

SUMMARY DISMISSAL OF AN EMPLOYEE, WHO WAS ALSO AN EMPLOYEE REPRESENTATIVE, FOR DISCLOSING CONFIDENTIAL INFORMATION TO AN EXPERT IN CONNECTION WITH AN ASSESSMENT OF THE EMPLOYER'S SHARE PRICE WAS NOT REASONABLY JUSTIFIED

A former employee at NKT Photonics, who was also an employee representative in NKT Photonics' parent company NKT, was summarily dismissed due to his disclosure of confidential information concerning the employer's order books to an impartial expert appointed by a court. The expert was appointed by the court in a case where the employer's share price was being assessed. The city court and now also the Danish Eastern High Court have ruled that the summary dismissal was not reasonably justified.

Back in 2016, NKT chose to compulsory purchase the minority shareholders in its subsidiary NKT Photonics, which at that time constituted 2% of the share capital. In connection with the compulsory purchase, the minority shareholders disagreed with NKT's valuation of the shares, and an impartial expert was appointed to make an assessment of the value of the shares in NKT Photonics. The employee in question was (i) employed with NKT Photonics as the product manager, (ii) an employee representative on NKT's board of directors, and (iii) a minority shareholder in NKT Photonics.

With the purpose of acting in his own and the other minority shareholders' interest, and, according to himself, also in the interest of NKT Photonics, the employee disclosed material to the impartial expert from NKT's internal system, including information about expected future orders from key customers, which the expert considered as vital information for the valuation of the shares.

When NKT's chairman became aware of this disclosure, NKT Photonics summarily dismissed the employee with reference to disloyal behavior and a breach of duty of confidentiality.

During the court cases in the city court and the Danish Eastern High Court, NKT alleged that the information disclosed was confidential trade secrets and that the disclosure of the information to the impartial expert was a breach of the employee's duty of loyalty and duty of confidentiality. The employee alleged that his actions were carried out in his interests and the interests of the other minority shareholders of NKT Photonics and thus also in the interest of NKT Photonics, referring to NKT Photonics' interest in acting fairly towards NKT Photonics' remaining employees.

The city court did not find that the summary dismissal of the employee was reasonably justified, and the Danish Eastern High Court has now reached the same conclusion.

The case has yet to be made public by the Danish Eastern High Court, and so the exact reasons for the conclusion remain to be seen.

The case is interesting due to the different “hats” that the employee in question wore during the course of the incident and consequently which interests he was allowed to pursue, i.e. as an employee, minority shareholder and/or as an employee representative. It should be noted that the courts have only concluded that the actions of the employee did not merit a summary dismissal and not whether the employer could have terminated the employment by giving standard notice of termination due to disloyal behavior and breach of confidentiality. However, one important takeaway from this case is that employees who have different stakeholder interests should be careful with regards to how they act and which information they are allowed to use if the information is not obtained in their capacity as employees.

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