted?" in the contract is characteristic for establishing a claim.

The Court explained that it could not be otherwise even when the formulation "voluntary social benefit?" in the employment contract is taken into account. This could also refer to a non-existing statutory or collective bargaining obligation. In particular, the judges emphasized that the plaintiff's claim originated not in a corporate exercise but explicitly under the employment contract.

The Court ruled that in the present case, the contractually regulated reservation of voluntary payment would have to be dealt with. In its form, it is found to be contrary to the transparency principle in the German Civil Code (BGB) and is therefore invalid. While the reservation excluded a claim for a Christmas bonus, this was inconsistent with the contractual granting of the additional benefit. Therefore, the reservation was ruled ineffective due to incomprehensibility and obscurity.

In most cases, when there is a conflict in an employment situation, the employment contract is considered first. It includes numerous obligations for employers as well as for employees. Even when an employment contract is developed, employers should consult a lawyer with experience in labour law to avoid legal problems. But employees can also use legal assistance to assert their claims.

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Anlage: Bild

