Germany: Sacked Opel worker appeals to Industrial Court

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More than a year after the one-week strike by Opel workers at the Bochum factory against massive job cuts and plans by Opel's parent company, General Motors, to close plants, a fresh appeal has been lodged in the state Industrial Court in the city of Hamm, North Rhine-Westphalia, against the subsequent sacking of a worker.

Immediately after the strike ended in autumn of last year, the GM subsidiary Adam Opel AG sacked storeman Richard Kaczorowski without notice, as well as Turhan Ersin, the latter a member of the factory works committee. Whereas Opel had to take its case against Ersin to court (Ersin was protected against instant dismissal by his position on the works committee), Kaczorowski was simply dismissed. It fell to Kaczorowski himself to initiate what has been a drawn-out legal appeal to establish the illegality of his sacking.

On October 14 of last year, the workforce at the Bochum factory laid down its tools and organised "informational pickets" after it was made known to the works committee, the union representatives and the media that Opel's chief in Europe, Fritz Henderson, had made statements to the press threatening to shut down entire factories. The work stoppage lasted several days and led to a complete production standstill. It received the support of most of the population.

On the third day of the stoppage, a Saturday, a day on which no production was due to occur, a group of workers, among them Kaczorowski, left the picket and went inside the factory to take a look at the body of Opel's new Zafira model. This led to a short exchange of words with a group of four other workers and an office manager, who were just finishing working in a corner of the otherwise empty assembly plant, putting together components for this new model.

Like every other discussion that took place during this period, whether inside the factory, on the picket line, at the factory gates or inside the homes of thousands of workers, it centred on the future of their families and why it was important to support the protests and informational pickets against the planned mass sackings.

This discussion was later used by Opel management as the pretence for sacking Kaczorowski, action taken "due to a significant disruption of company peace." Opel alleged that Kaczorowski attacked, threatened and insulted other workers.

Kaczorowski rejected these allegations as fictitious, both during his questioning by Opel management as well as in his written and verbal statements to the Industrial Tribunal. Even Opel's prosecution witnesses contradicted Opel's claims during the hearing at the Industrial Tribunal in Bochum. All five of them, including the office manager, testified that they had not felt they were being threatened. The leading judge subsequently told the court that the defence witnesses that Kaczorowski had named would no longer be required, leading many observers of the case to believe that Kaczorowski's appeal would be successful.

However, at the hearing's next session in July, the judge surprised many in the court's public gallery by announcing that Kaczorowski's appeal had been rejected. The dismissal would remain in effect, but instead of being an instant dismissal, would be a dismissal with due notice. Previously, the judge had suggested an out-of-court settlement whereby Kaczorowski would receive 20,000 euros in compensation, a proposal that Kaczorowski took as a provocation and rejected.

In the written reasons for his decision, the judge used arguments to justify the dismissal that were used neither by Opel inside the court nor in Kaczorowski's letter of dismissal. The judge argued that Kaczorowski had not only disturbed the company peace, but also the company's operations, and had disrupted the assembly line. Kaczorowski's behaviour had also gone way beyond the neglect of duty of other strike participants, the judge said, in that he demanded that other workers break their work contracts.

Kaczorowski lodged an appeal against this judgement, which was due to be held in Hamm on December 19. While the chances of winning the appeal are considered good, a defeat could be very costly. Kaczorowski could be forced to pay court costs of more than 10,000 euros, in addition to those of his own legal defence. As the lawyer assigned to the case by the trade union had not acted adequately in his interests, Kaczorowski had to employ the services of a more capable and conscientious one, with his own money.

Kaczorowski's new attorney based the appeal on numerous formal legal flaws, the dismissal procedure of Opel, and the first trial and judgement.

The appeal claims that after the dismissal, the works committee was not told of all of the allegations against Kaczorowski that were later used in the court case. The works committee was also not informed by Opel of the fact that Kaczorowski had been employed for 24 years without any previous complaint against him.

Another aspect of the legal deficiencies at the Bochum hearing and judgement was conspicuous to all participants and observers at the time: witnesses for the defence were simply not heard by the court without any reason given. As far as the testimony of the witnesses for Opel were used in the court's judgement, this content actually worked in favour of Kaczorowski.

However, Kaczorowski's appeal is not just based on formal legal questions, but also on questions of content. Regarding the allegation of "significant disruption of the assembly line" and his supposed "neglect of duty," which went "far beyond that of other workers demonstrating against job reductions," Kaczorowski argues that in view of the days-long work stoppage by more than 6,000 employees, there could not have been any other "significant" disturbance to production than that already caused by the strike itself. In view of this, Kaczorowski had not, as the judge saw it, demanded other workers "strike" or "break contracts," but had rather held a discussion in the same way that thousands of others had done from the beginning of the protest action.

It appears as though the state Industrial Court in Hamm will undertake a detailed review of the events as a result of this latest appeal, something that the magistrate in the first hearing did not allow. All witnesses are to be called again, including those named by Kaczorowski. The court is

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demanding information from Kaczorowski as well as from Opel, requesting each to provide written answers to questions about the events in question during the protests.

For example, Opel management is being asked to comment on why it dismissed only Kaczorowski and none of his companions. It also has to explain whether any formal permission was given at all for the work on that Saturday, when the Zafira model was being assembled.

This latter poses another question upon which the court's judgement may not necessarily have a direct impact, but which nevertheless is of decisive significance. Kaczorowski, as an ordinary worker, has been forced to undertake long and extensive legal action in two courts in order to defend his rights and his employment.

The question is: What was the role of the works committee and the union during the protest action in autumn 2004, and what has been their role since then?

A review of three facts is sufficient to answer this question.

First, the instant dismissal was made possible by the works committee and union, which, against the will of many of the strikers and without having reached any kind of tangible result, ended the workers' struggle. Both organisations refrained from making an agreement with Opel management to prohibit subsequent reprimand action against the striking workers, a practice that was standard over the previous three decades.

A green light was thereby given to the company to go ahead with punitive measures, which were immediately organised after the strike ended by company management both in Germany and internationally, and carried out against Kaczorowski and Ersin.

Second, the disputed episode in the assembly hall was able to occur because the works committee had either formally given its permission for Saturday work to take place in the middle of a strike, or had silently tolerated such a step. Further, according to statements from Opel workers, the vice chairman of the works committee, Lothar Marquart, previously a long-standing member of the German Communist Party, had smuggled car bodies into the factory the day before in order to make work on Saturday possible.

This was openly known at the time and provoked protests and much discussion among the striking workers. It was such actions which led management to feel they had a free hand to undertake their own provocations.

Third, one year after his sacking, Kaczorowski is still unemployed and has now come under the new unemployment regulations of Hartz IV, which means he is not receiving one cent in unemployment benefits. As his wife is working, albeit for a very modest wage, Kaczorowski is prohibited by these new rules from receiving any kind of support from the government, even though his son has not yet finished his studies and is still living at home.

In spite of these extremely tough circumstances, the works committee did not feel obliged to offer Kaczorowski any financial support, even though Kaczorowski requested it many times and even though thousands of euros were donated by people in the entire region to cover such special cases. The works committee has kept the money under lock and key. The leadership of the IG Metall trade union—the world's largest—has refused to reimburse Kaczorowski's legal expenses from its own legal insurance policy, even though Kaczorowski was a paying member for 24 years.

Kaczorowski and, indeed, all of his work colleagues are faced with a works committee and trade union bureaucracy that are prepared to work behind the backs of their members and constantly make new concessions in cooperation with company management.

Just a few weeks after workers returned to work, the works committee came to an agreement with management with the cynical title "Pact for the Future." Ten thousand jobs are set to be destroyed under the December 2004 agreement.

Through the use of redundancy payments, 2,820 workers in Bochum and around 3,500 at the Rüsselsheim plant are to be placed "voluntarily" in so-called "transfer or job creation companies"—i.e., holding stations—before being shifted onto the unemployment lines and Hartz IV. Under the deal, the works committee and trade union will function as co-managers with Opel to force through job cuts.

The CEO of the new job creation company in Bochum BAQ, the IG Metall legal advisor and lawyer Horst Welkoborsky, admitted to the Monitor programme on the state-owned ARD television station that out of the hundreds of ex-Opel employees "only one, at most two" would be able to find permanent full-time employment. The "Pact for the Future" nevertheless states: those who do not volunteer for redundancy will be faced with the sack.

These attacks against Opel workers are just the beginning. The mass sackings and factory closures that General Motors in the US has announced, the 60 percent cut in wages at the former GM subsidiary Delphi, and the mass job cuts in numerous other companies across Europe reveal the global strategy of top management at GM and other large corporations and finance companies.

It is against this background that the legal proceedings over the sacking of a single Opel worker in Bochum must be viewed. For GM, the example punishment meted out to Kaczorowski and its ruthless prosecution in all legal arenas is of strategic significance. Its actions are designed to shatter the resistance of the workforce to its plans.

This is demonstrated by the fact that General Motors has engaged the services of Baker & McKenzie, a large international legal firm that charges hourly rates of between 220 and 280 euros. The legal fees are sure to cost GM more than two years of Kaczorowski's salary.

With his initial legal action before the Industrial Tribunal and now his appeal, Kaczorowski has courageously stood up to and fought the company and its union co-managers. To ensure an effective and lasting victory requires more than just legal proceedings, however, even if—something that would be welcomed—the case ends in a just decision in Kaczorowski's favour.

For this, an international strategy is necessary to counter the systematic extortion by management and their henchmen in the unions, a strategy that is oriented towards mobilising all workers in all factories on the basis of a socialist programme. A principled defence and support for Richard Kaczorowski and Turhan Ersin must be seen in this connection.

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