

Germany's highest labour judge defends sacking workers for next to nothing

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In an interview with the *Süddeutsche Zeitung* newspaper at the end of last year, the president of the Federal Labour Court (BAG), Ingrid Schmidt, rejected public criticism about the immediate sacking of employees for minor infringements and sharply attacked the workers concerned, who are threatened by unemployment and the loss of their livelihoods.

Since a BAG decision in 1984, the German labour courts have generally upheld instant dismissals for theft of company property or embezzlement. In such cases, the value of the stolen property would not normally be taken into account. Moreover, even the suspicion of such an act can be sufficient legally to justify dismissal, even if criminal proceedings against the employee are dropped.

Last year, the case of Emmely, a Berlin supermarket checkout operator who was fired after more than 30 years of service on the grounds that she had allegedly cashed two unused coupons left by customers, with a total value of €1.30, ignited particular public outrage over this practice. The sacking of Emmely was confirmed in two lower courts and will be tested again in the coming months by the Federal Labour Court.

Since then, more and more sackings have come to light for “offences” one more absurd than the other: for eating a meatball from a buffet; for consuming a milk bar; for taking a baby cot home from the garbage; and even for a worker charging his cell phone using the company’s electricity supply.

The Social Democratic Party (SPD) wants to introduce a bill this month in the *Bundestag* (parliament) that would make dismissal for petty infringements contingent on the offence being repeated. The SPD has only come up with the idea now it is no longer represented in the government. From 1998 to 2009, the party supplied both the labour and justice ministers and had ample opportunity to implement a change in legislation.

The practice of firing workers for trifles has been possible for two and a half decades, and the Emmely case has been fiercely debated for most of the past year. Because of his criticism of the Emmely ruling, former Bundestag president Wolfgang Thierse (SPD) had to put up with angry attacks from right-wing lawyers and lawyers’ associations. But the SPD only wants to change the law now it can no longer implement it. The current government of the Christian Democratic Union/Christian Social Union (CDU/CSU) and Free Democratic Party (FDP) has rejected any such amendment.

This makes the intervention by Schmidt all the more remarkable. First, there is her blatant interference in the affairs of the legislature. She rejected the bill proposed by the SPD with the remark that “new laws should solve more problems than they create.” An employer should not be expected to regard either 5, 10 or 50 euros as representing the limit of what constitutes a minor offence, she implied.

In general, judges—concerned for their independence—are very sensitive to any criticism from the government or parliament, and are sparing as well with their own criticisms of the other branches of the state. Schmidt’s partisan intervention into the political debate on the side of the CDU/CSU, FDP and the employers’ associations is unusual and reminiscent of the angry tirade by Munich professor Volker Rieble in the *Neue Juristischen Wochenschrift* (New Judicial Weekly Magazine). Rieble chose the Emmely case as an occasion to warn the judiciary against making any concessions to discontent within the population.

Then there is the aggressive and crude argumentation by Schmidt in her interview with the *Süddeutsche*. She declared that Thierse’s criticism of the judicial rubber stamp given to Emmely’s dismissal was “wildly off the mark.” Although the law explicitly demands a “major” reason for a summary dismissal, Schmidt maintained that

legally speaking there are “no minor offences.”

This means that for Schmidt, the case of the employee using his employer’s electricity supply to charge his mobile phone, where the damage to the employer was put at 0.014 cents (not euros), is a basis for dismissal. Apparently rhetorically, she asks the question: “How does one actually come to take pasta squares unsolicited?” Or “a roll of toilet tissue”? “Why such arbitrary actions?” It concerns “a lack of propriety.”

Schmidt is thereby alluding to real cases. In the first instance, a 58-year-old nursing home worker had taken six pieces of leftover ravioli; she claimed that since she had to attend an internal training course in the evening she had no time to eat her dinner at home. Moreover, the ravioli would only have landed in the trash.

According to Spiegel Online, the court said in its ruling that the worker was in violation of the express instructions of the employer. It was forbidden to take food made for the home residents. For staff, a daily meal was offered at a price of €3.35. “The individual worker cannot act as she sees fit, and against an existing prohibition by the employer.” That was the real heart of the matter and not the monetary value of the leftover ravioli. Here, the “lack of propriety” meant: those who do not do as they are told, must go.

The other case involved a bus driver in the Thuringian town of Ilmenau. Due to stomach problems, he had taken a roll of toilet paper onto his bus from a company toilet, which was covered by closed circuit television. According to his statement, he had also left it on his bus after work. Consequently, the precious toilet paper had never actually left the employer’s premises. However, the bus driver *did have to* immediately leave the premises.

One can imagine the court hearing: With an air of importance, the honourable judges inspected the videotapes, interviewed witnesses, and all this in order to clarify a question upon which the social existence of the worker depended: Where did the roll of toilet paper go? Had the bus driver made “unauthorised” use of one or even several sheets?

As ridiculous as these cases actually are, for the workers affected they are deadly earnest. For the most part, the employees have worked at their jobs for a number of years, or even decades, before being fired for their “lack of propriety.” Many are already over 40 or 50. Too young for a pension, they will usually not find another job, and become dependent on the meager Hartz IV welfare benefits.

Schmidt openly admits that in reality it usually is not

about ravioli or toilet paper: “An employee expects to receive not just money from his or her employers. He also expects recognition, and that he will be treated as a person. But the converse is also true: An employer expects an employee to consider the company’s interest. If this relationship is disturbed, then it does happen that a worker can walk away with something and an employer may raise the question of trust even over trifles.”

In other words, the highest labour judge is aware that when it comes to dismissals, the above alleged petty offences are just excuses to get rid of workers who have insufficient consideration for the “interest of the company.” It is particularly insidious that the employee must prove to the court that the employer was motivated by something else, which is virtually impossible. For the employer, reasonable suspicion even of a trivial “offence” can serve as grounds for dismissal.

This is particularly relevant in the present economic crisis. According to Spiegel Online, there were approximately 11 percent more legal cases involving disputes between workers and employers in 2009; appeals against dismissals have risen by more than 20 percent in some places. In the words of the *Süddeutsche*, it has become a widespread “impression among the people: Those who ruin their firms get a settlement, and whoever takes six pieces of ravioli gets the sack.” Schmidt, the president of the Federal Labour Court, reacted to this with a shrug: Such “fundamental” questions of justice “could not be vicariously answered by the labour judges.”

In this situation, working people have been clearly told by a competent judge: workers can expect no justice from the German labour courts.



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