

Federal Labor Court: Bicycle couriers are entitled to a bike and a cell phone – is a lump sum the solution?

This article discusses the ruling of the 5th Senate of the Federal Labor Court ("**BAG**") from November 10, 2021 (file no. 5 AZR 334/21). Although the BAG, as Germany's highest labor court, has so far only issued a press release, it has clarified that bicycle couriers who deliver food and beverages upon receipt of the orders via a smartphone app are entitled to have their employer provide them with the essential work equipment necessary to perform their job. This includes a roadworthy bicycle and a suitable, in particular internet-capable cell phone. This principle can only be deviated from by contractual agreement if and only to the extent that the respective employee is promised and paid an appropriate financial compensation for the use of his or her own bicycle and cell phone.

Facts of the case and the parties' arguments

The plaintiff worked as a bicycle courier for the defendant. The plaintiff's daily work consisted of picking up food from various restaurant upon receipt of the orders via the smartphone app and delivering the ordered food and beverages to customers. For this purpose, the employee used his/her own bicycle and cell phone which was contractually agreed between the parties. In exchange, the employer granted the employee a repair flat rate in the amount of 0.25 euros per hour worked, which could only be redeemed at a workshop designated by the employer.

In the lawsuit, the plaintiff sued his/her employer for the provision of a roadworthy bicycle and a suitable cell phone in order to perform the contractually agreed work. The plaintiff argued that the employer was obligated to do so because it was the employer's duty and responsibility to provide all employees with adequate and necessary work equipment.

The defendant objected to the plaintiff's argument to the effect that the employees working as bicycle couriers already had bicycles and internet-capable cell phones anyway, and were not burdened or at least not significantly burdened by the use of their own devices. Further, any disadvantages could be compensated by the statutory possibility of claiming reimbursement of

expenses and - with regard to the bicycle - by the repair budget granted by the employer.

Reasoning of the BAG

The BAG is of the opinion (as far as this can be seen from the press release) that the concept of bicycle couriers using their own bicycle and cell phone releases the employer from its corresponding obligation to acquire and provide work equipment and from any operating costs and, thus, that the respective employer bears the risk of wear and tear, depreciation, loss or damage of the essential work equipment. The BAG argued that this not only contradicts but also eradicates the basic legal ideas and principles of the employment relationship. In conclusion, the BAG ruled that the employer has to provide the work equipment essential for the performance of the agreed activity and further, has to ensure that the respective equipment is in good working condition at all times.

If couriers were nonetheless required to use their own equipment, this has to be sufficiently compensated. The possibility existing by law of being able to demand reimbursement of expenses via Sec. 670 German Civil Code ("**BGB**") does not constitute an adequate compensation within the employment relationship for bicycle couriers. The BAG based this decision mainly on the following aspects. The amount of the repair budget

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that has been made available to the employee was not based on the actual mileage driven, but on the actual time worked which is only indirectly related to the mileage and thus does not fully constitute an appropriate compensation for the wear and tear. In addition, the employee was not free to decide where to spend the budget, but rather could only redeem it at a workshop determined by the employer. Finally, no financial compensation at all was provided for the use of the cell phone.

The judges, therefore, ruled that the employee can indeed demand (according to Sec. 611a (1) BGB) that essential work equipment necessary for the agreed activity as a “rider” is provided. This includes the requested suitable bicycle for traffic and an adequate cell phone to which the delivery orders and addresses are transmitted within the respective food and beverage delivery app.

Practical advice and To-Do

The ruling clarifies that it is not possible to have employees use their own bicycle and cell phone without paying a compensation. However, it is already indicated that an appropriate lump-sum compensation agreement might be possible. In the lawsuit, the repair credit granted for bicycle repairs on a small scale were not sufficient to provide for an adequate compensation. In addition, a provision for the use of the cell phone was missing completely.

It is of interest whether the decision would have been different if the employer had granted a monthly lump sum of 25–30 euros. This is likely to be the case and the right approach for this business model in the future. In any case, the employment contracts and business models should be checked, adjusted quickly if necessary and a thought should be given to a possible appropriate lump-sum compensation.

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