

## **EMPLOYEE DISMISSED FOR PURCHASING PRIVATE TRAIN FARES ON HIS WORK MOBILE PHONE**

17 March 2016, The Supreme Court ruled in a case regarding whether an employer was just in dismissing an employee who had been using his work mobile phone to pay for private train transportation through an app that he had downloaded to the mobile phone.

The employee had been given a work mobile phone. Nowhere in the employee's employment contract was it stated that he was not allowed to use the mobile phone for private purposes and further, he was taxed on the value of it (multimedia tax).

From 1 January through 31 March 2011, the employee had purchased private train fares at different amounts, each at a maximum of DKK 57.60, totaling DKK 1.282,40.

The company had not given any instructions or guidance on how to use the mobile phone provided. When the company became aware of the employee's purchases of private transportation through his mobile phone, he was dismissed.

The employee brought the case before the Court of Glostrup stating that the dismissal was unjustified and he filed a claim for payment of DKK 675,332.00 in salary for the three months' notice period and compensation.

The employee explained that he thought that he was allowed to use the mobile phone for private purposes within an amount similar to the taxation of it. The Court of Glostrup found that the dismissal was unjustified, especially because the company did not have any guidelines for using the mobile phone. The case was appealed to the Eastern High Court and thereafter to the Supreme Court which both found that the dismissal was legitimate.

The Eastern High Court and the Supreme Court emphasized that at the least, it should have been clear to the employee that the work mobile phone was a work tool that could not be used for paying for private expenses without the employer's explicit consent.

### **Our Opinion**

Employees' use of work mobile phones – both in Denmark and abroad – gives cause for more conflicts and misunderstandings between employers and employees as well as unnecessarily large costs for the employers. It is our suggestion that every company that provides smartphones to their employees draw out specific smartphone policies where the employees may find clear instructions on the proper use of the mobile phone both in Denmark and when travelling abroad. Despite the fact that the case

described above resulted in the Supreme Court ruling in favour of the company, similar employee conflicts and the large expenses that companies are likely to incur by conducting a case may be avoided if the employees are given clear instructions in advance in the company's rules and expectations.

Moalem Weitemeyer Bendtsen has extensive experience with smartphone policies and we are available to assist in the preparation of such policies.

Click [here](#) to see the decision by the Supreme Court (in Danish).

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