

6 August 2021

Collective bargaining dispute with GDL: Deutsche Bahn fights off dozens of preliminary injunction proceedings with Luther

Berlin – The legal regulation on collective bargaining unity (§ 4a TVG) may continue to be applied by Deutsche Bahn. The German Train Drivers' Union (GDL) had tried to prevent this by filing 29 preliminary injunction proceedings in labor courts across Germany. None of these were successful..

In the ongoing collective bargaining dispute, the GDL has been trying since June to obtain temporary injunctions against the rail companies and AGV MOVE in a total of 29 proceedings before labor courts throughout Germany, thereby preventing the application of the collective bargaining unit. Among other things, it argued that § 4a TVG was unconstitutional and contrary to European law. All the proceedings decided ended in defeats for the GDL. The labor courts either considered the applications inadmissible, were unable to recognize the urgency required for the issuance of interim injunctions, or referred to the fact that special court proceedings had been created by law to clarify the issues relating to collective bargaining unity. Nor was Section 4a TVG obviously unconstitutional (see Berlin Labor Court, Press Release No. 20/21 of June 15, 2021).

However, this is not the end of the litigation battle. GDL can appeal in all proceedings. In addition, it has initiated main proceedings in parallel; among others, the Berlin Labor Court will hear the case in September (Case No. 30 Ca 5638/21). In addition, individual works councils are taking legal action against the application of the collective bargaining unit, so far also unsuccessfully. The GDL has already held out the prospect of strikes after the summer vacation.

Background

Since 2015, the principle of collective bargaining unity ("one company, one collective agreement") has applied by law in collective labor law. Andrea Nahles, as Federal Minister of Labor at the time, had advanced this provision of Section 4a TVG in order to preserve the ability of collective bargaining autonomy to function under Article 9 (3) of the Basic Law following a change in the case law of the Federal Labor Court and to defuse competitive battles between trade unions. The Federal Constitutional Court declared the provision to be constitutional in 2017 (Case No. 1 BvR 1571 et al.); the legislature subsequently amended the law again.

At Deutsche Bahn, there are two unions, the GDL and the Eisenbahn- und Verkehrsgewerkschaft (EVG), each of which concludes different collective agreements for its members. For Deutsche Bahn, the Employers' and Business Association of Mobility and Transport Service Providers (AGV MOVE) negotiates the collective agreements. An agreement that provided for the parallel application of the collective agreements of both unions expired at the turn of 2020/2021. Since then, the companies of the rail group have applied only the collective agreements of the respective majority union there in each plant.

On behalf of Deutsche Bahn/AGV MOVE:

Inhouse Deutsche Bahn/AGV MOVE (Berlin): Carsten Schröter (Head of Association and Litigation Representation), Jenny Panjas

Luther, Employment Law (Berlin): Prof. Dr Robert von Steinau-Steinrück (Partner), Dr Paul Gooren (Senior Associate)

On behalf of Gewerkschaft Deutscher Lokomotivführer (GDL):

Betz Rakete Dombek (Berlin): Dr Axel Görg

Brief profile Luther Rechtsanwaltsgesellschaft mbH

Luther is a leading German commercial law firm that offers comprehensive legal and tax advice. The full-service law firm employs over 420 lawyers and tax advisors and is represented in ten German economic hubs as well as with ten of its own international offices in key investment locations and financial centres in Europe and Asia. Its clients include medium-sized enterprises and large corporations, as well as the public sector.

Luther works closely with other commercial law firms in all the prevailing jurisdictions. Luther is a founding member of unyer (www.unyer.com), a global organisation of leading professional services firms that cooperate exclusively with each other.

Luther Rechtsanwaltsgesellschaft mbH is a law firm with a business approach: our innovative awareness aspires us to provide our clients with customised legal advice that addresses individual needs and delivers the greatest possible economic benefit. All of Luther's lawyers and tax advisors have a solid understanding of interdisciplinary matters and a wealth of experience in collaborating on complex tasks. Luther was named "Law Firm of the Year 2019" by the German legal publisher JUVE. Further information is available at: www.luther-lawfirm.com

Press Contact Luther Rechtsanwaltsgesellschaft mbH

Saskia Leininger

saskia.leininger@luther-lawfirm.com

T +49 221 9937 24679

Caroline Scheller

caroline.scheller@luther-lawfirm.com

T +49 40 18067 10251