CAMMINO DIRITTO
Rivista di informazione giuridica

THE EMPLOYEE HAS THE RIGHT TO REFUSE TO WORK IN AN UNSAFE WORKING ENVIRONMENT

With sentence n.839 of 19th January 2016, the High Court of Appeal established that the worker has the right to temporarily refuse to work, objecting to someone else´s non- performance and, at the same time, preserving the right to a remuneration.

Amelia Iaderosa (redattore Paola Labib)
CIVILE - LAVORO
Articolo divulgativo - ISSN 2421-7123

Pubblicato, Domenica 17 Luglio 2016

Cammino Diritto
ISSN 2421-7123

According to article n.2087 of the Italian civil code, the employer has to ensure adequate working conditions in order to guarantee occupational safety and to adopt those measures that are necessary to protect workers' physical and moral integrity, taking into account the job's features and the worker's experience and technique.

But what happens when an employer violates safety obligations foreseen by article n.2087 of the Italian civil code?

With sentence n.839 of 19th January 2016, the High Court of Appeal established that **the employee has the right to temporarily refuse to work, objecting to someone else's non-performance and preserving the right to a remuneration, because the employer's non-fulfilment cannot lead to negative consequences.**

The case

With an appeal made at the court of Turin, 14 employees who were in charge of assembling car doors sued the company to get a compensation for what was illegitimately withheld in the form of wage. In this case, after another car door had fallen, the claimants refused to work until the company had fulfilled safety obligations. After the intervention of a maintenance team, the employees started working again, but the company charged them with a wage corresponding to a custody of 1 hour and 45 minutes, defining their refusal to work as a strike.

The court of Turin rejected the appeal, believing that the employer's non-fulfillment was not so serious to apply article n.1460 of the Italian civil code (*objection raised regarding non-performance*).

The losing employees made this decision at the Court of Appeal of Turin, which recognized the gravamen and convicted the company to pay the withheld sum, following the sentence of 28th February 2011.

The local Court stated that "*all requirements foreseen by article n.1460 of the Italian civil code subsist, therefore the employees have the right to temporarily refuse to work*".

Cammino Diritto
ISSN 2421-7123

Consequently, the company appealed against this decision based on **5 reasons**:

1. Firstly, **the workers' right to a remuneration** was questioned both in the form of a compensation for damages *propter moram* and as a payment for non-performance.
2. Secondly, the ***mora accipiendi* applicability** was questioned as the situation prevented the employees from working.
3. Thirdly, it was highlighted how the Court of Appeal gave the company the **burden of proof** concerning the training activity of which it was not in charge, as adverse claim on this topic was not presented.
4. Fourthly, **scarce motivation concerning controversial and determining facts for the verdict** was highlighted.
5. Finally, **the Court of Appeal's application of article n.1460 of the Italian civil code** was questioned, even if a real non-performance was only presumed, that is, for example, a partial and not serious non-fulfillment for the obligations foreseen by article n.2087 of the Italian civil code.

The Court's decision

According to article n.2087, *"the employer has to ensure adequate working conditions in order to guarantee occupational safety and to adopt those measures that are necessary to protect workers' physical and moral integrity, taking into account the job's features and the worker's experience and technique"*.

The violation of this obligation gives the employee the right to refuse to work, objecting to someone else's non-performance.

Therefore, in order to guarantee civil protection, **the worker is entitled to contractual self-protection represented by the objection raised regarding non-performance**, refusing to work in an unsafe working environment, where legal safety conditions are missing and the employer's control is exercised.

In contracts involving obligations on borh sides, **when one of the parties justifies their non-performance with the other's non- fulfillment, it is necessary to make a comparative assessment on the contracting parties' behaviour,** taking into account

Cammino Diritto
ISSN 2421-7123

the causal and proportional relationships of non-performance in relation to the socioeconomic functions of the contract and the different obligations of each party.

In short, the importance of the non-fulfillment needs to be assessed in order to establish whether the refusal was legal or not.

What is important is the **good faith requirement** that was dealt with in article n.1460 of the Italian civil code, paragraph 2, according to which the objection raised subsists when the refusal is determined not only by a serious non-fulfillment, but also by reasons deriving from the decency obligations that article n.1175 of the Italian civil code imposed on the party, in relation to the contract's nature and final purposes.

In this case, **the employees refused to work after another car door had fallen**; this could have caused serious damage to the worker who could have been hit by it.

Furthermore, **the working environment by then was unsafe** – not only for the abovementioned episode – but also for many other cases of car door's total or partial falls, of which the employer had already been informed, but he had ignored them.

Consequently, **the employees temporarily refused to work to give the maintenance team enough time to intervene.** After this intervention, the workers were reassured and restarted to work.

In the light of all these considerations, the High Court of Appeal, with sentence n.839 of 19th January 2016, rejected the company's appeal and their request to make the workers pay for trial expenses, in addition to a 15% for general and extra expenses.