Workx Advocaten

DISMISSED AS A DIRECTOR – AND AS AN EMPLOYEE TOO?

A statutory director (statutair bestuurder) usually also has an employment contract with the company. What happens to it when the director is dismissed? The main rule is simple; the exceptions matter.

01. THE MAIN RULE

Dismissal as director = end of employment contract

The dismissal resolution also serves as notice of termination. There is no prior review by the Employee Insurance Agency (UWV) or the subdistrict court, and no consent of the director is needed.

Why?

The company's interest and an undisturbed relationship of trust with the shareholders come first; the director's pay compensates for this.

The other way round

If the director resigns, this as a rule also serves as notice under their employment contract.

Applies to the BV and NV, and also to the foundation (stichting) and association (vereniging). For all these legal entities the law rules out reinstatement of the employment contract (Articles 2:244, 2:134, 2:298a and 2:37(6) of the Dutch Civil Code), and notice can be given without prior review (Article 7:671(1)(e)).

02. DOES THE MAIN RULE APPLY? FIVE QUESTIONS

1 Validly appointed, and appointment accepted?

The appointment may be oral; registration with the Chamber of Commerce (KvK) alone is not proof.

× NO → **Not a director:** the ordinary dismissal protection applies. If the appointment is disputed, the company must in principle show that it took place.

2 Personally a director of their own employer?

× NO → **Director of another group company or through a holding company:** the employment contract does not end automatically; with a holding only if the two relationships are shown to be intertwined, and the test for this is not settled.

3 Is there a valid dismissal resolution?

The expiry of a term of appointment is *not* a dismissal resolution.

× NO → **Void or annulled resolution:** the employment contract has not been validly terminated either. **Has only the term of appointment expired?** Then the contract continues. Adopt a dismissal resolution in good time and give notice with effect from the end of that term.

4 A prohibition on termination, e.g. sickness?

Reported sick *after* the notice convening the general meeting (AvA)? Then no prohibition.

✓ YES → **The employment contract continues.** It can then only be ended if the court dissolves it, reviewing the ground for dismissal (often a disrupted relationship or a position that has been hollowed out). That ground must not be related to the sickness.

5 Was something else agreed?

Not readily assumed.

✓ YES → **The employment contract continues** if the agreement concerns what dismissal as director means for the employment contract. This may also follow from the general meeting and from continuing to work as an employee.

No exception: the contract ends as well

Subject to the notice period and with a **transition payment** (unless the director acted seriously culpably). If there is no reasonable ground or redeployment was not explored, the court may also award **fair compensation**.

03. BORDERLINE CASES

Director 'for signing purposes only'

Rarely accepted as an exception, certainly not if validly appointed and actually performing the role.

Management agreement

Whether the main rule also applies has not yet been decided. So terminate that agreement separately as well.

Listed company

Not an employment contract (Article 2:132(3) of the Dutch Civil Code), though employment law arrangements often apply under the contract.

Only the employment contract terminated

This does not automatically mean dismissal as director; that requires a resolution of the competent body.

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