

# Germany: Court penalises Opel worker

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On December 19, the Labour Tribunal in Hamm (North Rhine-Westphalia) found against Opel worker Richard Kaczorowski in a judgement that makes a mockery of any serious judicial procedure. The court sided unconditionally with the auto concern, Adam Opel AG, whose management had summarily dismissed Kaczorowski last year as an example to all those who had participated in the week-long strike in October 2004.

The verdict announced by the chairman of the judges panel, Helmut Richter, flouted the most elementary legal norms, ignoring the detailed arguments presented to the court by Kaczorowski and his attorney Dr. Grote. The court's decision means the company can slash jobs and carry out mass sackings without hindrance, and that the workers have no right to resist.

The court case lacked any trace of the oft-quoted judicial independence. One of the two honorary assessors sitting alongside Judge Richter, Rainer Witt, was introduced as the personnel chief of a "not small" factory; the second, Hussein Göcmen, was attending his first court hearing as an honorary assessor. He was sworn in at the beginning of the proceedings, and then said nothing in the course of the trial.

As soon as during the cross-examination of witnesses, the chairman of the judges stressed that neither he nor the assessors were in any doubt about the legality of the sacking. He put Richard Kaczorowski under enormous pressure to accept a compromise settlement without compensation, several times threatening to reject Kaczorowski's case completely and to uphold his summary sacking. This would have resulted in the Opel worker not only having to pay his own lawyer's costs but those of the opposing side.

Only by accepting such a settlement was Kaczorowski able to have his summary dismissal withdrawn in favour of being made redundant for "operational reasons."

The judicial decision has to be seen in connection with the mass sackings recently announced by many Germany companies and which have already been carried out in many workplaces.

For several days, workers at the electrical and electronics concern AEG in Nuremberg have been on strike against the planned closure of the company's parent plant, affecting almost 1,800 workers. A further 32,000 sackings have been announced at Telekom; some 8,000-10,000 at Volkswagen; 8,000 at Siemens and a further 8,000 at DaimlerChrysler. In addition, retailer KarstadtQuelle plans to shed 5,700 jobs; Walter Bau construction, 3,000; 2,400 at HypoVereinsbank 2,400 and 1,900 at Deutsche Bank; IBM, 1,600; Hewlett-Packard, 1,500; Ford, 1,300; Linde, 1,100; kitchen and kitchen appliance manufacturer Miele, 1,100, and 943 at plumbing fittings manufacturer Grohe. Tire manufacturer Continental wants to close its factory in Hanover with the loss of 320 jobs. Taken altogether, this is an almost endless list of mass sackings.

In contrast, the owners and shareholders of many of these corporations will be enjoying substantial year-end dividends. The swingeing job cuts are being used to force the remaining workforce to accept drastic concessions and increase company profits. This wave of mass redundancies will undoubtedly lead to big social conflicts.

On the same day the court penalised Richard Kaczorowski, New York

city transit workers had begun a strike in defiance of their trade union. They took this action in opposition to the courts, which had banned the strike and threatened to severely penalise those who participated in it.

It is now clear that the protest strike at Opel in Bochum in autumn 2004 was part of a qualitatively new stage in the international class struggle. The penalizing of Richard Kaczorowski, which has been upheld in the higher courts, is directly aimed at intimidating all workers and was decided upon at the highest level.

To prepare for coming struggles, it is necessary to draw the political lessons from Kaczorowski's trial and the one-week strike at Opel.

The most instructive comment was made at the beginning of the proceedings, when Elmar Eising, representing the Opel management, justified why the company would not make any severance payment. After the proceedings were briefly interrupted, so that Eising could telephone Opel management, he said that such a payment, even if it were a small one, would send out the "wrong signal" to other Opel workers. Eising added, "These proceedings are not only of great political importance for Richard Kaczorowski and those close to him, but also for Opel AG."

The political significance of the trial for Opel and the signal it is intended to send could not be clearer. Immediately after the one-week strike and protest actions at Opel Bochum in October 2004, the management picked out one worker—Richard Kaczorowski—and summarily fired him in order to set an example. The "signal" they wanted to send was to intimidate the workforce—anyone who in future dares to take part in protests and disputes against dismissals should reckon with draconian punishment.

Germany's industrial legislation, however, ostensibly prohibits the singling out and punishment of an individual. The law expressly states that both employers and the works council must ensure that "all those working in a factory are treated according to the principles of justice and equity" and that "no one should be treated differently because of their ethnic origins, religion, nationality, political or union activities." An authoritative legal commentary regarding this paragraph points expressly to judicial rulings banning victimisations following labour disputes.

In order to circumvent this prohibition, Opel management constructed a threadbare pretext for penalizing Kaczorowski. It was said that on the third day of the strike—a Saturday, a day on which manufacturing would not normally take place—during a factory gate meeting, Kaczorowski together with some other colleagues had gone into the factory to see what was happening in the workshop where the new Zafira model was being produced. It was then alleged that there was a brief dispute there with a group of four other workers and a foreman, who were handling the car bodies and were about to finish the setup work.

Like other discussions by countless workers that were held at that time in the factory, at factory gate meetings or at home, talk concerned the future of the workforce and their families, and why it was important to support the protest actions and attend the meetings about the planned mass sackings. The management took this discussion as the pretext to summarily dismiss Kaczorowski "for seriously interrupting factory operations," claiming he abused, threatened and insulted the workers.

During the first hearing of the case, only the prosecution witnesses

nominated by Opel were asked to give testimony, but even then they indicated that they had not felt threatened at any point during the discussions. It was only in the second hearing that witnesses nominated by the plaintiff, Richard Kaczorowski, were able to give evidence to corroborate his version of the events.

After these statements had been made a number of issues were clear: firstly, no physical assault had taken place; secondly, nobody had been threatened; thirdly, the requests to take part and exercise solidarity at the information meeting in front of the factory did not differ from the general discussion held in the factory; and fourthly, the group calmly left the workshop together after 10 minutes and went back to the information meeting at the gate.

However, the presiding judge, Richter, swept aside this train of events and permitted no evaluation of the testimonies. Instead he rejected two witnesses as unreliable and stated that only one witness had clearly expressed herself in favour of Richard Kaczorowski. Her statement was countered by three statements by prosecution witnesses and therefore, for the panel of judges, the issue was clear.

Such a presumption by Judge Richter had little to do with recognized procedures of judicial diligence. He patently ignored obvious contradictions in order to support the line of argument of Opel management. Thus the testimonies by witnesses had made clear that Kaczorowski was not the only one who had spoken out during the course of the visit to the assembly workshop. Several colleagues who accompanied him had said similar things. But none of them was disciplined, let alone dismissed.

In a writ of November 28, 2005, Richard Kaczorowski's attorney, Dr. Grote, had drawn attention to this contradiction: "The fact that completely opposed principles are at work and thereby the right of fair treatment with regard to the dismissal notice was completely ignored is shown by the fact that the companions of the plaintiff who sought with him, on October 16, 2004, to inspect the new Zafira body in the end assembly hall received neither warnings nor dismissal notices from the defendants. On the one hand this is entirely correct, but on the other hand stands in obvious contradiction to the excessive reproaches and dismissal notices given by the defendants to the plaintiff, who in the course of his visit of a few minutes to the Zafira workshop on 16 October 2005 conducted himself in a basically similar fashion as that of his companions."

Judge Richter also swept aside a further contradiction. In the judgment of the first instance it was stated that Richard Kaczorowski—through his "dereliction of duty," which far exceeded the behaviour of his "coworkers demonstrating against personnel reductions"—was responsible for a "substantial disruption of factory operations." He appeared disinterested in the fact that following a three-day strike by over 6,000 workers there were no factory operations which Richard Kaczorowski could have "substantially" disrupted.

If the judge had concluded that the events of that day, October 16, 2004, could not be definitely determined by the testimonies given by witnesses, then he would be obliged to follow the legal maxim "in dubio pro reo!" (in case of doubt, for the accused—in this case the dismissed plaintiff). Instead the behaviour of the court can only be as acting as an accomplice of Opel management.

As if in microcosm, the conduct of the trial revealed the relations between the company management and the judiciary and trade unions/works council on the one hand, and its employees on the other. At the end of the hearing the judge joked with the Opel attorneys and remarked that with the money they had saved in compensation payments they could afford to buy a new Opel Zafira. In addition, he requested those responsible in management to bring security staff "into line" to ensure that in future protesters could not "indiscriminately enter the enterprise."

When the chairman of the works council committee, who had been invited as a witness but was not asked to testify, failed to promptly take

his place for the concluding remarks made by the judge, the latter jokingly threatened him with detention. The joke was well received and Rainer Einkenkel, who heads the 36 full-time stewards employed in the company's work councils, laughed in response. On the one side a cheerful, joking family comprising top managers, judges and work council members; on the other Richard Kaczorowski and his colleagues and friends who were outraged and nearly speechless at the utterly unfair ruling which bore all the characteristics of class law.

The links became even clearer when the attorney for Richard Kaczorowski remarked shortly before the conclusion of the hearing that the events of that Saturday afternoon in October 2004 should nevertheless be seen "in connection with the general strike situation in the factory."

"Do not speak of strike!" Helmut Richter proclaimed. "Do not dishonour this respectable term 'strike,'" he called out and stressed that what had taken place was an "unruly, illegal action." Strikes, according to Judge Richter, could only be called in Germany by the trade unions and only under strictly determined conditions and guidelines.

It would have been scarcely possible to make clearer the significance of the punitive measure taken against Richard Kaczorowski. Any form of independent resistance by workers, any attempt to break out of the straitjacket and control of the trade unions, is to be prevented under all circumstances.

The penalization of Richard Kaczorowski must be regarded as a serious warning. The fact that the company management were prepared to go to great lengths in terms of preparation and cash outlays in order to set this example—employing one of the most expensive international legal offices, Baker & McKenzie—and were able to impose the dismissal decision in every court instance makes clear how important these punitive measures were and the type of ferocious attacks being prepared for the future.

In their offensive against workers, all companies, including Opel, are employing a double strategy—relying on both the courts and the trade unions. The dismissal without notice was only possible because the works council and trade union terminated the labour dispute last year against the express wishes of many of the workers involved and without achieving any significant result. In addition they failed to come to an agreement with management to prevent victimization of those involved in the labour dispute—although they had made similar agreements over a period of decades following other disputes.

It was the works council and trade union that gave the green light for the kind of punitive measures now imposed on Richard Kaczorowski and also possibly on another worker, Turhan Ersin, a work councils member who was also dismissed and whose own trial is due next month.

The trade unions are ever more clearly functioning as direct accomplices of the companies and blackmailing their members to accept company terms. This shift to the right by the trade unions is an international phenomenon. Public transport workers in New York currently face the same problem. The national leadership of the transport workers trade union in the US categorically expressed its opposition to the strike.

The source of this reaction by trade unions and works councils is to be found in their nationalist and pro-capitalist program. Workers at Opel and all other companies confront the necessity of taking up a fundamentally new political perspective. It is only possible to counter future mass redundancies and the systematic imposition of further wage cuts and worsened working conditions on the basis of an international socialist program.

The Socialist Equality Party in Germany (Partei für Soziale Gleichheit, PSG) and the *World Socialist Web Site* are intervening to undertake a principled defence of Richard Kaczorowski and Turan Ersin. We call upon all workers seriously seeking a political alternative to contact the PSG and the WSWS.



To contact the WSWWS and the  
Socialist Equality Party visit:

**[wsws.org/contact](https://wsws.org/contact)**