Revista JUSTICIA & TRABAJO

N.º EXTRAORDINARIO

MAYO 2024

revistajusticiaytrabajo.colex.es

REVISTA JUSTICIA & TRABAJO

© Editorial Colex S.L.

Calle Costa Rica, número 5, 3.º B (local comercial), 15004, A Coruña (Galicia)

91 109 41 00 info@colex.es

revistajusticiasocial@colex.es

COORDINACIÓN, EDICIÓN, DISEÑO Y MAQUETACIÓN: Editorial Colex

ISSN: 2952-1955 | **DOI:** https://doi.org/10.69592/2952-1955-EXTRA-JUNIO-2024

DOI: https://doi.org/10.69592/2952-1955-EXTRA-JUNIO-ART-3

Modalities of dismissal in Italy

Modalidades de despido en Italia

Luisa Rocchi
Tenure track assistant professor in labour law, Università e-Campus
luisa.rocchi@uniecampus.it

Dario Calderara
Ricercatore a tempo determinato presso Sapienza, Università di Roma
dario.calderara@uniroma1.it

Angelo Casu
Dottorando Sapienza, Università di Roma
angelo.casu@uniroma1.it.

Giulia Perri
Dottoressa in giurisprudenza, Sapienza, Università di Roma

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Abstract: In Italy the general principle is that the dismissal must be causal. This article analyzes the dismissal reform in Italy, introduced by Legislative Decree no. 23/2015, 7 March.In collective dismissal there is a specific procedure in the case of company relocations apart from the classic collective dismissal due to staff reduction. In the

other hand, the reinstatement protection, in a context of dismissal for objective justified reasons, is provided only for the case in which the judge ascertains the lack of justification for the reason consisting in the employee's physical or psychic disability, assimilating it to the hypothesis of nullity of dismissal. Regarding disciplinary dismissal, a distinction is made between the "giusta causa" and the "giustificato soggettivo motive".

Resumen: *En Italia el principio general es que el despido ha de ser causal. Este artículo analiza la reforma del despido en Italia, introducida por el Decreto Legislativo núm. 23/2015, de 7 de marzo. En el despido colectivo existe un procedimiento específico en el caso de traslados de empresa, al margen del clásico despido colectivo por reducción de plantilla. Por otro lado, la protección de readmisión, en un contexto de despido por causas objetivas justificadas, se prevé únicamente para el caso en que el magistrado compruebe la falta de justificación del motivo consistente en la incapacidad física o psíquica del trabajador, asimilándolo a la hipótesis de nulidad del despido. En cuanto al despido disciplinario, se distingue entre la «giusta causa» y el «motivo giustificato soggettivo».*

Keywords: Dismissal causal in Italy, collective dismissal, dismissal for objective justified reasons, disciplinary dismissal.

Palabras clave: *Despido causal en Italia, despido colectivo, despido por causas objetivas justificadas, despido disciplinario.*

I. Collective dismissals

Luisa Rocchi

1.1. Collective dismissals due to staff reduction and mobility

The discipline of collective dismissals was initially regulated by interconfederal agreements.

Only with law n. 223/1991, following the transposition of Directives n. 75/129/EEC and n. 92/56/EEC, the national legal system provided for specific rules dictated to mitigate the employment repercussions[1].

The Italian regulations provide for two hypotheses for collective dismissals: dismissal due to mobility and dismissal due to staff reduction.

1 M. D'Antona, *Riduzioni di personale e licenziamenti: la rivoluzione copernicana della l. 223/91*, in *Foro it.*, 1993, 2031; G. Santoro-Passarelli, Diritto dei lavori e dell'occupazione, 2022, Torino, Giappichelli, 444 ff.

to the r.s.a. or r.s.u., and the territorial branches of the comparatively most representative trade union associations at the national level, it must inform, at the same time, the regions of the affected territories, the Ministry of Labor and Social Policy, the Ministry of Economic Development and the national agency for active labor policies.

The notice must contain, in addition to the employer's intention to proceed with the closure, a number of other elements, such as the economic, financial, technical, or organizational reasons for the closure, the number and professional profiles of the staff employed, and the timeframe within which the closure is planned.

Subsequently, but in any case within 60 days of the communication, a plan drawn up by the entrepreneur to limit the employment and economic fallout resulting from the closure must be submitted, which may be approved with the consequent recognition of benefits both to the company, of an economic nature, and to the workers, who may have access to a series of wage supplementation treatments, or, in the event of failure to reach an agreement, the subsequent collective dismissal procedure will be opened, which will be carried out without the joint examination, given that the parties have, in effect, already examined the situation.

It should be pointed out that the union agreement does not avert the possibility of collective dismissals: the employer is still entitled to open the relevant procedure at the end of the plan itself. And yet, before the conclusion of the examination of the plan and its eventual signing, the employer cannot proceed with collective dismissals or intimate dismissals for objective justifications. As for the sanction profile, the law specifies that individual dismissals for objective justifications and collective dismissals announced in the absence of the notice of the opening of the procedure aimed at the presentation of the plan or before the expiration of the term of one hundred and eighty days, or the shorter term within which the plan is signed, are null and void, with consequent recognition of the reintegration protection provided for in art. 2, Legislative Decree n. 23 of 2015[23].

2. Objective dismissal in Italy

Dario Calderara and Angelo Casu[24]

2.1. Origin

The employer's freedom of dismissal, besides being expressly provided for in Article 2118 of the Civil Code of 1942, finds its constitutional coverage in Article 41 of the Constitution. Indeed, as evidenced by commentators, the freedom of private economic initiative recognized under Article 41 of the Constitution implies the freedom to dismiss the employee for

23 Following the intervention of the Constitutional Court in the sentence n. 22/2024, the adverb "expressly" was removed from the provision. However, even prior to this ruling there was no doubt about the expressly null and void character of the aforementioned dismissal.

24 The chapter is a joint reflection of the Authors. That said, §§ 1, 2, 3 are to be attributed to Dario Calderara, §§ 4, 5, 5.1 are to be attributed to Angelo Casu.

organisational reasons[25]. Freedom of enterprise, however, in the taxonomy of constitutional values is limited, on the one hand, by paragraph 2 of the same article, which states that private economic initiatives cannot take place «in contrast with social utility», and, above all, requires a balancing act with the right to work and employment established by Article 4 of the Constitution.

Over the last few decades, lawmakers weighed this balancing act differently, adjusting it under the democratic majority principle[26], in accordance with the changed economic context.

2.2. Historical evolution

The reference to the justified reason for dismissal, which contains the «misleading»[27] distinction between subjective and objective reasons, is included in Law No. 604/1966.

This legislative act overcomes the codified framework, which referred to the employer's withdrawal, as set out by Article 2118 of the Civil Code, i.e. the free withdrawal sc. *ad nutum*. The only obligation for the employer, according to the previous approach, was notice, the duration of which was established by custom, in equity or, more commonly, by collective bargaining applicable to the employment relationship.

If, on the one hand, Article 3 of Law No. 604/1966 has been unaffected by legislative amendments, being subject only to the evolution of case law, which has specified the scope of the rule over the time, on the other, the legislation on protection against unlawful dismissal has been subject to numerous amendments.

Law No. 604/1966 itself provided for an initial mandatory protection, requiring the employer to reinstate the employee unlawfully dismissed or, failing that, to pay him compensation.

With the introduction of Article 18 of Law No. 300/1970 there was a radical[28] change in the effects of unjustified dismissal. The invalidity of the dismissal has been sanctioned, for production units employing more than 15 employees, with the annulment of the dismissal and the consequent "real" reinstatement protection. The legislator, in this sense, strengthens the position of the employee with respect to the company's freedom of dismissal.

The change in the labour market and the context of the economic crisis prompted the 2012 legislator to amend Article 18 of Law No. 300/1970[29] allowing greater flexibility in dismissal, reducing the scope of reinstatement, in addition to cases of nullity of the dismissal and cases of «insubstantiality of the fact».

25 E. Gragnoli, *L'insopprimibile libertà di cessare l'impresa e l'illiceità del divieto di licenziamento*, in *Mass. giur. lav.*, 3, 2020, 609.

26 G. Santoro-Passarelli, *Le "ragioni" dell'impresa e la tutela dei diritti del lavoro nell'orizzonte della normativa europea*, in *Eur. dir. priv.*, 1, 2005, 65.

27 M.V. Ballestrero, entry *Licenziamento* individuale, in *Enc. dir., Annali,* V, 2012, 806.

28 G. Santoro-Passarelli, *Diritto dei lavori e dell'occupazione*, Giappichelli, IX ed., 2022, 426.

29 A. Maresca, *Il nuovo regime sanzionatorio del licenziamento illegittimo: le modifiche dell'art. 18 statuto dei lavoratori*, in *Riv. it. dir. lav.*, 2, 2012, I, 415 ss.; M. Marazza, *L'art. 18, nuovo testo, dello Statuto dei lavoratori*, in *Arg. dir. lav.*, 3, 2012, I, 612 ss.

The definitive paradigm shift, in favour of compensation protection, occurs with Legislative Decree No. 23/2015, which further reduces the cases under which unlawful dismissal is sanctioned with real protection. In fact, the economic protection becomes a common protection with respect to unjustified dismissal. The provision also provided for the system of the so-called increasing protection, to allow greater predictability to the employer of the costs to be incurred in the event of unlawful dismissal, linked only to the length of service[30]. This "mechanism" for quantifying the compensation was declared unconstitutional by the Constitutional Court through judgments No. 194/2018 and No. 150/2020. In particular, the Constitutional Court noted the unreasonableness of the parameter of seniority of service alone. Indeed, this would lead to an undue homologation of situations that may be different, regardless of the peculiarities and diversity of the events of the dismissals announced by the employer[31].

2.3. Current regulation. The concept of dismissal for objective justified reasons

The objective justification for dismissal, as mentioned above, is identified by Article 3 of Law No. 604/1966, in the «reasons inherent to productive activities, the organisation of work and the regular operation thereof». In other words, the provision defines the limits to dismissals that are not caused by the employee's breach of contract or breach of trust, pursuant to Article 2119 of the Civil Code. The "broad" wording includes cases where the employer decides to change the structure of the company organisation. The person of the employee is therefore relevant to the extent that his performance is deemed no longer useful by the employer[32], subject to the reasons set out in Article 3.

The judge's review of the legitimacy of the dismissal, therefore, must assess the existence of the reasons underlying the dismissal, as well as the causal link between the entrepreneurial choice and the dismissal. Case law subsequently introduced an additional obligation for the employer to verify the possibility of employing the employee within the company organisation, even by assigning him to different tasks (the so-called obligation of repechage)[33]. The impossibility of employing the employee in other company positions constitutes by "living law" a requirement for the legitimacy of dismissal for objective justified reasons.

The lack of only one of the above elements results in the illegitimacy of the dismissal. Pursuant to Article 5 of Law No. 604/1966, the burden of proof of the objective justified reasons is upon the employer.

30 The original text of Article 3(1) of Legislative Decree 23/2015 provided that: «[...] in cases where it is established that the grounds for dismissal for objective justified reason [...] do not apply, the judge shall declare the employment relationship extinct at the date of dismissal and order the employer to pay an indemnity not subject to social security contributions in an amount equal to two months' salary of the last reference salary for the calculation of severance pay for each year of service, in an amount in any case not less than four and not more than twenty-four months' salary».

31 C. Const. 194/2018, para. 11.

32 Among all M. Persiani, *Contratto di lavoro e organizzazione*, Cedam, 1966, 265, who observes that the employee's performance can satisfy the employer's interest if it produces a utility.

33 G. Santoro-Passarelli, *Il licenziamento per giustificato motivo oggettivo "organizzativo": la fattispecie*, in *WP CSDLE "Massimo D'Antona".IT*, 317, 2016, 2.

A first limitation placed by the legislator on the power of dismissal is, therefore, the necessary integration of reasons inherent in the productive activities, the work organisation, and the regular operation thereof. In this regard, the question arose as to whether a court could review the merits of the entrepreneur's business choices, or the economic and social adequacy of those choices, even requiring decisive proof of an unfavourable trend in the company's productive activity[34]. Such an interpretation, which was followed by the case law minority[35], would in fact risk conflicting with the employer's freedom to carry out business under Article 41, par. 1 of the Constitution. Moreover, Article 30, par. 1 of Law No. 183/2010 has specified, in this regard, that for the provisions on employment relations containing «general clauses», judicial examination cannot extend «to the review of the merits of the technical, organisational and production assessments which are the responsibility of the employer». The violation of this prohibition constitutes, following the amendment introduced by Law No. 92/2012, a ground for challenging the judicial decision for «violation of a rule of law».

In the exercise of its nomofilactic function, the Court of Cassation intervened with the well-known judgment No. 25201 of 7 December 2016, confirmed by further subsequent judgments[36]. This decision clarifies that, for the purposes of the integration of the case referred to in Article 3 of Law No. 604/1966, it is not necessary to ascertain the «factual ground» identifiable in the unfavourable conditions of the undertaking. In this sense, the Court of Cassation does not exclude that the dismissal may also be imposed for a «better management or production efficiency», as well as for the purpose of increasing the «profitability of the business», adopted according to the legitimate and unquestionable choice of the employer. In other words, the Court of Cassation adheres to the orientation following the letter of the law «it is sufficient that the dismissal is determined by reasons inherent to the productive activities, the organisation of work and the regular operation thereof» and that is verified «the causal link between the reason established as inherent to the productive activities and the organisation of work as declared by the entrepreneur and the dismissal in terms of traceability and consistency with the restructuring operated». It has been authoritatively observed how this judgment, on the one hand, enhances the elements of the case in order to avoid that the objective justified reason «can be assimilated to an *ad nutum* dismissal resulting from self-sufficient and unquestionable choices of the entrepreneur», while, on the other hand, no objective criteria are identified to guide the court on the merits, thus running the risk of rendering judicial review a «mere notarial ratification of the employer's decision to suppress the job»[37].

A further requirement of the justified reason is, therefore, the causal link that must exist between the suppression of the job and the dismissal. In other words, it is required that the justified reason for the employer's dismissal necessarily affects the position of the dismissed employee. It follows that the reason justifying the dismissal and the suppression of the employee's position constitute two distinct moments of assessment, rejecting the hypothesis that the dismissal could be motivated only by the suppression of the job[38]. Verification of the

34 R. Del Punta, *Diritto del lavoro*, XIV ed., Giuffrè, 2022, 692.

35 Cass., 24th June 2015, no. 13116; Cass. 16th March, no. 5173, Cass. 17th January 2014, no. 902; Cass., 23rd October 2013, no. 24037. See also V. Speziale, *Il giustificato motivo oggettivo: extrema ratio o "normale" licenziamento economico?*, in A. Perulli (a cura di) *Il licenziamento per giustificato motivo oggettivo*, Giappichelli, 2017, 119 ss.

36 Recently Cass., 30th January 2024, no. 2831; Cass., 12nd January 2023, no. 752.

37 G. Santoro-Passarelli, *Il licenziamento per giustificato motivo oggettivo "organizzativo"* cit., 7.

38 R. Del Punta, *Disciplina del licenziamento e modelli organizzativi delle imprese*, in *Dir. lav. rel. ind.*,

existence of the causal link, therefore, is an assessment that must be carried out at the level of the logical consistency between the dismissal and the justified reason for it, without this leading to judicial interference in the merits of the entrepreneurial choice[39], thus making it possible to verify the non-pretextuality of the dismissal[40].

As mentioned, the case law on the subject of dismissal, starting from the well-known decision of the Court of Cassation, Unified Section, No. 7755 of 7 August 1998, has deduced from the general principles of the legal system the obligation for the employer to investigate the «possibility of another activity attributable [...] to the tasks currently assigned or to equivalent tasks or, if this is impossible, to inferior tasks, provided that this activity can be used in the undertaking, according to the organisational structure unquestionably established by the employer». This would be an expression of the principle whereby dismissal must constitute the ultima *ratio* (extreme remedy) for the employer[41]. It should be borne in mind that the entrepreneurial organisational structure constitutes the limit of the extension of the obligation to dismissal[42] and therefore requires a joint reading with Article 2103 of the Civil Code, which delineates the boundaries of the employer's power to assign the employee to different tasks. It should also be borne in mind that according to a recent ruling of the Court of Cassation, the employer, in fulfilling the obligation of repechage, must «also take into consideration those job positions which, purely yet unfilled, will become available in a time span quite close to the date on which the notice of dismissal is given. When [...] that circumstance is well known to the employer»[43]. With reference to the limits of the obligation of *repêchage*, it should be noted that case law holds that in the presence of a group of undertakings, the obligation must extend to the other undertakings only where a single centre of imputation of legal relations can be identified, or in the case of joint employership[44].

Regarding the burden of proof, the *regula iuris*, pursuant to Article 5 of Law No. 604/1966, according to which the employer bears the burden of proving the impossibility of relocating the employee to other tasks, must be confirmed. However, part of the case law[45] has developed an orientation tempering the burden of proof on the employer about the obligation to reallocate, which, especially in large companies, could be particularly onerous. According to those judgments, the worker would be required to provide evidence of the possibility of being reinstated, according to a principle of cooperation[46] of the worker himself. However, according to more recent case law, the burden of proof would be interpreted strictly. The

80, 1998, 707.

39 On this matter see F. De Giuli, *Il nesso causale nel licenziamento per giustificato motivo oggettivo*, in *Lav. dir. eur.*, 3, 2022, 2 ss.

40 Cass., 28th March 2019, no. 8661.

41 E. Ghera — A. Garilli — D. Garofalo, *Diritto del lavoro,* Giappichelli, 2020, 267; R. Del Punta, *Diritto del lavoro* cit., 694. In problematic terms on the relationship between *extrema ratio* and "repechage obligation" see M. T. Carinci, *L'obbligo di «ripescaggio» nel licenziamento per giustificato motivo oggettivo di tipo economico alla luce del* jobs act, in *Riv. it. dir. lav.*, 2, 2017, I, 203 ss.

42 Cass., 19th November 2015, no. 23698; Cass., 23rd April 2010, no. 9700.

43 Cass., 8th May 2023, no. 12123.

44 Cass., 9th May 2018, no. 11166.

45 Cass., 6th July 2012, no. 11402; Cass., 15th May 2012, no. 7512; Cass., 6th July 2011, no. 14872; Cass., 8th February 2011, no. 3040; Cass., 18th March 2010, n. 6559; Cass., 12nd December 2007, n. 26084.

46 Cass., 12nd August 2016, no. 17091.

employee would not bear «the burden of alleging the positions that can be filled, since it would be contrary to ordinary procedural principles to differentiate between those burdens»[47].

Now, it should be noted that dismissal for objective justified reasons also includes hypotheses attributable to the person of the employee, but which do not constitute non-performance. In this sense, we are referring to the cases referred to in Article 2110 of the Civil Code, in addition to cases of objective impossibility of performance, pursuant to Article 1256 of the Civil Code, such as the supervening unfitness for the worker's job, *pursuant to* Law No. 68/1999[48].

2.4. Procedure for intimation of dismissal for objective justified reasons

For workers to whom Article 18 of Law No. 300/1070[49] applies, i.e. hired before 7 March 2015, employed in offices or establishments employing more than 15 employees, there is a procedure for the exercise of the power of dismissal by the employer, aimed at mitigating the social consequences of dismissal.

Article 7 of Law No. 604/1966, in fact, provides that dismissal for objective justified reasons must be preceded by a communication, made by the employer, to the Labour Inspectorate of the place where the employee works, transmitted for information to the employee himself. The content of the notice must indicate the intention to dismiss, the reasons for the dismissal and any measures to assist the outplacement of the worker concerned.

The employer and employee must be summoned by the Labour Inspectorate within seven days of receiving the request, at the Provincial Conciliation Commission, where the employee may be assisted by a trade union representative, a lawyer, or an employment consultant.

The procedure must be concluded within 20 days — with the possibility of suspension for a maximum of 15 days for justified impediment on the part of the worker — and alternatives to dismissal must be examined.

2.5. The sanctions regime. Employers hired before 7 March 2015

As mentioned, the system of protections against unlawful dismissal in the Italian legal system is different for workers hired before 7 March 2015, to whom Law No. 300/1970 and the sanctions system of Law No. 604/1966 apply, and after 7 March 2015, to whom Legislative Decree No. 23/2015 applies.

47 Recently Cass. 30th January 2024, no. 2739; Cass., 13rd November 2023, no. 31512; Cass., 11st November 2022, no. 33341; recalling Cass., 22nd March 2016, no. 5592, annotated by M. Persiani, *Licenziamento per giustificato motivo oggettivo e obbligo di repêchage*, in *Giur. it*, 5, 2016, 1167, who nevertheless observes that the provision of a burden on the worker to indicate which positions in the company where he could be redeployed would be a «reasonable compromise».

48 S. Cairoli, *Il licenziamento per giustificato motivo oggettivo per i lavoratori assunti prima del 7 marzo 2015*, in G. Santoro-Passarelli (a cura di), *Diritto e processo del lavoro e della previdenza sociale*, Utet, 2020, 1511.

49 See Article 3 (4) of Legislative Decree No. 23/2015.

The legislation of privatised public employment essentially does not distinguish between dismissal for justified subjective and objective reasons, in relation to the sanction's regime[50]. It is worth noting that in that legislative framework, real stability still constitutes a general character, pursuant to Article 63 of Legislative Decree No. 165/2001[51].

In private employment, workers hired before 7 March 2015 and employed in a location or establishment employing more than 15 employees are covered by the protections of Article 18 of Law No. 300/1970, while, below that threshold, the protection is the mandatory protection of Article 8 of Law No. 604/1966.

Therefore, for systematic purposes, with specific reference to cases of illegality of dismissal for objective justified reasons, it is necessary to distinguish between: "attenuated" reinstatement protection, "strong" economic protection, and "weak" economic protection[52].

The first refers to the sanction of the reinstatement of the worker unlawfully dismissed, accompanied by compensation for damages equal to an indemnity commensurate to «the last full salary from the day of dismissal until the day of actual reinstatement»[53] up to a maximum of twelve months' salary, in addition to the payment of the relevant social security and welfare contributions. From the compensation must be deducted what the employee has received, during the period of dismissal, for the performance of other work activities (so-called *aliunde perceptum*), as well as what he could have received by diligently seeking new employment (so-called *aliunde percipiendum*).

Insofar as it is of interest herein, this sanction concerns cases where the lack of justification relates to the employee's psycho-physical unfitness, pursuant to Articles 4, par. 4 and 10, par. 3 of Law No. 68/1999 or for breach of the rules on the Art. 2110 of the Civil Code, as well as to the finding that the fact underlying the dismissal for objective justified reason does not exist.

This assumption follows the intervention of the judgments No. 59 and 125, respectively issued by the Constitutional Court on 1 April 2021[54] and 22 May 2022, which "equalised" the penalty regime for the absence of the fact in the case of dismissal for justified subjective and objective reasons as well as for just cause.

Indeed, Law No. 92/2012 provided that in case of absence of objective justification, the judge could discretionally choose between reinstatement protection and economic protection. Otherwise, if there was no subjective justification or just cause, the judge was

50 A. Veltri, *Gli altri casi di estinzione del rapporto di lavoro pubblico* cit., 3634 ss.

51 Pursuant to Article 63, Legislative Decree No. 165/2001, which is similar to the original text of Article 18, L. no. 300/1970 «The judge, with the sentence annulling or declaring the dismissal null and void, shall order the administration to reinstate the employee in the workplace and to pay an indemnity commensurate with the last salary used to calculate the severance pay corresponding to the period from the date of dismissal until the date of actual reinstatement, and in any case not exceeding 24 months' salary, less any sums received by the employee for other work activities. The employer is also ordered to pay social security and welfare contributions for the same period».

52 See the systematisation in R. Del Punta, *Diritto del lavoro* cit., 700 ss.

53 Art. 18, para. 4. L. No. 300/1970.

54 S. Bellomo — A. Preteroti, *La sentenza della Corte n. 59/2021 sull'art. 18 St. lav.: una questione di (inaccettabile) discrezionalità*, in *federalismi.it*, 13, 2021, 1 ss.

required to annul the dismissal and reinstate the worker. According to the Constitutional Court, judgement No. 59/2021, the «merely» optional nature of reinstatement would conflict with the principle of equality under Art. 3 Const. and reveal an internal disharmony in the peculiar system of protections outlined by Law. No. 92/2012. In support of its decision, the Court also invokes Art. 4 and 35 of the Constitution, respectively, the right to work and the protection of labour in all its forms and applications, reiterates that the non-existence of the fact in each case denotes the «most strident contrast» with the principle of necessary justification for termination.

Similar arguments underlie judgement No. 125/2022. Indeed, the letter of the Law No. 92/2012 provided that the absence of the fact in objective dismissals had to be «manifest». This unequal treatment was found by the Constitutional Court to be unreasonable and therefore unconstitutional. This requisite was found to be indeterminate. The unreasonableness of the requisite is also examined from a procedural standpoint. Indeed, in disputes involving dismissals for objective justifications, the evidentiary framework is often articulated, so much so that it is not compatible with an immediate verification of the non-existence of the fact, which the law requires for the purposes of reinstatement. The unreasonable character, therefore, would occur in the «imbalance between the ends enunciated and the means concretely chosen» by the rule.

In the further hypotheses in which the judge considers that the grounds for the objective justification do not exist, he orders the employer to pay an indemnity «all-inclusive determined between a minimum of twelve and a maximum of twenty-four months' salary of the last global *de facto* remuneration, in relation to the worker's seniority and taking into account the number of employees employed, the size of the economic activity, the behaviour and conditions of the parties, with the burden of specific motivation in this regard» ("strong" economic protection).

The "weak" economic protection, applicable, as mentioned above, to workers, hired before 7 March 2015, employed in offices or establishments where less than 15 employees are employed, provides that the unlawfulness of dismissal for objective justified reasons shall be subject to 'an indemnity of an amount between a minimum of 2.5 and a maximum of 6 months of the last de facto global remuneration'. The provision also identifies the criteria for determining the compensation, i.e. the number of employees employed, the size of the undertaking, the length of service of the employee, the conduct and conditions of the parties. This allowance may be increased up to ten months' salary for employees with a seniority of more than ten years. For workers with a seniority of more than twenty years, the allowance may be increased up to fourteen months' salary.

2.6. Employers hired since 7 March 2015

For workers hired since 7 March 2015, as mentioned above, the rules set forth in Legislative Decree No. 23/2015 apply, which is characterised by the residual role attributed to reinstatement protection, favouring economic protection.

In fact, the provision provides that in any case in which it is found that the grounds for dismissal for objective justified reasons do not exist, even if the fact does not exist, the employer is required to pay the employee only economic compensation, corresponding to

the payment of an indemnity commensurate with the last salary used as a reference for the calculation of severance pay, not subject to social security contributions, in an amount not less than six and not more than thirty-six months' salary[55].

With reference to workers employed in offices or establishments with less than 15 employees, pursuant to Article 9 of Legislative Decree No. 23/2015, which expressly recalls Article 18, paras. 8-9 of Law No. 300/1970, the amount of the indemnity is halved and, in any case, cannot exceed six months' salary.

The reinstatement protection, in a context of dismissal for objective justified reasons, is provided only for the case in which the judge ascertains the lack of justification for the reason consisting in the employee's physical or psychic disability, assimilating it to the hypothesis of nullity of dismissal.

3. Disciplinary dismissal

Giulia Perri

3.1. Origin

Disciplinary dismissal is a type of withdrawal that includes both dismissal for justified subjective reason and dismissal for just cause[56]. Those types of dismissal constitute sanctions to punish the breach of contract of the employee.

The evolution of the discipline of the termination of the employment relationship originates in the Civil Code of 1942. The Code contains Article 2118 characterized by an approach focused on the symmetrical freedom of withdrawal from the permanent employment contract. Article 2118 of the Civil Code regulated the two unilateral legal actions capable of producing the extinguishing effect of the relationship: that of the employer (dismissal) and the one of the employee (resignation).

In the employment relationship, however, the interests of the opposing parties do not coincide and are not substantially equivalent. While the employer, on one hand, has an interest in easily adapting his workforce (and therefore the number of workers) based on the needs of his company, being able as he is to dissolve his contractual obligations with a certain ease[57], the worker is interested in the stability of his job. This conflict of interests between that of

55 Art. 3, Legislative Decree No 23/2015.

56 Disciplinary dismissal has been expressly classified as such in the public sector by Legislative Decree no. 165/2001, while in the private sector the explicit reference to it was contained in Article 1, paragraph 7, letter. c) of enabling law no. 183/2014, A. Boscati, *Il licenziamento disciplinare nel contratto a tutele crescenti*, in *Dir. rel. ind.*, 4, XXV, 2015, 1034.

57 Similarly G. Santoro-Passarelli, *Diritto dei lavori e dell'occupazione*, Giappichelli, Torino, 2022, 419.