# Supreme Court



# KKO:2019:28

**Employment contract term on compensation for the cost of training**

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*Background to the case and the issue to be decided*

On the basis of an employment contract signed in October 2013, A had worked as a real estate agent on commission for a corporate entity, B Ltd. According to the terms of the employment contract, should the employment relationship end and A would begin to engage in competing real estate brokerage within six months of such termination of the employment, A was obliged to reimburse B Ltd for the costs of studying to become a licenced real estate agent and for other specialized training, at a rate of 400 euros for each training event in which he had participated during the 24 months before the end of the employment. A had given notice of termination of his employment contract as of January 2015 and had commenced to work at a competing company. After this, B Ltd had, on the basis of the contract term, demanded that A reimburse the company a total of EUR 5,200 as the costs of 13 training sessions.

The question before the Supreme Court was whether the terms of the employment contract relating to the reimbursement of training costs could be deemed unreasonable. However, before that it was necessary to assess whether the contract term constituted an agreement on non-competition and whether the term was null and void on the ground that it had restricted A's right to terminate the employment contract.

*Assessment by the Supreme Court*

The Supreme Court noted that, as a general rule, the parties to an employment contract may arrange their mutual relationship on the basis of an agreement, subject to the provisions in mandatory legislation or the collective agreement for the protection of the employee.

Chapter 2, section 1 of the Employment Contracts Act provides for the obligation of the employer to ensure that the employees are able to carry out their work and to promote the employees' opportunities to develop themselves according to their abilities so that they can advance in their careers.

Chapter 3, section 5 of the Employment Contracts Act provides for the conditions for concluding an agreement of non-competition and provides also that an agreement on non-competition shall be null and void in so far as it is contrary to the provisions of said section.

The Employment Contracts Act does not contain provisions on the reimbursement of the costs of training. In accordance with the principle of freedom of contract, the employer and the employee may, in principle, also agree on the reimbursement of the costs of training, provided that the contract does not reduce the rights and benefits of the employee under the Employment Contracts Act.

The Supreme Court held that the employer and the employee could thus conclude separate agreements on the reimbursement of training costs. However, such an agreement may not provide that the employee is liable to reimburse the employer for example for the costs of training that the employer is required to provide under the mandatory general obligation provision contained in Chapter 2, section 1 of the Employment Contracts Act. Furthermore, the terms of an agreement dealing with training costs may not be unreasonable.

The Supreme Court assessed the contractual term in question and noted that it had features of a non-competition agreement. However, the Supreme Court held that what was at issue was not a non-competition provisions within the meaning of Chapter 3, section 5 of the Employment Contracts Act. The Supreme Court also held that this contractual provision could not be deemed, in a way that would be contrary to the mandatory provisions of the Employment Contract Act, to restrict the employee's right to terminate the employment contract. Instead, what was at issue was a contractual term on the obligation to reimburse training costs. Such a term is valid and binding on the parties, provided that it is not deemed to be unreasonable.

The Supreme Court held that, under Chapter 10, section 2 of the Employment Contracts Act, a term in an employment contract may be adjusted or disregarded if the application of the term is contrary to good practice or otherwise unreasonable.

In assessing whether or not the application of a term in an employment contract is unreasonable, consideration shall be paid to the employment contract as a whole and otherwise to the circumstances of the employee and the employer. Consideration may be given at least to the following aspects: the kind of training involved, the length of time the employee has agreed to reimburse the employer for the costs of the training, and the amount the employee has agreed to provide reimbursement. In addition, consideration may be given, for example, to the salary of the employee and to the reason for termination of the employment.

The premise is that the closer the training referred to in the term is to the quality and cost of training that the employer is obliged to arrange for the employee without any obligation of reimbursement, the greater the likelihood is that the application of the term would lead to an unreasonable result. The length of time that the employee has undertaken to reimburse the costs of the training is to be considered in a parallel manner. In addition, in many cases the application of the term may lead to an unreasonable result if the employee has undertaken to reimburse the full cost of the training, without any consideration being taken of the benefit that the training has provided to the employer.

The Supreme Court held that B Ltd had had a reason based on its own operations to provide its employees with the training referred to in the contractual term. The training had been somewhat similar to the training that B Ltd would have been obliged to arrange in accordance with Chapter 2, section 1 of the Employment Contracts Act, the costs of which it would not have been able to transfer by contract to become the responsibility of its employee. This argued along the lines that the term was unreasonable from the point of view of A.

The unreasonableness of applying the contractual term was further supported by the fact that 400 euros had been agreed upon as the amount to be reimbursed for training costs even in cases where the cost to the employer had been less. The establishment of the amount of the reimbursement also had not taken into consideration how the employer was able to utilize the knowledge and skills acquired by the employee through the training, in his subsequent work. A had been in the employ of B Ltd even after having receiving the training in question.

In addition, the assessment had to take into account, first, the fact that A had undertaken to reimburse the training costs for a considerable period of time, taking into account the quality and cost of the training. In addition, A had worked on commission and had not received any salary or other remuneration during the training period.

*Conclusion*

Having weighed these factors, the Supreme Court concluded that said contractual terms were to be disregarded. Application of the term would be unreasonable in view of the quality of the training referred to by the term, the amount of reimbursement, the duration over which the liability was incurred and A’s salary. B Ltd's claim for reimbursement was therefore rejected.

The Supreme Court voted on the case. One justice deemed the term to constitute a non-competition agreement and held that the legal preconditions for such an agreement were not fullfilled, for which reason the term was null and void. For these reasons, the justice agreed with the majority on the outcome.

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