

newsletter
JUNE 2019

CASE LAW



Studio
Arlati Ghislandi

CONSULENZA
DEL LAVORO E FISCALE

Disciplinary termination of employment: cumulation of disciplinarily reprehensible behaviors

Corte di Cassazione, no. 11539/2019

Corte di Cassazione, with judgement no. 11539/2019, pronounced upon disciplinary dismissal applied for several disciplinary failures.

When disciplinary termination is determined following several reproachable episodes, just cause of termination must not necessarily be found only in the sum of all episodes, since each one of them may be suitable to justify dismissal. The judge, nonetheless, as well as evaluating these episodes in their entirety, must also examine the disciplinary relevance of each single one of them.

Non-existence of the disciplinary episode: notion

Corte di Cassazione, order no. 12174/2019

Corte di Cassazione, with order no. 12174 of 8th May 2019, pronounces upon the non-existence of the disciplinary episode for the application of the employee's reinstatement in case of unlawful termination of employment.

The non-existence of the episode does not only include episodes in which the episode didn't happen at all, but also all those situations in which the episode did actually happen, yet doesn't carry disciplinary relevance or may not be related to the employee's behavior.

INPS contribution: facilitated settlement and pending judgement

Corte di Cassazione, order no. 11540/2019

With order no. 11540/2019, Corte di Cassazione confirmed the end of pending trial in case of acceptance of the facilitated settlement procedure (as per Law Decree no. 193/2016).

If the taxpayer declares the will to proceed to facilitated settlement, waiving judgement, trial must be declared extinguished, pursuant to art. 391 c.p.c., by either debtor's waiver or "ex lege".

Failure to pay INPS contribution: probative value of auditor's statement

Corte di Cassazione, order no. 12363/2019

Corte di Cassazione, with order no. 12363/2019, provided clarifications on the probative value of audit reports showing failure to pay social security contribution.

The report has full probative value, unless challenged as forgery, on:

- episodes in the presence of public officials and observed without personal remarks, or directly committed by the official
- emission of the document by the public official, and
- statements provided by parties.

This doesn't extend to the public official's remarks and evaluations, not to episodes told to public officials by third parties, or elements considered to be true by public officials following deductions or personal logical connections.

The content of the report, for the part that's not covered by privileged probatory value, can be freely assessed and appreciated by the judge.

Pension and work-related income: cumulation of incomes

Corte di Cassazione, no. 14417/2019

Corte di Cassazione, with judgement no. 14417/2019, pronounced upon the relationship between access to pension treatment and subordinate employment.

Specifically, the Court observes that while work-related and pension-related income can be cumulated, pension may still be paid only if, upon pension request, the employment relationship is terminated.

Tax treatment of invalidity pension

Corte di Cassazione, order no. 10887 of 16th April 2019

With order no. 10887/2019, Corte di Cassazione pronounced upon the tax treatment of sums paid to an employee following the outcome of a trial, as invalidity pension. These sums must be subject to separate taxation, since they qualify as income from subordinate work.