

# Germany: labour court confirms dismissal of Opel auto worker in “wildcat strike”

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28 July 2005

On July 19 the labour court in Bochum came down with its ruling in the case against Opel auto worker Richard Kaczorowski. The 45-year-old worker from the work logistics department of the Opel factory in Bochum had appealed against his summary dismissal by the company. In the course of the hearing, he was able to prove that the accusations made against him were groundless and part of disciplinary measures imposed following a walk-out at the company last autumn.

The labour court ruled the immediate dismissal to be disproportionate and illegal, but then converted it into a dismissal by notice within a prescribed period and rejected Kaczorowski's plea for reinstatement by the company.

The verbal judgment made by court chairman Judge van der Leeden was remarkable. After the cross-examination of witnesses on the first day of the hearing in May had made clear that the reason given for the dismissal—i.e. that Kaczorowski had threatened, sworn at and insulted workmates—could not be upheld, van der Leeden now declared this was not the issue.

Instead, he introduced another reason for his judgment: “The wildcat strike in the autumn last year, whatever one calls it [for legal reasons, the workers officially claimed their walk-out to be an “continuous information meeting” and not a strike], was illegal. The plaintiff did not only take part in it—that would not perhaps justify a dismissal—he also expressly urged others to participate in this strike. That was a demand to breach the contract [of employment] and thus a severe violation of industrial peace.”

With these words, the judge made clear what was at stake in this trial. The protest action and spontaneous walk-out of last October are to be criminalised retrospectively and all employees intimidated. To this end, one worker has been picked out, made an example of and punished, together with a member of the factory council who was also dismissed without notice. After all, there can be no doubt that during the one-week strike, organised as a “continuous information meeting” for employees, all of the company's workers discussed the strike and the large majority—in particular, factory shop stewards—worked to ensure that, where possible, the action should be conducted in a unified and mutually supportive fashion.

In other words: Richard Kaczorowski's actions were identical to those of nearly all employees during the week of action, and now, on behalf of all those involved, he is to be punished.

Judge van der Leeden, who made his short statement without reading from notes, appeared concerned about the clarity of his

words and added: “It is not about setting an example!” The plaintiff not only took part in protests, but was also took part in a “special activity” and called for illegal behavior. This was the source of his incorrect conduct and the grounds for his dismissal, according to van der Leeden.

Kaczorowski announced he would appeal against the judgment.

The judgment strikingly contradicts the course of the hearing up to now. The facts are clear. Opel issued immediate dismissals to Richard Kaczorowski and factory council member Turhan Ersin shortly after the strikes carried out by workers at the Bochum plant last October. The strike involving thousands of workers shut down the entire Opel factory in Bochum for a full week. The protest was called following the announcement of plans to close the factory, which would result in mass redundancies, and found wide support in other plants and the population as a whole. The strike only came to an end following strong pressure from trade union and local factory shop steward leaders.

Since Turhan Ersin was a member of the works council and appealed against his dismissal, the company was forced to go to a labour court to enforce its action. This trial has already begun. As an ordinary worker, however, Richard Kaczorowski does not enjoy such protection against dismissal. His summary dismissal became effective immediately. After 24 years with the company—including 18 years on the assembly line—he found himself jobless and was then prevented from obtaining unemployment compensation for a period of three months because of alleged “self-induced redundancy.”

The first day of the hearing on Kaczorowski's appeal for reinstatement took place on May 10. It centered on the testimony of five witnesses for the company. In the written dismissal notice, the company justified its action by referring to these witnesses and claiming that Kaczorowski had scared and intimidated co-workers with threats of violence. In the course of cross-examination, however, four of the witnesses conceded that at no time had they felt themselves to be threatened in their discussions with Kaczorowski. Only the senior employee W. confirmed the accusation, although he also admitted, “I had, however, no fear of the plaintiff.”

In view of the clarity of the testimony, which failed to back up the accusations of compulsion or threat in any way, Judge van der Leeden noted at the end of the first day of the trial that it would be unnecessary to call defence witnesses for the plaintiff. But he refused to give judgment on behalf the plaintiff, but suggested

instead a pause for negotiations and pressed for a settlement.

The second day of the hearing, on July 19, which was also attended by many factory council representatives, shop stewards and fellow workers, began with discussions over a settlement. Management representatives, however, were unwilling to offer more than a stipulated redundancy package of between 30,000 to 40,000 euros and Kaczorowski insisted on his reinstatement.

Then, after just 15 minutes, the court withdrew for consultation. Many observers at the trial concluded that the facts allowed no other judgment than a reversal of the dismissal notice. There was therefore considerable surprise when the decision was announced. A written version of the judgment is not yet available, but in his verbal commentary, Judge van der Leeden gave reasons for the dismissal that had not been referred to on the first day of the hearing and had not come up during the cross-examination of witnesses.

In a writ drawn up by the attorney Dr. Markus Kappenhagen from the office of Baker & McKenzie, which represents the interests of Opel, Point 2 stipulates: "Reason for the dismissal without notice is the fact that on 16.10.2004 [November 16, 2004] the plaintiff threatened four workmates with violence, as well as swearing at and insulting them." These claims were disproved by the witnesses' testimony. The aforementioned reason now given by Judge van der Leeden for the dismissal—i.e., "request to breach contract"—was not only introduced afterward, it is untenable.

If it was illegal to urge others to take part in a protest action during discussions with fellow auto workers, then the vast majority of the 9,600 Opel Bochum workforce, including a number of shop stewards, should be sitting in the dock. What in fact has occurred is the exemplary punishment of one worker. However, such victimisation is expressly forbidden by German industrial law.

The appropriate passage in the law reads that "all those persons active in the factory are to be treated according to the principles of law and fairness" and that "any different treatment of persons on the basis of their race, religion, nationality, origin, political or trade union activity or opinion is not allowed...." (§ 75 paragraph 1 BetrVG). In a legal commentary (refer: Gnade/Kehrmann/Schneider/Klebe/Ratayczak), specific reference is made to this paragraph in connection with judicial rulings and disciplinary actions following an industrial dispute.

The statement that the behavior of Richard Kaczorowski represented a "severe violation of industrial peace," is also untrue. In reality, the industrial peace at the Opel works in Bochum was lastingly disturbed by General Motors Europe, when the company unilaterally informed the media (ignoring the factory negotiating committees) of its decision to axe 10,000 jobs at its European plants.

This point was made in a very detailed writ drawn up by the attorney Dr. Thomas Grote. After the first day of the hearing, Richard Kaczorowski had changed his legal representation, following the very passive behavior in court of the attorney recommended by the trade unions. Kaczorowski is now being represented by Dr. Grote, of the well-known and respected office of Professor Dr. Hartstang.

Workers attending the court hearing reacted indignantly to the judgment. On the same day, the B shift in the assembly production

department at Opel drafted a resolution that stated, "We protest against today's judgment at the labour court in Bochum, which rejected in the first instance the appeal made by our colleague Richard for the withdrawal of all dismissal notices issued against him."

While it is entirely legal for companies to destroy thousands of jobs, "workers are treated like criminals, if they resist," the resolution continues. "We reject this scandalous judgment and demand the reinstatement of Richard and his full support by staff, works council and trade union."

However, the judgment calls for more than a declaration of solidarity. It is directed against the entire workforce, in particular those who were not prepared to accept the destruction of jobs without resistance. In order to strike back at this attack, it is necessary to provide comprehensive and detailed information to the workforce. This must include a critical examination of the behaviour of the leadership of the works council and the trade union.

Why did neither the works council nor the workers' trade union—IG Metall—demand a clause from management at the end of the dispute forbidding the victimisation of those involved in protest action? Such assurances have been regularly demanded by unions since the major industrial disputes of the late 1960s. The refusal to raise this demand on behalf of all those involved in the dispute represents a deliberate blow to solidarity in the factory and enabled management to select and punish individual workers.

Why did the works council agree to additional work being carried out on a Saturday that led to the exchange of words that then became the excuse for the dismissal notices? Why has the works council refused to undertake any concrete measures for the defence of the dismissed colleagues Richard Kaczorowski and Turhan Ersin, although 3,000 signatures have already been collected protesting the dismissals?



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