
NEWSLETTER

| MARCH 2019

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CASE 1

The court of Appeals of Milan clarified again the importance of distinguishing indirect from direct commissions due to an agent

Case reviewed by Stefano Trifirò and Mariapaola Rovetta

The Court of Appeals of Milan clarified again the importance of distinguishing indirect from direct commissions due to an agent from a principal. The former, as is well known, are due to an agent only in the eventuality that the principal operates directly in the area of competence of the agent, finalising business directly with clients within the agent's mandate. Practically speaking, this situation can often be confusing.

Specifically, the problem arose due to the presence of clients managed directly by the principal without taking into consideration the area of competence of the individual agents.

The Court found in the principal's favour because the clients were determined to have a direct relationship with the principal, and consequently the indirect commissions were not owed. Moreover, the agent's defence didn't give appropriate evidence as regards the specific type of clientele, and also from analysis of the depositions it was clear that the agent could only operate in a promotional manner, whereas the principal had the responsibility to decide whether to accept or not the business brought by the agent. ■



CASE 2

Limits to the use of private investigators for monitoring employees who work outside the company.

Case reviewed by Marina Olgiati

Court of Florence, 18 January 2019, n. 51

The case examined by the Court concerned the dismissal of an employee who carried out his job mainly outside the company.

He was under no obligation to certify his presence through clocking in and out, instead certified his professional service through reports he compiled.

The company contested the falsification of the reports, having ascertained that the visits indicated therein did not correspond to the real ones. This verification was effectuated by investigators - appointed by the company to monitor the employee's movements during working hours. They ascertained that during work time he also carried out activities of a private nature.

The Court held that the dishonest compilation of the reports constituted the legitimacy of the dismissal and existence of just cause. According to the decision, the behavior of the worker was a serious violation of the obligations of fidelity, decency and good faith.

The legitimacy of the use of the investigators' reports in these matters cannot concern the fulfillment or the non-fulfillment of the work performance, but must be limited to the unlawful acts of the worker even where there is only suspicion. In the case in question, the fact upon which the dismissal was founded is constituted by the false compilation of the reports, which is an illegal act also relevant criminally. The employer's recourse to the investigators was considered justified because the purpose of the "control" was not fraudulent conduct of the source as there was also damage for the employer. ■



CONTACTS

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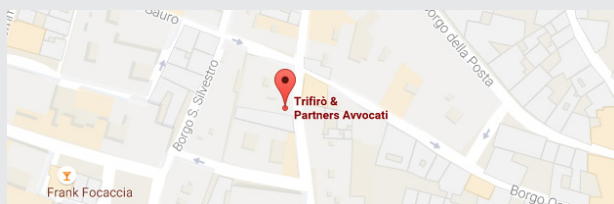
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