CENTRE DE DROIT
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Immediate dismissal

Non-compliance with anti-money laundering rules within a bank

Par Roxane Pedrazzini le 2 August 2024

The Swiss Federal Supreme Court has upheld the immediate dismissal of an employee due to his careless application of the bank's anti-money laundering rules (ruling 4A_67/2023 of 12 June 2024).

The employee had been working in the Panamanian branch of a Ticino bank since July 2012. He received two warnings, the first on 19 June 2015 following an angry outburst towards an employee in the *Legal & Compliance* department, and the second on 24 July 2017 for his carelessness in applying anti-money laundering rules, particularly in the context of a banking relationship in view of certain dubious and insufficiently documented transactions. The bank therefore asked the employee to terminate the banking relationship.

On 7 December 2017, the General Manager of the Panamanian branch reprimanded the employee, who had still not carried out the closure instruction, and asked him to immediately cease all activity in relation to certain companies. The employee voiced his dissatisfaction on 7 December 2017 in a virulent manner to his colleagues and superiors, as well as at a meeting on 12 December 2017, suggesting on that occasion, according to the bank, that he would not change his *modus operandi*. The bank dismissed the employee with immediate effect on 14 December 2017.

The employee contested his immediate dismissal and filed an action for payment against the bank. The first two instances confirmed the validity of the immediate dismissal. The employee therefore appealed to the Federal Court.

The employee raised a number of somewhat deconstructed objections to the cantonal ruling. He maintains that his immediate dismissal was ordered solely as a result of his reaction of 7 December 2017, but not because of his failure to comply with (i) the instruction to close the banking relationship considered problematic and (ii) the anti-money laundering rules. On this basis, he argues that his reaction of 7 December 2017 cannot be qualified as serious and justify immediate dismissal and that the latter would have been pronounced belatedly.

Immediate termination within the meaning of art. 337 of the Code of Obligations is permitted on a restrictive basis and is justified only in the event of serious misconduct, i.e. a breach of contract of such a nature as to objectively break the relationship of trust. In addition, termination must be immediate, with case law in principle allowing a cooling-off period of two to three

working days. A longer period is permissible only in exceptional cases, for example where the decision must be taken by a body composed of several members or the course of events requires clarification.

In the present case, the Federal Court held that the immediate dismissal was decided not only on the basis of the employee's aggressive reaction on 7 December 2017, but also because of his carelessness in applying the anti-money laundering rules despite a warning.

The Federal Court examines these two grounds :

Firstly, the warning of July 2017 was justified by serious failings on the part of the employee in the management of the problematic banking relationship, in particular with regard to anti-money laundering rules. In particular, the employee used Forms A signed in blank by the customer, did not have supporting documents for numerous banking transactions, suggested answers to the customer to avoid compliance checks and did not deal with 38 money laundering alerts recorded by the bank. These failings were proven by testimonies, documents and an internal investigation carried out by the employer, including internal audits and employee hearings. The employee must therefore have been aware that further breaches would have consequences for the continuation of the employment relationship.

Secondly, the evidence on file showed that the bank had repeatedly asked the employee to close a banking relationship, to no avail. However, on 7 December 2017, the employee lost his temper when his line manager confronted him with the fact that he had ignored the instruction to immediately close the banking relationship in violation of internal anti-money laundering regulations. The employee also demonstrated a total lack of awareness of the importance of anti-money laundering rules and of self-criticism regarding his failings. The bank could therefore validly assume that the employee would continue to disregard the anti-money laundering regulations, which was likely to break the relationship of trust.

The Federal Court's analysis serves as a reminder of how important it is for employers to be able to prove the grounds for dismissal put forward. It must therefore ensure that it documents the stages and factors taken into account in the decision-making process.

Furthermore, according to the Federal Court, the immediate dismissal in this case was not untimely as it was made four working days (8, 9 and 10 December 2017 being public holidays) after the bank noted that the employee had still not closed the banking relationship. During those four days, the decision-making body met in Panama – one member of which had to travel there from Switzerland – to hold a meeting with the employee and found on that occasion that he had not become aware of the importance of the anti-money laundering rules.

This ruling underlines the importance that banks have attached in recent years to the fight against money laundering. Every employee, regardless of rank, must take anti-money laundering regulations seriously and, if challenged in this respect, take appropriate action immediately. In the event of (persistent) carelessness in applying these regulations, the employee is liable to immediate dismissal, as was the case in the judgment under review.