UDC 321 (091);349.2
DOI: 10.17238/issn2686-9241.2019.1.205-214

The Development of Norms on the Dismissal of an Employee on the Initiative of the Employer During the Economic Liberalization of the 1920s

Nikolai V. Demidov*

* *West-Siberian Branch, Russian State University of Justice, Tomsk, Russia*
For correspondence: ra_nickolas@list.ru

Introduction. Historical and legal study of the regulation of relations for the dismissal of an employee in the USSR of the 1920s is characterized by the extremely weak development. Special scientific works in the observed area are absent. The studies are either historical in nature or belong to legal science, but only describe the applicable rules.
Theoretical basis. Methods. The task was to address the existing scientific shortcomings, study the legal consolidation of the grounds for dismissal in the 1920s, the motives of the legislator and socio-economic prerequisites of the chosen regulatory model. The work was carried out by means of historical and legal method.
Results. The norms of the Soviet legislation on dismissal on the initiative of the employer of the 1920s are analyzed.
Discussion and Conclusion. In the 1920s there was a liberalization not only of the Soviet economy, but also of the branch of labour law as a key tool for regulating employment relations. Denationalization of practical relations on termination of an employment contract is noted. The Institute largely turned to the developments of the pre-revolutionary legislation. The rules on dismissal acquired significant private law features, which are largely perceived by the modern Russian legislator. Despite its economic efficiency, the restoration of an economically motivated labour market turned out to be temporary and was curtailed simultaneously with a return to the politicization of public life in the wake of the communist ideology and the usurpation of power by I.V. Stalin. The regularity inherent in the history of domestic labour law was revealed, according to which labour law was used as an instrument of the current political situation.

Keywords: labour legislation, history of labour law, labour law of the USSR, RSFSR, Labour Code of 1922, NEP, evolution of labour law

For citation: Demidov, N.V., 2019. The Development of Norms on the Dismissal of an Employee on the Initiative of the Employer During the Economic Liberalization of the 1920s. *Pravosudie* = Justice, 1(1), pp. 205–214. DOI: 10.17238/issn2686-9241.2019.1.205-214

Развитие института увольнения работника по инициативе работодателя в период экономической либерализации 1920-х годов

Н.В. Демидов*

** Западно-Сибирский филиал, ФГБОУВО «Российский государственный университет правосудия», г. Томск, Россия*
a_nickolas@list.ru

Введение. Историко-правовое исследование регламентации отношений по высвобождению работника в СССР 1920-х гг. характеризуется крайне слабой разработкой. Специальные научные труды в заявленной области отсутствуют. Исследования либо носят исторический характер, либо принадлежат юридической науке, но лишь описывают действовавшие нормы.
Теоретические основы. Методы. Поставлена задача восполнения имеющегося научного пробела, изучения правового закрепления оснований увольнения в 1920-е гг., мотивов законодателя, социально-экономических предпосылок избранной регламентационной модели. Работа проведена средствами историко-правового метода.
Результаты исследования. Проанализированы нормы советского законодательства об увольнении по инициативе работодателя 1920-х гг.
Обсуждение и заключение. В 1920-е годы происходила либерализация не только советской экономики, но и отрасли трудового права как ключевого инструмента регулирования отношений по найму труда. Отмечается разгосударствление практических отношений по расторжению трудового договора. Институт во многом обратился к наработкам дореволюционного законодательства. Нормы об увольнении приобрели значительные частноправовые черты, которые во многом восприняты современным российским законодателем. Несмотря на свою экономическую эффективность, реставрация экономически мотивированного рынка труда оказалась временной и была свернута одновременно с возвратом к политизации общественной жизни в русле коммунистической идеологии и узурпации власти И.В. Сталиным. Проявилась свойственная истории отечественного трудового права закономерность, согласно которой отрасль используется как инструмент политической конъюнктуры.

Ключевые слова: трудовое законодательство, история трудового права, трудовое право СССР и РСФСР, КЗоТ 1922 г., НЭП, эволюция трудового права

Для цитирования: Демидов Н.В. Развитие института увольнения работника по инициативе работодателя в период экономической либерализации 1920-х годов // Правосудие. 2019. Т. 1, № 1. С. 205–214. DOI: 10.17238/issn2686-9241.2019.1.205-214

With the seeming attention to the history of the branch of labour law in the domestic legal science the legal norms of the past are hardly analyzed. Current researches are primarily of a descriptive and reconstructing character. Even the most famous works on the branch history largely describe the sequence of the adoption of regulations and reproduce historically prevailing norms. The problem also applies to the legislation of the first post-revolutionary decade of the Soviet state. Among the studies in which the legal norms on labour of the 1920s are critically interpreted, it is rather possible to name holdings of historians [Borisova, L.V., 2006;

Andryushin, E.A., 2012; Lyutov, L.N., 2002]. Meanwhile, it was during the period under study that the fundamental principium of Soviet labour law was formed. It was not just situational rules of behaviour that were adopted, but a model of a national labour right-Soviet state was being developed. In most approaches and norms, modern labour law of Russia inherits conceptual and particular developments of the Soviet legislator. The study of the genesis of labour law at the stage of system-wide branch education allows a deeper understanding of the current state of the norms on wage labour.

The results of the study. Legal regulation of dismissal in the 1920s was preceded by a short period of the Labour Code of 1918 in action[1]. The code turned out to be inconsistent and innovatively paradoxical in many established institutions. The legal regulation of the dismissal of an employee under the RSFSR Labour Code, 1918, was subject to the recovery and military-mobilization stage of the Soviet state. The general approach was characterized by restrictive content. Taking into account the ambiguous pre-revolutionary experience, dismissal was perceived as an infringement of the interests of the working population in favour of the capitalists, as well as a violation of the interests of the state in maximizing the use of labour resources. The legislator in the Labour Code of 1918 extremely reduced the list of grounds for dismissal and made the decision to discharge in dependence on the will of the state, trade union and party bodies. In fact, for the first time of the post-revolutionary years dismissal was outlawed. The employee could only leave work with further job placement to a new enterprise or institution. The disadvantages of this speculatively designed model were revealed quickly enough. There were discovered difficulties with labour discipline and the economic needs of the organization were left without ensuring. A decree of the Council of People's Commissars of 06/17/1920 introduced the "General Regulation on Tariff"[2]. Article 145 of the Regulations significantly expanded the list of grounds for termination of an employment contract at the initiative of the employer. In particular, the following reasons for dismissal were conceded:

a) either full or partial liquidation of the institution, enterprise or household, etc., or abolition of individual works or duties;

b) suspension of work for more than one month;

---

[1] Sobraniye Uzakoneniy i Rasporyazheniy Rabochego i Krest'yanskogo Pravitel'stva RSFSR [Collection of Legislations and Orders of the Workers and Peasants' Government of the RSFSR]. 1918. No. 87–88. Art. 905.

[2] Obshcheye polozheniye o tarife (Pravila ob usloviyakh nayma i oplaty truda rabochikh i sluzhashchikh vsekh predpriyatiy, uchrezhdeniy i khozyaystv v RSFSR) // Sobraniye uzakoneniy RSFSR [General Regulation on Tariff (Rules on the conditions of employment and remuneration of workers and employees of all enterprises, institutions and farms in the RSFSR) // Collection of laws of the RSFSR]. 1920. No. 61–62. Art. 276.

c) expiration of work, if the work was temporary;

d) unsuitability to work, if found out after preliminary testing;

e) violation of the given Regulations or internal regulations;

f) criminal act;

g) non-attendance due to illness lasting for more than 2 months or to maternity lasting for more than 4 months;

h) due to the movement of labour service to other enterprises.

The legislator of the early Soviet era neglected the issues of legal conflicts and therefore for one and a half years the General Regulation was in force simultaneously with the Labour Code of 1918 and contradicted it. However, the hot needs of the economy dictated the need for quick measures on resolution of the problem. After the experiment of 1918, there was an attempt made to elaborate the rules on dismissal, to set a number of standards and guarantees for the rights of parties to an employment contract, to formalize the process of enforcement. To a certain extent, the motivation of this decision was the negative experience of giving the court wide enforcement powers in the field of dismissal in the previous year and a half. Partly the low efficiency of implementation norms on the termination of an employment contract under the Labour Code, 1918, was subject to the general unfavourable situation in the country. In any case, the legislator returned to the pre-revolutionary mixed imperative-dispositive approach, to a more thoughtful and detailed consolidation of the rights and obligations of the employee, employer, trade union in the procedure of termination of an employment contract.

In fact, Regulation on the tariff, 1920, declared insolvent the model of the Labour Code, 1918. The normal evolutionary continuity of the Soviet institution of dismissal in relation to the factory law of the Russian Empire has been restored. At the same time, there are notable signs of time, e.g. the opposition of free movement of workers and state interests. Thus, the period of permissible non-appearance for work due to illness was extended as compared with the pre-revolutionary Charter on Industrial Labour in 1913 from 2 weeks to 2 months. This ensured both the employee's interest in preserving work and the stability of personnel for the benefit of the state. An employee, just as in 1918, could not independently manage his abilities to work, dismissal did not mean for him the freedom of labour. In particular, Art. 146 of Regulations on the tariff established: "Those dismissed from work are placed at the disposal of the local Accounting and Distribution Branch of the Workforce".

At the highest political level, the mistakes of the labour and labour policy were officially recognized by the Eleventh All-Russian Conference of the RCP (b) in December 1921. The conference adopted a resolution stipulating the refusal of labour service in 1918: "It would be the biggest mistake to apply the methods that were used by the Soviet authorities in the field of

the national economy in the previous period and that were caused by the conditions of the civil war"[3].

Later, at the XV Conference of the CPSU (b) in November 1926, I.V. Stalin said about the postulate of the "Principles of Communism" by F. Engels: "You know that we tried this way in the period of military communism, in the form of the organization of labour armies. However we have not achieved any major results. We later went towards this goal in workarounds, and there is no reason to doubt that we will achieve decisive success in this area"[4].

Fundamentally new foundations of the legal regulation of labour were secured by the RSFSR Labour Code, 1922[5]. Non-economic methods of attracting to work were replaced by equal agreement between the employee and the employer. The employment contract re-acquired the valid nature of the contract. Labour service was established in exceptional cases. It can be claimed that for the first time in Russian history the concept of protecting the interests of both parties to an employment relationship was implemented by law in the Labour Code of the RSFSR, 1922. Among other institutions legal regulation of the termination of an employment contract initiated by the employer approached world standards. The list of grounds for dismissal has expanded: the employee could be dismissed due to the systematic failure to perform his job duties, as well as due to temporary disability, which resulted in non-attendance of work for more than two months.

Two grounds for termination of employment legal relations were borrowed from the Industrial Labour Charter, 1913: resulting from a crime commission, and resulting from a three-day absence from work without good reason.

Dismissal of an employee in accordance with Art. 47 of the RSFSR Labour Code, 1922, was allowed for the following reasons:

a) full or partial liquidation of the enterprise, institution or farm, as well as reduction of work in them;

b) suspension of work for more than one month for production reasons;

c) discovered unsuitability of the employee;

d) systematic non-fulfillment of obligations imposed by an agreement or internal regulations on a hired person without valid reasons;

---

[3] Resheniya partii i pravitel'stva po khozyaystvennym voprosam. 1917–1967. Sbornik dokumentov za 50 let [The decisions of the party and the government on economic issues. 1917–1967 Collection of documents for 50 years]. Vol. 1. 1917–1928. M., 1967. P. 167

[4] XV Conference of the CPSU (b). M.; L., 1927. P. 719.

[5] Sobraniye Uzakoneniy i Rasporyazheniy Rabochego i Krest'yanskogo Pravitel'stva RSFSR [Collection of Legislations and Orders of the Workers and Peasants' Government of the RSFSR]. 1922. No. 70. Art. 903.

e) commission of a criminal offense by an employee, directly connected with their work, and established by a court verdict that has entered into force;

f) absence from work for more than three days in a row, or a total of more than six days per month without good reason;

g) non-attendance due to temporary incapacity for work after two months from the date of disability, and in case of temporary incapacity for work after pregnancy and childbirth – after six months.

Despite the well-known democratization of layoffs, the discretion of the employer was essentially limited to procedural standards. The wording of Art. 47 of the RSFSR Labour Code, 1922, stipulates the dismissal "at the request of the employer". Such a linguistic nuance was fixed purposefully: the employer's will expression was realized indirectly through an appeal to the authorized bodies. For dismissal on the grounds of the unsuitability of the employee and the systematic non-fulfillment of their duties, apart from the decision of the employer, the consent of the rate-conflict commission was required. The dismissal of members of the trade union committee could be made only with the consent of the higher trade union body.

The guarantee norm of the "Provisions on hiring for rural work" dated June 11, 1886 was constructively evaluated and accepted. Upon termination of the employment contract under paragraphs "a", "b" and "c" of Art. 47 of the RSFSR Labour Code, 1922, (innocent grounds for dismissal) the employer was obliged to pay the employee the severance pay in the amount of his two-week salary or warn about the impending dismissal for two weeks.

The Soviet legislator failed to make any effective rule of dismissal due to unfitness to work (paragraph "c" of article 47 of the Labour Code). The conditions for the application of this foundation were withdrawn from the wording existing in the former Labour Code of 1918, and only its content was preserved: "in the case of the revealed unsuitability of the person hired to work".

Such conciseness and lack of procedural regulation led to an unsystematic relationship of dismissal due to unsuitability to work. This situation lasted for decades and was the subject of scientific criticism as early as the 1970s: "The use of attestation was ahead of its legislative regulation" [Ivanov, S.A., 1974, p. 194]. A.F. Bochkov wrote in 1971 about the long period of existence of this norm: "The wording of the previously existing law did not contain any indications of objective signs characterizing unsuitability for work... did not reflect a specific assessment of the employee's business skills, led in practice to expansive interpretation, created the ground for mistakes and led to violations of the law" [Bochkov, A.F., 1971, p. 137].

Simultaneously with the RSFSR Labour Code, 1922, in the early stages of the formation of Soviet labour law, there were rules laid down on the dismissal of pregnant women and women with children of a certain age. The Decree of the RSFSR Labour Code of August 8, 1922, No. 342 "On

the Procedure for Dismissing Pregnant Women"[6] by People's Commissariat of Labour allowed the dismissal of pregnant women only in exceptional cases, "with the permission of the relevant labour inspector or the Conflict Commission of the Labour Department each time".

By the Decree of the RSFSR People's Commissariat of Labour of July 16, 1925, No. 207/1264 "On the procedure for dismissing single women with children up to one year of age", a similar rule applied to women with children under one year. In the further history of domestic labour law, the circle of entities will be supplemented by nursing mothers (part 2 of Article 170 of the RSFSR Labour Code, 1971) and other persons raising children without a mother (Article 264 of the Labour Code of the Russian Federation). Thus, the foundations were laid for the modern labour-law ideology of the maximum possible provision of guarantees for pregnant women and women with children of a certain age. This approach is unprecedented for foreign branches of labour law. It seems that the reception of the Soviet approach deserves discussion.

Prescriptions of the policy with a century`s history are not always justified. For example, a ban on the dismissal of a pregnant employee even in the case of a gross disciplinary offense (Article 261 of the Labour Code) or a direct refusal by the Supreme Court of the Russian Federation to recognize the possibility of abuse by a pregnant woman (Clause 25 of the Resolution of the Plenum of the Supreme Court of the Russian Federation of January 28, 2014, No. 1) are of the sort. Their result is not an increase in the guarantees of vulnerable categories of workers, but, on the contrary, an expressed employer's policy of avoiding hiring pregnant job seekers and women with children. This wording was consistent with the Soviet system and the economy. In the conditions of a monopolistic state employer, the state went on a clear imbalance of interests in favour of the employee for ideological reasons.

The growing politicization and bureaucratization of the society in the 1920s required certain attention of the legislator to the work of leading personnel. For the first time, the dismissal of the head of the organization, deputies, the chief accountant, and other executives was legislated in the Soviet labour law. Resolution of the Central Executive Committee of the Council of People's Commissars of the USSR of October 13, 1929, "On the fundamentals of disciplinary legislation of the USSR and Union Republics"[7] imparted an administrative-legal character to disciplinary dismissals of workers using the right of hire and dismissal, as well as other responsible workers. These categories were henceforth responsible in accordance with

---

[6] Izvestiya Narodnogo komissariata truda RSFSR [News of the People's Commissariat of Labour of the RSFSR]. 1922. No. 5/14.

[7] Sobraniye Postanovleniy Pravitel'stva SSSR [The Collection of Decrees of the Government of the USSR]. 1929. No. 71. Art. 670.

the procedure for subordination (paragraph 3 of the resolution). They were held accountable "for actions, which might be not a direct violation of the duties of service and labour discipline, but were incompatible with the dignity and appointment of officials of these categories due to the special nature of their duties" (paragraph 5 of the resolution). According to paragraph 1 of the Decree of the USSR People's Commissariat dated October 18, 1929, No. 339[8], cases of dismissal and reinstatement of persons enjoying the right of hiring and dismissal, as well as responsible employees of state, cooperative and public enterprises, institutions and organizations were not subject to consideration by the rating-conflict commissions and labour sessions of the people's court. These decisions secured a special legal status of the head of a Soviet enterprise, who was rather a public officer than an employee. While in pre-revolutionary law the head of an enterprise was covered by civil law, in Soviet times the relationship for his dismissal was largely transferred to the administrative and legal field. One more regularity of the Soviet model of labour law was revealed: the self-closure of the power apparatus, the formation of a special corporation of administrative, party and economic managers. Their responsibility and protection were realized in the logic of a special investigation, hidden from the eyes of the subordinate population. In addition, the characteristic of the USSR concept of direct vertical governance, the most effective in the eyes of the highest political elite, was embodied.

The RSFSR Labour Code, 1922, outlined a possible window of opportunity of turning to an economically determined evolutionary development of labour legislation, which was favourably assessed by some lawyers of the NEP period.

The essence of the Code was seen by them in social compromise as the only constructive way to solve problems in the world of work. Thus, K.M. Varshavsky noted: "When the interests of an employer and a worker collide, he tries to find some resultant, and is not solely in favour of the worker" [Varshavsky, K.M., 1923, p. 10]. A. Lyakh wrote: "A completely new stage in the development of Soviet labour legislation begins with the introduction of a new economic policy. Changes in the system and forms of organization and management of the national economy naturally entailed a review of the system of labour regulation. The five-year experience of

[8] Postanovleniye Narodnogo Komissariata Truda SSSR [Resolution of the People's Commissariat of Labour of the USSR] of October 18, 1929 No. 339 "O poryadke uvol'neniya i vosstanovleniya v dolzhnosti otvetstvennykh rabotnikov, dela kotorykh ob uvol'nenii ne podlezhat rassmotreniyu v rastsenochno-konfliktnykh komissiyakh i trudovykh sessiyakh" // Izvestiya Narodnogo komissariata truda SSSR ["On the order of dismissal and reinstatement of the responsible employees, whose cases of dismissal are not subject to consideration in the rate and disputes commissions and labour sessions" // News of the People's Commissariat of Labour of the USSR]. 1930. No. 1–2.

the practical application of the Code of 1922 showed the full vitality and expediency of all its main provisions" [Lyakh, A., 1927, p. 114].

Together with a few other scientists K.M. Varshavsky called for "creating conditions under which the economic life of the country could develop, under which, in particular, private industrial capital would find sufficient incentives to speak in the arena of economic life" [Varshavsky, K.M., 1923, p. 14].

At the same time some lawyers of the Trudovik perceived the theses of the leadership of the RCP (b) about "maintaining commanding heights in power", about "temporary tactical retreat". Thus, I.S. Voytinsky, opposing K.M. Varshavsky, argued that it was impossible in principle to achieve class compromise in the Soviet state, that "no concessions were made to private capital by the Soviet government due to the economic and legal status of the labour force" [Voitinsky, C., 1928, p. 67]. Positions of I.S. Voitinsky and other scientists were in widespread in the late 1920s. Despite the stabilization of the Russian economy and the sphere of labour relations, in this period the curtailment of the policy of limited economic liberalism begins. The economy of the NEP revealed some notable success in the service industry and small industries. The rise of the consumer sector questioned the need for the party nomenclature and the non-market ideas of communism and socialism. From the point of view of the national economy, under the conditions of the NEP, heavy industry and the mining industry, the military-industrial complex, and science did not receive adequate development.

Discussion and conclusion. The study period was preceded by the Labour Code of 1918. It was primarily an attempt to address the gap and designed a practically unviable model of the institution of dismissal initiated by the employer and was not justified from the enforcement point of view. The General Regulation on the Tariff, 1920, and the RSFSR Labour Code, 1922, quickly replaced it. The Labour Code of 1922 largely embodied a return to the normal evolutionary line of development from the pre-revolutionary factory law to the Soviet labour law.

The legal regulation of the termination of an employment contract at the initiative of the employer approached world standards. Nevertheless, the central planning principles, which ensured the interests of the state to manage labour resources, retained their importance. They were manifested both formally, having received regulatory consolidation, and unofficially, at the level of real economic practice. The latter was determined by the party recommendations and instructions, ideological attitudes of the central power apparatus. Further development of labour legislation in general and the institution of dismissal of an employee in particular showed the choice of the legislator in favour of the development of administrative principles. In line with the previous and subsequent stages of the history of the industry, labour law served as an instrument of domestic policy, in many respects was put at the service of ideology.

References

Andryushin, B.A., 2012. *Iz istorii trudovogo zakonodatel'stva SSSR i politiki sovetskogo pravitel'stva v oblasti trudovyh resursov* = [From the history of the labour legislation of the USSR and the policy of the Soviet government in the field of labour resources]. Moscow: Novyj hronograf. (In Russ.)

Bochkov, A.F., 1971. *Rastorzhenie trudovogo dogovora* = [Termination of employment]. Minsk: Gos. izd-vo Belorusskoj SSR. (In Russ.)

Borisova, L.V., 2006. *Trudovye otnosheniya v sovetskoj Rossii (1918–1924 gg.)* = [Labour Relations in Soviet Russia (1918–1924)]. Moscow: Sobranie. (In Russ.)

Ivanov, S.A., 1974. *Trudovoe pravo i nauchno-tekhnicheskij progress* = [Labour law and scientific and technical progress]. Moscow: Nauka. (In Russ.)

Lyah, A., 1927. [The development of Soviet labour legislation for ten years]. *Voprosy truda* = [Labour Issues], 10, pp. 114–129. (In Russ.)

Lyutov, L.N., 2002. *Obrechyonnaya reforma. Promyshlennost' Rossii v epohu nepa* = [Doomed reform. Russian industry in the era of NEP]. Ul'yanovsk: Izd-vo UGU. (In Russ.)

Varshavskij, K.M., 1923. *Trudovoj dogovor po Kodeksu zakonov o trude* = [Labour Contract under the Labour Code]. Petrograd: Academia. (In Russ.)

Vojtinskij, I.S., 1928. *Trudovoe parvo* = [Labour law]. Moscow: Yuridicheskoe izdatel'stvo NKYU RSFSR. (In Russ.)

Информация об авторе / Information about the author

Nikolay V. Demidov, Associate Professor of Civil Law Department, West-Siberian Branch, Russian State University of Justice, (2 Lenina Sqr, Tomsk, 634050, Russia), Cand. Sci. (Law), Associate Professor [**Демидов Николай Вольтович**, доцент кафедры гражданского права Западно-Сибирского филиала ФГБОУВО «Российский государственный университет правосудия» (634050, Россия, г. Томск, пл. Ленина, д. 2), кандидат юридических наук, доцент]. E-mail: fra_nickolas@list.ru