

German court rejects challenge against temporary work

Konrad Kreft**20 December 2013**

Last week, a ruling by the Federal Labour Court (Bundesarbeitsgericht—BAG) was met with expressions of satisfaction and relief from the bourgeois media. The BAG rejected the charge of a temporary worker that his previous employer's practice of replacing regular employees with temporary workers employed by agencies was "sham hiring."

The judgment establishes the principle that temporary workers have no possibility of claiming wages from a company, even if they have been hired by temporary work agencies for many years. The BAG thereby cemented the temporary work system and "legalised" the widespread practice of companies that hire agency workers for an unlimited period of time at significantly lower wages and with worse working conditions than regular employees.

The case of the complainant is typical of hundreds of thousands of temporary workers. Harald Hotop from Lörrach in Baden-Württemberg was contracted out by his labour agency to a hospital as an IT technician from 2008 to October 2011. The labour agency was a subsidiary of the hospital. The agency's 450 employees worked at the hospital under significantly worse working conditions than those of regular employees.

The IT technician lodged a complaint against the hospital because it had concluded a "sham contract" with the labour agency in order to hire workers illegally and increase the downward pressure on wages. The complainant referred to the fact that his three-year employment had been a working relationship, and he was therefore entitled to the same wage as the company's own employees. During this period, he earned a gross salary of around €2,000 per month, while under the collective agreement applying to company employees he would have been due €3,000.

This charge was rejected. The principle established by the BAG's ruling overturned the decision of the state court for Baden-Württemberg, which upheld Hotop's

case. The judges at the state labour court ruled that Hotop's service had lasted significantly longer than the law allows, but the federal judges argued there was no legal basis for this view.

The law on the hiring of employees states: "The contracting of employees to hiring agencies takes place temporarily." The law does not define what "temporarily" means, because, as the federal court declared, "the lawmakers deliberately avoided sanctions in cases where companies contract temporary workers for years."

This sentence was inserted into the law only in 2011, so as to bring the statute into line with EU regulations on temporary work. With the ruling, it has become clear that it was never about restricting temporary work or punishing breaches. "Regarding the numerous potential sanctions," the judges found, "it is a matter for the lawmakers to select them and not the court for labour matters."

The highly exploitative practice of employers has thereby been legitimized at the highest judicial level. A ruling that imposed sanctions on employers would have impacted hundreds of thousands of similar cases and significantly undermined a tool that has been used by politicians, trade unions and employers to slash wages.

The ruling is part of an offensive by the ruling elite to firmly establish temporary work as a method of exploitation, in order to further reduce wages.

In the opinion of the BAG, politicians should establish a legal framework containing clear regulations for temporary work. Although in the coalition government agreement between the Christian Democrats (CDU) and Social Democrats (SPD) there is talk of limiting temporary work to 18 months, with workers after nine months paid in line with employees who are part of collective agreements, sanctions for breaches are not stipulated.

The promises of the new German grand coalition to

restrict temporary work, like its pledge to introduce a comprehensive minimum wage, contain nothing progressive. It would be easy for companies to avoid time limitations simply by laying off temporary workers and re-hiring them.

With its Agenda 2010 and Hartz IV welfare reforms, the Social Democratic-Green Party government under Chancellor Gerhard Schröder eliminated all legal restrictions on temporary work, with the collusion of the trade unions. In 2003, the Social Democratic-Green government completely overturned the legal limitation on temporary work, which had been three months. Since then, the ruling elite in Germany has created the largest low-wage sector in Western Europe, and the number of temporary workers has risen from around 300,000 in 2003 to almost 900,000 today.

These policies are now to be continued through the collaboration of the new government and the trade unions, which openly support both the new Christian Democratic Union-Social Democratic grand coalition and temporary work.

In order to prevent agency workers from obtaining the legal right to equal pay with regular employees, the Verdi and IG Metall unions concluded a contract prior to the BAG ruling which ensures that temporary workers cannot receive the same pay as company employees.

Trade union representatives cynically criticised last week's judgment, while at the same time confirming their support for the government. Verdi Deputy Chair Andrea Kocsis demanded that the restriction on temporary work planned in the coalition agreement be implemented quickly. IG Metall Chair Detlef Wetzel called on the government to set "a maximum period of service for temporary workers."

Like the trade unions, the interest group Association of Temporary Labour Companies appealed to the government. The group's head, Werner Stolz, urged the government to "finally provide planning security to temporary labour agencies and customer services."



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