

## RECORDS OF CONCILIATIONS BEFORE TRADE UNIONS: ARE THEY ALWAYS UNAPPEALABLE?

Some recent judgments have called into question from various points of view the principle that conciliations of employment disputes signed by an employee with the assistance of a trade union cannot be challenged.

Apart from cases in which it is a flaw in the consent (error, violence or fraud) that has been criticised, some of these judgments have emphasised the limits to which these records of conciliation are subject from both a substantive and procedural point of view.

In this regard it will be appropriate for undertakings to pay utmost attention to all prerequisites laid down by courts' decisions as otherwise the worker may challenge the agreement within 180 days of it being signed.

### THE EFFECTIVENESS OF TRADE UNION ASSISTANCE

In some judgments the courts have taken the view that conciliations may be challenged where the designated trade unionist has not provided real assistance and the worker has not been able to provide his "informed consent" (Court Rome no. 4354 of 8 May 2019 and Court of Bari no. 3154 of 28 August 2019; prior to this see Supreme Court no. 24024 of 23 October 2013).

In particular, trade union conciliations have been considered ineffective when it was found that the trade unionist had confined themselves to reading the record and explaining that after signing it would no longer be possible to raise any subsequent objections, without describing the scope of the decision to agree to the conciliation in terms of costs/benefits and without being informed about the details of the matter that had been settled.

### DETAILS OF WAIVERS

Other judgments have criticised waivers that were generic and not structured analytically. This was the case with Supreme Court judgment no. 20518 of 30 July 2019, which deemed a settlement agreement void as the waiver was generic and therefore unsuitable for allowing the employee to state a clear intention on the basis of the exact representation of the rights waived (see also Supreme Court no. 15371/2003).

#### Main aspects

- The effectiveness of trade union assistance
- Details of waivers
- The collective agreement procedure

# **C L I F F O R D**

## **C H A N C E**

This makes it necessary to draw up a detailed record of settlement and avoid the use of boilerplate clauses.

### **THE COLLECTIVE BARGAINING PROCEDURE**

A recent judgment of the Court of Rome (judgment no. 4354 of 8 May 2019, cit.) criticised from a formal point of view a trade union conciliation signed using methods other than those laid down by the national collective labour agreements entered into by the trade unions with the largest representation in accordance with the provisions of art. 412-*ter* of the Code of the Civil Procedure.

The Court of Rome took the view that:

- the rules on waivers in employment law matters have an exceptional character and a broad interpretation of legal provisions or recourse to analogy are not allowed;
- only those conciliations in respect of which the collective agreement provides expressly for regulation can ensure that the workers are fully protected;
- in those sectors in which the collective agreement does not regulate the matter, trade union conciliations remain challengeable.

It will be necessary to await developments at the subsequent stages of the proceedings in relation to the judgment which until now has been an isolated one in case law.

We note, however, that certain circulars and interpretations from the Ministry of Employment (circular no. 37/5199 of 16 March 2016) and the National Labour Inspectorate (circular no. 163 of 17 May 2018) have highlighted the prerequisite set out in art. 412-*ter* of the Code of Civil Procedure of the degree of greater representativeness of the trade unionist providing assistance in the conciliations for the purpose of filing the record at the Territorial Labour Inspectorate and the competent court of jurisdiction.

### **CONCLUSIONS**

It will, accordingly, be appropriate to evaluate the provisions of the collective agreement applied before planning a trade union conciliation. Where the collective agreement does not regulate trade union conciliations it will be preferable to turn to another protected forum (namely one of the certification forums where the attempt at conciliation set forth at art. 410 of the Code of Civil Procedure can be carried out in accordance with art. 76 of the Law of 10 September 2003, no. 276).

## CONTACTS



**Simonetta Candela**  
Partner

**T** +39 02 8063 4245  
**E** [simonetta.candela@cliffordchance.com](mailto:simonetta.candela@cliffordchance.com)



**Marina Mobiglia**  
Senior Associate

**T** +39 02 8063 4339  
**E** [marina.mobiglia@cliffordchance.com](mailto:marina.mobiglia@cliffordchance.com)



**Alessio Amorelli**  
Associate

**T** +39 02 8063 4256  
**E** [alessio.amorelli@cliffordchance.com](mailto:alessio.amorelli@cliffordchance.com)

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