



Finnish Supreme Court: Success for shipowner against boycott action by ITF

by Othmar K. Traber*

Introduction

By way of background, cargo handling at a German port often requires the owner to issue a confirmation that the vessel, being loaded or discharged, is covered by a recognised ITF agreement. If not, the ITF may threaten the ship manager with a boycott until an ITF standard collective agreement (CBA) has been signed by the manager on behalf of the owner. In most cases the manager or owner agrees to sign to avoid the costs of boycott induced delay. However, when he considers the boycott unlawful, the shipowner is not defenceless but can request the local industrial tribunal to order the blockade terminated by way of an injunction.

The Supreme Court's decision

In Finland the Supreme Court recently has ruled on the legality of such an order to terminate the blockade as an interim measure (judgement of 10.10.2018, ECLI: FI:KKO:2018:61). The assessment was based on whether the boycott was, with a high degree of probability, unlawful. Hence, there had to be very probable grounds that the blockade, due to its manner of implementation, its objectives or its consequences, was in breach of law or good practice, or was unreasonable. The German legal situation is, basically, comparable in this respect.

According to the Finnish Supreme Court, the way in which the blockade was implemented and resulting economic losses for the ship owner had been standard in the field and could not be deemed contrary to law or good practice or unreasonable.

However, the Court held that the objective of the boycott was, with a high degree of possibility, unlawful, since the collective agreement sought by way of the blockade would be void under Vietnamese law, which was applicable to employment contracts on the ship flying the Vietnamese flag, and thus could not have produced the legal effect intended in the agreement.

The court paved the way for ship owners and managers to defend themselves effectively against out-of-the-blue actions by Unions arguing in conflict to mandatory law. We are assuming that the next legal step for the ship owner will be to claim damages from the Union. In the past, Ahlers & Vogel, too, has been successfully assisting a ship owner in such an interim injunction and subsequent compensation for damages.

Both cases contain some different legal questions and the Supreme Court's finding cannot, therefore, be transferred in a generalizing way. However, it demonstrates considerable doubts about the general applicability of the ITF CBA and legality of blockades. The court has stressed that industrial tribunals deciding on an injunction must assess if the strike or boycott action could possibly be justified by a legal permissible goal of the strike. From our point of view, German tribunals are likewise obliged to answer these questions. Bearing this decision of considerable importance in mind, we would like to encourage our clients not to accept any boycotts for we stand by your side as a competent partner for the entire legal process in opposing against threats for your business through ITF and its national affiliate Ver.di.

Disclaimer

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