

Compensation for dismissal without real and serious grounds: the tumultuous saga of the "Macron scale"



Isabelle Le Coq, Partner, Avocat au Barreau de Paris

Andrea Linne, Dr. iur., Avocat à la Cour

Adel Labadi, Avocat à la Cour

By order n. 2017-1387 of 22 September 2017, the government established a scale to evaluate the compensation that a company must pay to an employee if his/her dismissal is declared to be without real and serious grounds.

By virtue of this said "Macron" scale, the amount of compensation granted by judges must obligatorily fall between a minimum and a maximum determined according to the employee's seniority.

The "Macron scale" thus limits uncertainties and helps to control the financial risks associated with the termination of an employment contract.

As early as 2018, several Labour Councils ruled out the application of the "Macron scale" on grounds that it did not provide adequate and appropriate compensation for the employee's loss, and that it failed, therefore, to comply with three international texts: the Convention for the Protection of Human Rights and Fundamental Freedoms, the European Social Charter, and International Labour Organization Convention n. 158.

In several opinions issued on 17 July 2019, the Court of Cassation declared the "Macron scale" compliant with the aforementioned international texts.

Since these non-binding opinions, some jurisdictions have ruled out the application of the "Macron scale" while others have applied it strictly.

By judgment of 22 July 2019, the Grenoble Labour Court considered that, in the case before it, the "Macron scale" could not be applied because it did not provide sufficient reparation.

According to the "Macron scale", because of her seniority of eleven years and eleven months, the employee would have been entitled to a maximum indemnity of eleven months' salary (approximately €23,000). The Labour Court granted the employee an indemnity of approximately 16 months' salary (€35,000), taking into account her seniority and age (55), indicating that her employment contract would continue until retirement, and in consideration of her difficulty finding employment due to her low qualifications.

By a judgment dated 25 September 2019, the Reims Court of Appeal applied the scale to the case in point, but specified that it would have derogated from it if it had not allowed adequate and appropriate compensation for the loss suffered by the employee.

By decision of 30 October 2019, the Paris Court of Appeal seems to have agreed with the opinions of the Court of Cassation in the following terms:

"The establishment of a scale is not in itself contrary to the texts in question (...) requiring States, in the event of unjustified dismissal, to guarantee the employee "adequate compensation or appropriate reparation", with French courts, within the framework of the minimum and maximum amounts enacted on the basis of the employee's seniority and the size of the company's workforce, retaining a margin of appreciation."

The divergence of court decisions and the questioning of the ceilings of the "Macron scale" reintroduce uncertainty regarding the cost of a dismissal.

Depending on the court referred to the extent of the employee's loss, the level of compensation, unforeseeable, could exceed the maximum amount provided for by the "Macron scale".

Only a ruling (and no longer an opinion) by which the Court of Cassation would declare the scale to be compliant with international texts would put an end to this situation.

This final stage in the tumultuous saga of the "Macron scale" would reintroduce an element of certainty concerning the maximum amount of compensation granted to an employee whose dismissal is deemed to be without real and serious grounds.

Let us not forget, however, that even if it saved the "Macron scale", the Court of Cassation would not put an end to the burdensome unpredictability for companies: one that depends on a judge's assessment of whether a dismissal is justified or not.