Eliza Kosiorek

Workers' disciplinary liability as an autonomous kind of liability in the labour law

Labour legislation mostly serves to protect employees as a weaker part of the employment relationship. At the same time, the regulations such as disciplinary and material liability, as well as termination of employment serve employer's benefit, because thanks to them, the employer can obtain report for duty in a way which complies more with her/his needs. Talking about the institution of disciplinary liability, which is the subject of this dissertation, we can assume that this institution is doubtful and controversial in the conditions of market economy and the dominance of private entrepreneurs in today's job market. It might seem that in the free market economy, in which employers have quite a big possibility of modeling the labour, the repressive-educational instruments in the form of disciplinary penalties are useless. In subject literature there are often arguments for the resignation from using disciplinary penalties. Although it might seem that such an institution cannot exist in our reality , in my opinion there are arguments for maintaining this institution in the labour legislation, such as preventive-educational benefits, as well as other functions. The employer should posses a wide variety of ways of influencing the staff and its members in cooperative and subordinate work, which has special importance in traditional forms of employment, which still dominate in the public sector.

Raising the subject of this dissertation, I wanted to draw attention to solving the emerging interpretative doubts connected with using regulations of disciplinary penalties. Nonetheless, the main aim of the dissertation was stating the legislative character of disciplinary liability as well as showing that disciplinary liability can be one of the instruments of human resource management by the employers, which have influence on the efficiency and effectiveness of work.

The scope of legal measures which the employer possesses and can use toward the employee in the case of not performing or wrong performing of work duties is wide and varied. The violation of duties connected with employment relationship by the employee can lead to his/her compensatory liability, resulting in material liability for the damage done to the employer. However, the employee can also be called to non-compensatory liability in the form of disciplinary liability. The aim of disciplinary liability, when opposed to compensatory material liability, is not the compensation for the damage done to the employer , but disciplining the employees on the issue of following a fixed work order.

Writing about disciplinary liability of employees towards employers we should point out that this topic is not a common subject of deliberations in literature, judicature or commentaries. In the juridical writings this problem is undertaken in the form of articles and contributions. However ,

there is still no monograph on this subject. Among the authors dealing with this issue we can distinguish the publications by Zbigniew Góral.

The complexity of issues connected with the institution of disciplinary liability demanded use of different research methods. These were respectively matched with the research problems.

The basic research method used in this dissertation was legal-doctrine method. At the same time, historical method was used with the aim to show the genesis of regulations of disciplinary liability, pointing out to the causes of proceeding changes. In the dissertation jurisdiction of the Supreme Court was used , which helped to explain many interpretative doubts and controversies connected with the issue of using disciplinary liability, as well as draw conclusions *de lege ferenda.* This dissertation is mainly based on the writings by M. Święcicki, Z. Góral, J. Pacho T. Kuczyński, W. Szubert czy J. Wratny.

The dissertation is split into six chapters according with its aims.

The first chapter contains considerations concerning disciplinary liability. It shows the genesis and evolution of legal regulations connected with this form of liability. Other forms of worker's liability were also characterized, pointing out to differences and similarities between them in relation to the institution of disciplinary liability.

In the second chapter I analyzed the types of penalties connected with disciplinary liability, as well as presumptions of using them , including the distinction between the objective side of the disciplinary offense and subjective side, that is the worker's behaviour.

In the third chapter I described a subject scope of disciplinary liability, consisting of subjects eligible to using sanctions as well as a group of employees towards whom this liability can be addressed, especially employees at executive posts.

In the fourth chapter particular elements comprising the process of imposing disciplinary liability were analyzed , that is the terms connected with using disciplinary liability, fulfilling a duty of listening to the employee, taking decision of imposing a penalty as well as the restriction of informing the employee about calling him/her to account.

The fifth chapter comprises the issues related to legal possibilities of employee's questioning legality of imposing disciplinary liability, that is an employee's objection towards the employer, the employer's duty of collecting an opinion from unions, bringing an action to the labour court).

The sixth chapter is devoted to considerations over the legal character and functions performed by this institution. In the conclusion the problem of keeping this institution in today's working relations was reconsidered and conclusions were presented.

EKosiorek