
Employment Law

Newsletter | Portugal

April 2018



Contents

- > Extension Orders
- > National Case Law
- > European Case Law



I. Extension Orders

Sector	Order
<p>Electrics, electrical appliances, Photography and Electronics</p>	<p>Order no. 88/2018 - <i>Diário da República</i> no. 62/2018, Series I, March 28, 2018</p> <p>Establishes the extension of the amendments to the collective bargaining agreement between AGEFE - Electrics, Electrical Appliances, Photography and Electronics Business Association and FEPCES – Portuguese Federation of Business, Offices, and Services Trade Unions and others.</p>
<p>Textiles, Woollens, Garments, Footwear and Leathers</p>	<p>Order no. 99/2018 - <i>Diário da República</i> no. 71/2018, Series I April 11, 2018</p> <p>Establishes the extension of the amendments to the collective bargaining agreement between the Portuguese Tanning Industry Association and FESETE - the Portuguese Trade Union Federation of Textiles; Woollens, Garments; Footwear and Leather Workers.</p>
<p>Foodstuffs Trade and Industry</p>	<p>Order no. 100/2018 - <i>Diário da República</i> no. 71/2018, Series I, April 11, 2018</p> <p>Establishes the extension of the amendments to the collective bargaining agreement between ANCIPA - National Association of Foodstuffs Trade and Industry and SITESE - Services, Trade, Catering and Tourism Workers and Technicians Trade Union (fruit confectionery and preserves – clerical staff).</p>



<p>Foodstuffs Distribution</p>	<p>Order no. 106/2018 - Diário da República no. 77/2018, Series I, April 19, 2018 Establishes the extension of the amendments to the collective bargaining agreement between ADIPA - Foodstuffs Distributors' Association and SITESE - Services, Trade, Catering and Tourism Workers and Technicians Trade Union (retail trade in foodstuffs).</p>
<p>Wholesale Trade of Chemical and Pharmaceutical Products</p>	<p>Order no. 107/2018 - Diário da República no. 77/2018, Series I, April 19, 2018 Establishes the extension of the amendments to the collective bargaining agreement between GROQUIFAR – Chemical and Pharmaceutical Products Wholesalers' Association and FEPCES – Portuguese Federation of Business, Offices, and Services Trade Unions - Federation and one other (wholesale trade of chemical products for industry or agriculture).</p>

II. National Case Law

Ruling by the Porto Court of Appeal, March 25, 2018

Dismissal – Termination for cause

This particular case considered the claim for unlawful dismissal by a banking institution employee, known beyond doubt to have stolen cash handed over to her by one of the bank's customers.

The employer submitted a substantiated case for dismissal, alleging that, as proved from footage taken by the video surveillance cameras, the employee had purloined the sum of € 1,460.00 handed over to her by a customer of the bank where she worked. The employer concluded that in view of the above facts, the relationship of trust underlying the employment relationship had inevitably been broken, making it impossible to continue.

The employee alleged that, pursuant to Article 20 of the Labour Code, the employer could not use remote means of surveillance in the workplace in order to monitor employees'



performance of their professional duties. Furthermore, she argued that since the employer was a banking institution, it was subject to banking secrecy laws and had not sought authorisation from the National Data Protection Commission to use footage with a view to imposing disciplinary measures on an employee. Lastly, she alleged that in any case, the disciplinary measure was inappropriate and disproportionate to the seriousness of the case.

Having viewed the images, the Court considered the dismissal to be lawful.

The employee contested the decision by lodging an appeal before the Porto Court of Appeal, in which she reiterated her argument concerning the unlawfulness of using footage from video surveillance cameras without authorisation from the National Data Protection Commission and the disproportionality of the disciplinary measure imposed.

With regard to the validity of the evidence submitted, the Court of Appeal considered it to be admissible, since it was not the monitoring of the employee's professional performance that was at stake, prohibited under the said Article 20 of the Labour Code, but rather *“specific security requirements on the premises and the protection of people and goods, given that what gave rise to the disciplinary proceedings were facts concerning the alleged appropriation of assets belonging to someone else, that is to say, facts falling outside the scope of the employee's occupational activities”*. The Court added that any other interpretation would give rise to untenable contradictions between different legal frameworks, since then, the footage could be lawfully used to punish criminal offences, but not irregular behaviour in the workplace.

With regard to the alleged disproportionality of the disciplinary measure imposed and the lawfulness of the dismissal, the Court specified that the breakdown in trust in the employment relationship, which is a prerequisite for a dismissal to be deemed lawful, is not gauged on the magnitude nor the very existence of damage caused by the employee, but rather, according to the Court of Appeal, it suffices that *“the employee's conduct be sufficiently alarming for the employer to legitimately doubt it in the future.”* The Court therefore ruled that the acts that the employee was known beyond doubt to have committed would undoubtedly cause the loss of the employer's trust in her work, in particular, given the nature of the employee's tasks in the bank, whereby she handled large sums of money on a daily basis.

The Porto Court of Appeal hence judged the evidence submitted at first instance to be admissible and as a result endorsed the lawfulness of the dismissal.

III. European Case Law

Ruling by the European Court of Justice, February 21, 2018

Organisation of Working Time

This ruling concerned the interpretation of Article 2 (1) of Directive 2003/88, of November



4th (hereunder “Directive”), involving certain aspects of the organisation of working time, in a case related to its transposal into Belgian law. Essentially, it concerned whether or not the Directive prevented firefighters' stand-by time from being considered as “*working time*”, when, despite firefighters spending the stand-by time at their home, restrictions imposed upon them during this period (such as the obligation to respond to calls from their employer within a maximum of 8 minutes) significantly restricted their opportunities to have other activities.

In 2009, R. Matzak brought judicial proceedings seeking an order that the town of Nivelles pay him a compensation for failure to pay remuneration for his services as a volunteer firefighter during his years of service, particularly for his stand-by services at home, which the Nivelles Labour Court upheld. According to the plaintiff, time spent “*on stand-by*” must be categorised as working time, within the meaning of the Directive.

The Town of Nivelles contested the decision, by appealing it before the Higher Labour Court of Brussels, which decided to refer the above question, among others, to the Court of Justice for a preliminary ruling.

The Court specified, first of all, that the concepts of ‘working time’ and of ‘rest period’ are mutually exclusive and explained that moreover, the intensity of the work by the employee and his output are not among the characteristic elements of the concept of ‘working time’, within the meaning of the Directive.

The Court also specified that “*If the stand-by period in the form of physical presence at the place of work were excluded from the concept of ‘working time’, that would seriously undermine the objective of the Directive*”, which is to establish minimum requirements “*to encourage improvements in workers' living and working conditions.*”

The European Court of Justice therefore ruled that considering stand-by time at home as part of the concept of “rest period” contravened the Directive.



Contact

Cuatrecasas, Gonçalves Pereira & Associados,
Sociedade de Advogados, SP, RL
Sociedade profissional de responsabilidade limitada

Lisboa

Praça Marquês de Pombal, 2 (e 1-8º) I 1250-160 Lisboa I Portugal
Tel. (351) 21 355 3800 I Fax (351) 21 353 2362
cuatrecasasportugal@cuatrecasas.com I www.cuatrecasas.com

Porto

Avenida da Boavista, 3265 - 5.1 I 4100-137 Porto I Portugal
Tel. (351) 22 616 6920 I Fax (351) 22 616 6949
cuatrecasasporto@cuatrecasas.com I www.cuatrecasas.com

For additional information on the contents of this document, please contact Cuatrecasas.

©2018 CUATRECASAS

All rights reserved.

This Newsletter was prepared by Cuatrecasas, Gonçalves Pereira & Associados, Sociedade de Advogados, SP, RL for information purposes only and should not be understood as a form of advertising. The information provided and the opinions expressed herein are of a general nature and should not, under any circumstances, be a replacement for adequate legal advice for the resolution of specific cases. Therefore, Cuatrecasas, Gonçalves Pereira & Associados, Sociedade de Advogados, SP, RL is not liable for any possible damages caused by its use. Access to the information provided in this Newsletter does not imply the formation of a lawyer-client relationship or of any other sort of legal relationship. This Newsletter is published free of charge and may not be copied or distributed without formal prior consent. The personal data you provide us, including your email address, will be treated in accordance with national and European data protection legislation. If you do not wish to continue receiving this Newsletter, please send an e-mail to cuatrecasasportugal@cuatrecasas.com.