

Employment & Labour - Cyprus

Court upholds illegal termination for failure to act within reasonable timeframe

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Facts Decision

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In *Misouraka v Frederick Educational Foundation* (Case 366/2010) the applicant worked as a replacement professor in an applied sciences department at a private university. The university (the respondent) hired the applicant in October 2007 on a gross salary of €52,551. The applicant's employment was terminated by the university in September 2010 as a result of numerous alleged incidents of poor conduct.

The university dean appointed an investigator in February 2009 after receiving a number of complaints from students and faculty staff regarding the applicant's conduct. The investigator delivered his report to the dean on April 29 2009, who forwarded the report to the chairman of the university disciplinary committee on the following day.

On June 3 2009 the chairman of the disciplinary committee sent a letter to the applicant containing all of the applicant's alleged violations of conduct. The chairman also invited the applicant to attend a disciplinary hearing on June 10 2009, at which the applicant would be able to present her case. The alleged breaches of conduct by the applicant included:

- absences from classes without informing her department;
- failure to send the course syllabus to students; and
- unacceptable behaviour towards students and colleagues.

The applicant attended the disciplinary hearing and presented her case.

Following the disciplinary hearing, on June 23 2009 the chairman of the disciplinary committee sent the applicant a letter informing her that she would be given a written warning. The applicant was also informed that she could submit a written objection to the university's decision within 15 days of receipt of the letter. The applicant exercised her right to object and her lawyer submitted a written objection on July 2 2009.

On August 26 2009 the university senate decided to validate the decision of the disciplinary committee, finding the applicant guilty of all charges. However, the senate found that the disciplinary action taken by the committee had been far too lenient and decided to terminate the applicant's employment immediately.

In her application to the Employment Court, the applicant stated that she had been unlawfully terminated, and that the unlawful termination had damaged her reputation as well as her future employability, promotion and career prospects. The applicant claimed:

- damages for unlawful termination;
- payment in lieu of notice;
- a proportion of her 13th-month salary;
- a proportion of her paid annual leave; and
- legal costs, plus value added tax.

The university denied all allegations by the applicant, stating in its defence that it had lawfully terminated her employment due to conduct violations which came to light after complaints were submitted to the university by students and other members of staff.

Decision

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Under Article 6(1) of the Termination of Employment Law (24/67, as amended), the onus was on the university to prove that the applicant had not been unlawfully dismissed.

The court found that the university had followed its statutes and regulations fully and had investigated the allegations against the applicant using a reasonable procedure. The court also found that the university had provided the applicant with evidence indicating that she had committed the alleged breaches of conduct, giving the applicant the opportunity to defend herself both before and after the disciplinary hearing and before the senate had decided to terminate her employment.

Furthermore, following evaluation of the testimonies of both parties, the court found without hesitation that the university's witnesses had been truthful. Its testimony was consistent and during cross-examination its witnesses did not contradict themselves.

In turn, the court ruled that the applicant had failed to prove that her employment had been terminated for reasons other than those provided by the university. The applicant failed to convince the court that she had been treated prejudicially.

However, despite the above, the court found that the university had failed to terminate the applicant's employment within a reasonable period of time after the complaints had been received and had allowed her to continue to exercise her normal duties. Most of the complaints concerning the applicant concerned the academic year from 2007 to 2008. The court stated that the university should have come to a decision shortly after receiving the complaints; however, the disciplinary procedure was not initiated until several months later.

Thus, the court found that the university had illegally and unjustifiably terminated the applicant's employment in breach of Article 5(e) of the law, under which an employer may lawfully terminate an employee.

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