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News from the German Federal Labor Court on Compensation for Delayed Agreement of Targets

(Federal Labor Court, Judgment of 19.02.2025 - 10 AZR 57/24)

Dear reader,

Today we would like to inform you about a recent decision of the Federal Labor Court (judgment of 19.02.2025 - 10 AZR 57/24), which for employers whose remuneration is also based on bonus systems is likely to be of considerable practical and economic importance.

I. Background

The agreement of variable remuneration enables employers to create incentives in the form of profit-sharing or bonus payments for employees and to allow them to participate in the economic success of the company.

Clauses that oblige the employer to define the targets for variable remuneration by a certain point in the year are common.

What happens if the employer is late in defining the targets was decided in the judgment of the Federal Labor Court discussed at hand.

II. Decision of the Lower Courts

The subject of the legal dispute between the employee and his employer was the question of whether the employer must pay compensation for the late and incomplete setting of targets to which the payment of variable remuneration was linked.

The employment contract between the parties, as well as a works council agreement, stipulated that the target, 70% of which consisted of company targets and 30% of individual targets, for the payment of a corresponding bonus to the employee must be set by 1st March of each year at the latest. The employer was responsible for setting the targets.

In 2019, the targets were not set until 15th October 2019. Contrary to the provisions of the employment contract and the works council agreement, the employee was not given individual targets for 2019. On 26th September 2019, the employer's managing director merely informed the employees with management responsibility that for 2019 in relation to the individual targets, in line with the average target achievement of all managers over the past three years a target achievement level of 142 % was assumed. On 15th October 2019, the plaintiff was given specific figures on the company targets, including their weighting and the target corridor. No individual targets were set for the plaintiff. The defendant paid the plaintiff variable remuneration for 2019 of EUR 15,586.55. The plaintiff believes that there is a target achievement level of 100% for the company targets and the promised target achievement level of 142% for the individual targets, entitled to a weighted overall target



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achievement level of 112.6%.

The employee therefore filed a claim for damages in the gross amount of EUR 16,035.94.

The labor court dismissed the claim in its entirety. The Cologne Regional Labor Court, on the other hand, upheld the claim in full on the plaintiff's appeal and awarded the plaintiff the full amount of damages sought.

The defendant employer appealed against this decision.

III. Decision of the Federal Labor Court

The Federal Labor Court dismissed the defendant's appeal as unfounded.

It held that the defendant was liable for damages in the full amount. The defendant culpably failed to set the targets in good time, so that the plaintiff is entitled to damages instead of performance in accordance with Section 280 para. 1, para. 3 German Civil Code ("BGB") in conjunction with Section 283 sentence 1 BGB.

A subsequent target setting could no longer fulfill the necessary motivational and incentive function, so that no subsequent judicial determination of performance pursuant to Section 315 para. 3 sentence 2 half-sentence 2 BGB could be considered with regard to the targets. The Federal Labor Court also stated that contributory negligence on the part of the plaintiff is generally

out of the question if the employer fails to submit the target or submits it late. Furthermore, the plaintiff was not obliged to inform the employer of the failure to set targets.

When assessing the claim for damages, it should generally be assumed that an employee targets set in good time and in accordance with reasonable discretion would have achieved, with the result that a target achievement level of 100% should be assumed (Section 252 sentence 2 BGB), unless special circumstances exclude this assumption.

IV. Practical Significance

The Federal Labor Court imposes strict requirements on the employer's obligation to comply with the deadline for setting targets. It is therefore advisable to deal with the targets at an early stage or to define uniform targets that can be adjusted annually on a voluntary basis. In the present case, the "right" time was clear, as it was expressly stated in the works council agreement. Without such a definition, determining the latest point in time to define targets is not as easy, as this also depends on which targets are set by the employer and how much influence they have. Employers should act early, as otherwise the promised variable remuneration in full will be owed as compensation.



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Feel free to contact us! Our employment law team will be happy to answer any questions you may have on the topic of legally compliant bonus arrangements.

Your employment law team



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