

LEGAL UPDATE LABOUR AND EMPLOYMENT LAW

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Signing documents has to be learned

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In this age of digital communication with electronic signature solutions and editable PDF documents, handwritten signatures have gone a bit out of fashion. However, the law still requires handwritten signatures for important legal transactions. Sometimes, for example, with collective redundancies, dozens of dismissals must be signed at the same time. This can be rather time consuming and lead to flippancy. But such flippancy may lead to a dismissal being invalid, as was the case in the decision of the Hamm Regional Labour Court, (Landesarbeitsgericht, LAG) dated 28 June 2022 (*Hamm LAG, 28/06/2022, 17 Sa 1400/21, [AE 2022, pg 235](#)*).

Decision / Facts of the matter

The company had appointed two Prokurists (persons with a general commercial power of representation), Mr X and Ms Y (their surnames have 12 characters, which is entirely irrelevant). Both were not permitted to act on their own, but must always represent the company along with another person.

Employee M had to be dismissed, for reasons which are not relevant here. The notice of termination had already been prepared in advance. It contained a preprepared signature line with printed names, as is common practice. Prokurist X then signed the letter with a nice ornate signature. Next, Prokurist Y signed the letter

with a squiggle that was approximately 1-1.5 cm wide, consisted of a vertical stroke and a short wavy line, along with "ppa" [which indicates that the person signing is a Prokurist]. The notice of termination was then delivered to Employee M. He opposed this and filed a claim for unfair dismissal, stating that the dismissal was invalid due to lack of authority ([section 180 German Civil Code \(BGB\)](#)), as the notice of termination had only been signed by *one* Prokurist, Mr X. He claimed that Prokurist Y's squiggle was not a proper signature. Therefore Prokurist X had acted alone and thus exceeded his authority.

The court ruled in favour of the claimant, stating that the notice of termination lacked the necessary signature of a second Prokurist. Prokurist Y's squiggle did not satisfy the requirements of the written form ([sections 126 \(1\), 623 BGB](#)). It was merely an abbreviated signature ("handwritten mark") which is not a signature in accordance with the law. Merely using an abbreviated signature is not sufficient for the written form. Only a handwritten signature fulfils the requirements of the written form, held the Hamm LAG, as the issuer of a document should be recognisable. The signature should establish an unambiguous connection between the document and the person signing it. If the signature is incorrect, this breaches written form. If only one Prokurist signs correctly when both are re-

quired for the document to be valid this will result in the dismissal being invalid due to lack of proper authority.

Practical relevance

This decision shows how important it is to adhere to form requirements. A lay person may feel that decisions such as this one by the Hamm LAG are exaggerated nit-picking with regard to formalities. From a dogmatical point of view, however, the judgement is quite valid. It is supposed to encourage every employer representative who is authorised to dismiss employees to critically assess their signature. In principle, the case law is quite generous. A signature should be comprised of individual writing which must represent a rendition of a name, without it being readable as such. The purpose must be

recognisable that it is a full signature (i.e. different to initialling). In this sense, a simplified name that has been radically truncated over time may also be recognised as a signature.

In particular, those people who have very long surnames and use a very short or extremely simplified signature need to reconsider how they sign. In any case, vitally important signatures (such as on a notice of termination) should therefore be signed a little more lengthily in order to avoid doubt. Initials are anyway not permitted. It can, of course, be time consuming if many documents require an original signature. But, on the other hand, the grave consequences of collective redundancies failing due to a cursory signature justifies the effort in signing in a more ornate hand.

Note

This overview is solely intended for general information purposes and may not replace legal advice on individual cases. Please contact the respective person in charge with GÖRG or respectively the author Jens Völksen on +49 221 33660504 or by email to jvoelksen@goerg.de. For further information about the author visit our website www.goerg.com.

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