LABOR LAW LIABILITY OF THE EMPLOYEE FOR DAMAGE DONE TO THE EMPLOYER IN THE SOVIET UNION

1. Introduction

In capitalist labor law, the question of the reimbursement by an employee of losses caused by him to the enterprise is not one of the hot issues. In legal doctrine, the opinion prevails that the employee should only be held liable for losses caused by grave faults because it is held that the employer has to take the risks of faults of his employees. The courts try to avoid using the general provisions of civil law and rely on various theories to do so. So, in France the employee is only liable for faute lourde équipollente au dol. In the German Federal Republic, the courts distinguish between "work which is apt to cause damage" (schadensgeneigte Arbeit), where the worker is only liable for grave faults, and other kinds of work where the provisions of civil law are applied. The normal starting point is, therefore, that the general provisions of civil law have to be applied in these cases and that exceptions to these provisions are leges speciales.

In the socialist states, the question of the reimbursement of losses caused by the employee to his employer has received the attention of the legislative agencies, and the Labor Codes usually contain provisions connected with this problem.

The consequence of this, and of the existence of special Labor Codes in general, is that the civil law rules do not apply, except in some countries were the civil law provisions are applied in cases where the damage is held to be caused when not performing the duties according to the contract of employment.

In this article, I will give a survey of earlier Soviet legislation concerning this question and will discuss the changes to this legislation which were introduced on 13 July 1976.

2. Earlier Legislation

Under the 1922 Labor Code, the liability of an employee was restricted in such a way that the amount of the damage, caused by the employee's culpable negligence or failure to observe the rules of employment, could not exceed one-third of his monthly scheduled rate of pay. The amount could be deducted pursuant to a decision of the labor dispute commission. The provisions were considered to have the character of penalties and not of a reimbursement of damages, and the legal doctrine—and some courts—held it possible to use the normal rules of civil law for the
reimbursement of the damage.9 The lawmakers also adopted some provisions for special cases (e.g. in retail trade) which abolished the restrictions of the Labor Code.10
The uncertainties came to an end in 1929 when the lawmakers of the USSR issued a decree “On material liability of workers and employees for damage caused by them to the employer”,11 soon followed by special rules for some categories of workers or employees, or for some special cases.
The principles governing the liability of employees were henceforward to be:
1) the provisions of civil law should never apply in such cases, even when the damage was caused in the performance of the employee’s duties;12
2) the maximum amount of the financial liability was one-third of the scheduled rate of pay, unless exceptions are made to this rule in the Labor Code or in special provisions.
In the Labor Code itself, the following exceptions were made:
a) when the damage was caused by a criminal act or not in the performance of the employee’s duties;
b) when a special contract (in writing) was concluded between the enterprise and the employee whereby the employee could assume financial liability beyond the normal limit “for the depreciation of valuables entrusted to the employee for storage or other purposes”.
3) in cases where the liability was limited to one-third of the scheduled rate of pay, the employer could deduct the amount within 7 days after the date on which he had notified the employee of his decision. When the employee did not agree with the deduction, and in all other cases, the dispute was to be settled by the labor disputes commission; and
4) the judicial authorities could always take into consideration the actual circumstances in which the damage was caused and the financial situation of the employee. Whenever it was of importance, only actual losses and not lost profits were to be taken into account.

These amendments to the law were soon followed by other amendments providing special rules for the financial liability of employees for goods of the enterprise issued to them for their work (materials, working clothes, tools etc.). In these cases,13 the employee was liable for five times the amount of the damage caused in cases of theft, willful destruction, or willful injury. In other circumstances, the amount of damage could be assessed at an amount less than this maximum depending on the circumstances.
On the basis of these laws, a very complex piece of legisla-