Naknada za neiskorišćeni godišnji odmor pri prestanku radnog odnosa

Compensation for Unused Annual Leave Upon Employment Termination

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Pravo na naknadu štete za neiskorišćene dane godišnjeg odmora u slučaju prestanka radnog odnosa

Neujednačenost sudske prakse, kao i neusklađenost sa mišljenjima nadležnog ministarstva, nisu novost kada je reč o radnom pravu.

Ipak, čini se da poslednjih godina čak i ona pravna pitanja za koja smo smatrali da su nesporna postaju sporna.

Jedno od tih pitanja je i pitanje naknade štete koja se isplaćuje zaposlenom za neiskorišćene dane godišnjeg odmora u slučaju prestanka radnog odnosa.

Right on compensation of damage for unused days of annual leave in case of employment termination

Inconsistency in judicial practice, as well as inconsistency with the opinions of the competent ministry, are not new when it comes to labour law.

However, in recent years it seems that even those legal issues that we thought were indisputable are becoming arguable.

One of those issues is the issue of compensation of damage that is paid to the employee for unused days of annual leave in case of employment termination.

Presuda Vrhovnog suda, Rev2 2673/2022 od 5.9.2024. godine:

„Zaposlenom pripada naknada štete po osnovu prava na godišnji odmor koji nije mogao da iskoristi do prestanka radnog odnosa, iz razloga privremene sprečenosti za rad, s obzirom da mu je radni odnos prestao na način predviđen zakonom, usled potpunog gubitka radne sposobnosti.“

U konkretnom slučaju zaposleni je imao pravo na 30 dana godišnjeg odmora za svaku kalendarsku godinu. Počev od dana 17.7.2014. godine zaposleni je neprekidno bio privremeno sprečen za rad zaključno sa danom 12.5.2016. godine, kada mu je prestao radni odnos usled potpunog gubitka radne sposobnosti. Zaposleni je iskoristio 15 dana godišnjeg odmora za 2014. godinu, dok preostali deo godišnjeg odmora za 2014. godinu (15 dana), celokupan godišnji odmor za 2015. godinu (30 dana) i srazmerni deo godišnjeg odmora za 2016. godinu (10 dana) nije iskoristio usled privremene sprečenosti za rad.

Decision of the Supreme Court, Rev2 2673/2022 as of 5th September 2024:

“The employee is entitled to compensation of damage for annual leave he was unable to use until employment termination due to temporary inability to work, having in mind his employment was terminated in line with the law, due to a complete loss of working ability.”

In the specific case, the employee was entitled to 30 days of annual leave for each calendar year. Starting from 17th July 2014, the employee was continuously temporarily unable to work until 12th May 2016, when his employment ended due to a complete loss of working ability. The employee used 15 days of annual leave for the year 2014, while he did not use the remaining part of the annual leave for the year 2014 (15 days), the entire annual leave for the year 2015 (30 days) and a proportional part of the annual leave for the year 2016 (10 days) due to temporary inability to work.

Vrhovni sud utvrdio je da zaposlenom pripada naknada štete za neiskorišćeni godišnji odmor za celokupan napred navedeni period, odnosno za ukupno 55 dana godišnjeg odmora.

Svoju odluku Vrhovni sud zasniva na odredbama Zakona o radu kojima je propisano da zaposleni stiče pravo na korišćenje godišnjeg odmora u kalendarskoj godini posle mesec dana neprekidnog rada kod poslodavca, da se pod neprekidnim radom podrazumeva i vreme privremene sprečenosti za rad u smislu propisa o zdravstvenom osiguranju, te da se zaposleni ne može odreći prava na godišnji odmor.

Iz navedenog razloga, prema shvatanju suda, zaposlenom ne može biti uskraćeno pravo na naknadu štete za neiskorišćene dane godišnjeg odmora u slučaju kada usled privremene sprečenosti za rad nije bio u mogućnosti da koristi pripadajući godišnji odmor.

The Supreme Court determined that the employee is entitled to compensation for unused annual leave for the entire above-mentioned period, i.e. for a total of 55 days of annual leave.

The Supreme Court based its decision on the provisions of the Labor Law, which stipulate that an employee acquires the right to use annual leave in a calendar year after one month of continuous work for the employer, that continuous work also includes the time of temporary inability to work in terms of health insurance regulations, and that the employee cannot waive the right to annual leave.

For the above reason, according to the court's understanding, the employee cannot be denied the right to compensation of damage for unused days of annual leave if due to temporary inability to work, he was unable to use the corresponding leave

Dalje se u presudi navodi: „...dužnost poslodavca, propisana navedenom odredbom Zakona o radu, da zaposlenom u slučaju prestanka radnog odnosa isplati naknadu štete za neiskorišćeni godišnji odmor, nije isključena kada zaposleni iz razloga privremene sprečenosti za rad nije mogao da iskoristi godišnji odmor do prestanaka radnog odnosa.“

The decision further states: “...the employer’s duty, prescribed by the aforementioned provision of the Labor Law, to pay the employee compensation of damage for unused annual leave in the event of termination of the employment is not excluded when the employee could not use the annual leave until the termination of the employment due to temporary inability to work.”

Ipak, čini se da Vrhovni sud nije uzeo u obzir osnovne odredbe Zakona o radu koje regulišu način korišćenja godišnjeg odmora, a kojima je propisano sledeće:

- mogućnost korišćenja godišnjeg odmora jednokratno ili u više delova;
- u slučaju kada se godišnji odmor koristi u više delova, prvi deo koristi se u trajanju od najmanje dve radne nedelje neprekidno u toku kalendarske godine, a ostatak najkasnije do 30. juna naredne godine;
- zaposleni koji nije u celini ili delimično iskoristio godišnji odmor u kalendarskoj godini iz razloga privremene sprečenosti za rad izazvane samo i isključivo korišćenjem porodiljskog odsustva, odsustva sa rada radi nege deteta i posebne nege deteta, može iskoristiti taj odmor do 30. juna naredne godine.

Iz napred navedenih odredaba Zakona o radu sledi da godišnji odmor mora da se iskoristi u Zakonom o radu propisanom roku, odnosno najkasnije do 30. juna naredne godine. U suprotnom, pravo na korišćenje godišnjeg odmora „propada“.

However, it seems that the Supreme Court did not consider the basic provisions of the Labor Law, which regulate the way of using annual leave, and which prescribe the following:

- the possibility of using annual leave once or in several parts;
- in case when annual leave is used in several parts, the first part is used for at least two working weeks continuously during the calendar year, and the rest no later than 30th June of the following year;
- an employee who has not used full or part of annual leave in the calendar year due to temporary inability to work caused only and exclusively by maternity leave, child care and special child care, may use that leave until 30th June of the following year.

From the aforementioned provisions of the Labor Law, it follows that annual leave must be used within the period prescribed by the Labor Law, i.e. no later than 30th June of the following year. Otherwise, the right to use annual leave “lapses”.

Pored toga, celokupan godišnji odmor za pripadajuću kalendarsku godinu zaposleni može iskoristiti do 30. juna naredne godine samo ukoliko nije bio u mogućnosti da isti iskoristi u toku kalendarske godine usled privremene sprečenosti za rad izazvane trudnoćom, negom deteta i posebnom negom deteta, dok u svim drugi slučajevima pripvremene sprečenosti za rad ne postoji mogućnost „prenošenja" dela, kao ni celokupnog godišnjeg odmora na narednu kalendarsku godinu.

Iz navedenog razloga je Ministarstvo za rad, zapošljavanje, boračka i socijalna pitanja dalo mišljenje broj 011-00-463/2016-02 od 18.7.2016. godine: „Zaposleni ima pravo na drugi deo godišnjeg odmora, koji može da iskoristi najkasnije do 30. juna, ukoliko mu je prvi deo u trajanju od najmanje dve radne nedelje propao jer je isti morao da iskoristi u toku prethodne godine."

Dakle, ukoliko zaposleni ne može da iskoristi pripadajući godišnji odmor za tekuću kalendarsku godinu nakon 30. juna naredne kalendarske godine, postavlja se pitanje iz kog razloga bi poslodavac bio dužan da isplati zaposlenom naknadu štete po tom osnovu.

In addition, the employee can use the entire annual leave for the corresponding calendar year until 30th June of the following year only if he was unable to use it during the calendar year due to temporary inability to work caused by pregnancy, child care and special child care, while in all other cases of temporary inability to work there is no possibility of "carrying over" a part, as well as the entire annual leave, to the next calendar year.

For the above reason, the Ministry of Labour, Employment, Veterans and Social Affairs issued opinion number 011-00-463/2016-02 as of 18th July 2016: "The employee has the right to the second part of the annual leave, which he can use no later than 30th June, if the first part of at least two working weeks "lapsed" because he had to use it during the previous year."

Therefore, if the employee cannot use the corresponding annual leave for the current calendar year after 30th June of the following calendar year, the question arises as to why the employer would be obliged to pay compensation of damage to the employee on that basis.

Privremena sprečenost za rad koja je prouzrokovana bolešću ili povredom van rada, te usled koje zaposleni nije u mogućnosti da koristi Zakonom o radu propisano pravo na godišnji odmor, ne može predstavljati osnov za odgovornost poslodavca, odnosno osnov za naknadu štete.

Samim tim, u slučaju koji je bio predmet odlučivanja Vrhovnog suda, trebalo bi da je zaposleni ostvario pravo na naknadu štete za ukupno 30 dana neiskorišćenog godišnjeg odmora i to 20 dana godišnjeg odmora za 2015. godinu i 10 dana godišnjeg odmora za 2016. godinu. Navedeno zaključujemo iz sledećih razloga:

- srazmerni deo godišnjeg odmora za 2014. godinu je „propao“ – zaposleni je isti morao da iskoristi najkasnije do 30.6.2015. godine;
- prvi deo godišnjeg odmora za 2015. godinu je „propao“ – zaposleni je isti morao da iskoristi do 31.12.2015. godine;
- preostali deo godišnjeg odmora za 2015. godinu „nije propao“ – zaposleni je preostali deo godišnjeg odmora mogao da iskoristi do 30.6.2016. godine;

Temporary inability to work caused by an illness or injury outside of work, and as a result of which the employee cannot use the right to annual leave prescribed by the Labor Law, cannot be a basis for the employer's responsibility, i.e. a basis for compensation of damage.

Therefore, in case that was the subject of the decision of the Supreme Court, the employee should have been entitled to compensation of damage for a total of 30 days of unused annual leave, namely 20 days of annual leave for the year 2015 and 10 days of annual leave for the year 2016. We came to this conclusion because of the following reasons:

- the proportional part of the annual leave for the year 2014 "lapsed" - the employee had to use it no later than 30th June 2015;
- the first part of the annual leave for the year 2015 "lapsed" - the employee had to use it until 31st December 2015;
- the remaining part of the annual leave for the year 2015 "has not lapse" - the employee could have used the remaining part of the annual leave until 30th June 2016;

- srazmerni deo godišnjeg odmora za 2016. godinu „nije propao“ – zaposlenom je radni odnos prestao 12.5.2016. godine, te je nesporno da ima pravo na srazmerni deo godišnjeg odmora za odnosnu godinu.

Ukoliko bi se prihvatio stav Vrhovnog suda, isti bi podrazumevao da zaposleni koji usled privremene sprečenosti za rad ne mogu da koriste godišnji odmor, imaju pravo na bezgranično „prenošenje“ neiskorišćenih dana godišnjeg odmora, a čini se da to nije bila namera zakonodavca, niti takva obaveza za poslodavce proizilazi iz odredaba Zakona o radu.

Samim tim, prilikom utvrđivanja prava zaposlenog na naknadu štete za neiskorišćene dane godišnjeg odmora, poslodavac mora najpre da utvrdi na koji broj dana godišnjeg odmora zaposleni ima pravo na dan prestanka radnog odnosa, te da shodno istom utvrdi visinu štete koju je potrebno isplatiti.

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- the proportional part of the annual leave for the year 2016 “has not lapsed” - the employment ended on 12th May 2016, and it is indisputable that the employee has the right to a proportional part of annual leave for the respective year.

If the stand of the Supreme Court were to be accepted, it would mean that employees who, due to a temporary inability to work, cannot use annual leave, have the right to limitless “carry-over” unused annual leave days, and it seems that this was not the intention of the legislator, nor does such obligation for employers arise from the provisions of the Labor Law.

Therefore, when determining the employee’s right to compensation of damage for unused days of annual leave, the employer must first determine the number of vacation days the employee is entitled to on the day of termination of employment and accordingly determine the amount of damage that must be paid.

Iako sudska praksa ne predstavlja izvor prava u Republici Srbiji, ista u značajnoj meri određuje način primene odredaba Zakona o radu, kao i drugih propisa. Zbog navedenog razloga možemo samo da se nadamo da je reč o stavu jednog veća, koji je podložan promeni, te da to neće biti opšte usvojena praksa građanskog odeljenja Vrhovnog suda.

Although judicial practice is not a source of law in the Republic of Serbia, it determines to a significant extent the way of applying the provisions of the Labor Law, as well as other regulations. For the above reason, we can only hope that this is the opinion of one panel, which is subject to change, and that it will not be a generally adopted practice of the civil department of the Supreme Court.

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