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## **OFFENSE OF THE EMPLOYEE OUTSIDE THE WORKPLACE: IS THE DISMISSAL LEGAL?**

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*Last 19th of January, the sentence no. 776 was filed, with which the Court of Cassation, work section, had to rule on a dismissal which had been declared illegal in the prior proceedings in the Court of Appeal.*

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This is the fact that caused that sentence.

It was October 27, 2004 when the Italian Post Office Ltd. ordered the dismissal to one of its own employees, because he was the author of crimes of usury and extortion, facts whose existence had been positively assessed by the Criminal Court. That inspection was for the first instance judge sufficient to consider the employment relationship “not prosecutable”.

However, in 2011, The Court of Appeal of Naples, in the reform of the court decision, declared the dismissal illegal.

Following this decision, Italian Post Office Ltd. complained about being discredited because of what could result of that, underlining the negative impact of the employee's presence in the business premises as well.

For its part, the Court of Appeals denied that “those so called crimes could interrupt the bond of trust necessary between employer and employee, regarding the specific circumstances” and recognized the value of “mitigating the twenty years duration of the employment relationship, the lack of previous disciplinary problems and the well-defined scope in which the crimes had been committed”.

Therefore, the employing company appealed to the Supreme Court.

They complained in that case of the violation of Articles 1362, 1364, 2106, 2119 Civil code; art. 7, L. 20 May 1970 n. 300; Articles 1 and 2, L. 15 July 1966 n. 604; Articles. 81, 629, 644 penal code and errors in the statement of reasons, because the Court of Appeals ignored the suitability of the facts established in the Criminal Court, to undermine the trustworthy relationship necessary between employer and employee, especially considering ‘the nature of the activities of the Italian Post Office (the management, storage and custody of the credit, in addition to the activity, now predominant, like bank intermediation and the transport and delivery of mail, valuable mail, checks, credit cards, etc.)’, and the potential destabilization of the work environment.

The Supreme Court, believing the reason valid, did not fail to show how “even illegal conduct, outside the exercise of the duties of the employee can have a significance in disciplinary conduct because the employee has not only the obligation to provide his/her professional service but also to respect outside work behavior accessory obligations, so as not to adversely affect either the moral and economic interests of the employer or the

confidence that, to varying degrees and in different forms, binds the parties to a lasting relationship. Such illegal conduct involves the expulsion sanction only if it has the degree of seriousness that should be appreciated, among other things, in relation to the nature of the activity performed by the employer, activities in which the service is provided by the subordinated worker.”

The Court underlined that such conducts, if they can not be considered serious to the point of leading to the dismissal by the company giver that has a purely private activity, “on the contrary can break the bond of trust and the related requirement reliability, that are at the basis of an employment relationship established for the performance of a public service, even in private legal regime”.

The postal service, on the other hand, is made through the establishment of companies that mainly or totally uses public capital. The private nature requires them to operate in a competitive environment but the use of public money and the pursued public aim subordinates the conduct of the principles of good conduct and impartiality of the Constitutional matrix (art.97).

This implies that employees should ensure reliability, towards the employer and user, even in the conduct outside work.

Otherwise, the same Court in 2012 with sentence no. 21940 had supported the thesis of ‘unfairness of the dismissal effected by Italian Post Office Ltd. at the expense of an employee, who had been convicted of the offense of “possession of marijuana inflorescence for personal use”, assuming in that occasion that the fact in question was “unfit to determine the violation of the bond of trust“.

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