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TYPES OF EVIDENCE AND PROVING IN THE LABOR DISPUTE COURT

Аннотация: *in this article, the author examines the types of evidence and the specifics of the proof process in labor disputes. The main means of proof are analyzed, such as written and material evidence, witness testimony, expert opinions, and electronic correspondence. Particular attention is paid to the issue of burden of proof in labor disputes, in particular, the situation when the burden of proof may pass to the employer.*

Ключевые слова: *labor disputes, litigation, adversarial principle, examination, burden of proof, reinstatement.*

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Abstract. *in this article, the author examines the types of evidence and the specifics of the proof process in labor disputes. The main means of proof are analyzed, such as written and material evidence, witness testimony, expert opinions, and electronic correspondence. Particular attention is paid to the issue of burden of proof in labor disputes, in particular, the situation when the burden of proof may pass to the employer.*

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Before proceeding to the execution of a court decision, the judicial process includes an important stage of the court session and evidence collection, in which a thorough study of the case materials is carried out, clarifying the presence or absence of necessary evidence, their significance and role in the final resolution of the labor dispute. The stage of collecting and examining evidence is key in the process of judicial protection of citizens' labor rights and significantly affects the results of the case.

The essence of evidence in a judicial context is defined by article 55 of the Code of Civil Procedure of the Russian Federation. Evidence in a case is considered to be information and information about facts that the court uses to establish the presence or absence of events justifying the claims and objections of the parties, as well as other significant circumstances that affect the correct resolution of the case. The process of proving in court is a complex mechanism, including the interaction of facts, procedures and legislation, which helps the court to apply substantive law to real factual events [1, c. 195].

It should be noted that the judicial process is conditioned by the principle of adversarial proceedings, where each party involved in a labor dispute is obliged to present reasonable and legitimate arguments and evidence in support of its position. If the evidence available to the court is insufficient, or one of the parties refuses to provide the necessary evidence, the court may involve the parties in collecting the necessary information or even provide judicial assistance in collecting evidence [2, c.

158].

The process of collecting and researching evidence plays an essential role in the judicial protection of citizens' labor rights, allowing the parties to present reasonable arguments and evidence necessary for the correct resolution of labor disputes in the judicial system.

At the stage of the initial consideration of the case, the court is obliged to determine the party who bears the burden of proof, according to the general rule established by Article 56 of the Civil Procedure Code of the Russian Federation. According to this rule, the party confirming its claims is obliged to provide evidence of the facts to which it refers. However, in practice, there are cases where the definition of the duty of proof causes difficulties and misunderstandings.

This rule, according to which the one who asserts, and not the one who denies, proves, has its origins in Roman law and is fundamental. However, in some cases, this formula may be questioned and events or facts may require joint proof by the parties [3, c. 258].

Consider this example: the employer claims that the employee missed work, while the employee claims that this was due to non-payment of wages in accordance with Article 142 of the Labor Code of the Russian Federation. In this situation, both participants in the process assert and prove their arguments together.

The process of judicial practice on labor disputes sheds light on this conflict. Resolution No. 2 of March 17, 2004, issued by the Plenum of the Supreme Court of the Russian Federation, provides recommendations for resolving such issues. It

emphasizes that in case of labor disputes related to late payment of wages, an employee has the right to suspend his work after 15 days of salary delay, provided that the employer is notified in writing in advance [4].

It is important to note that the principle of equality of the parties in court proceedings is a general principle of judicial proceedings. However, in labor disputes, the parties are not always equal. Structurally, labor disputes usually involve the employer and the employee, and in terms of de facto equality, the employee tends to be more vulnerable. Consequently, the principle of equality, which is characteristic of some other types of legal proceedings, may be more formal than procedural in the case of labor disputes [5, c. 129].

In the context of labor legislation, there is no principle of presumption of innocence, which is characteristic of criminal proceedings. In criminal proceedings, the principle of presumption of innocence presupposes that a person brought to criminal responsibility is considered innocent until his guilt is proven in accordance with the procedure established by law.

Taking into account the specifics of labor disputes, an employee may need to prove that the employer forced him to sign a letter of resignation, which, in turn, requires convincing arguments. But since an employee, as a rule, does not have all the necessary documents and information, he has the right to apply to the court with a request for the provision of relevant evidence from the employer or other authorities.

It is important to note that not all employees whose labor rights have been violated can be considered a "weak" party. Some of them may abuse their employment rights

for personal gain. In such cases, the purpose of their activities may not be to restore their rights, but to obtain material benefits at the expense of the employer.

As part of the consideration of labor disputes, the court has not established restrictions on the use of evidence. The Civil Procedure Code of the Russian Federation provides for a variety of means of proof, such as physical and written evidence, witness testimony, expert opinions, as well as other methods.

Written evidence often forms the main part of the evidence base in labor disputes, including contracts, acts, reports and orders. The court, as a rule, takes into account only the originals of documents or duly certified copies. If the parties are unable to obtain the necessary document, they have the right to apply to the court for assistance in collecting evidence.

Electronic correspondence plays an important role as a means of proof in labor litigation. However, not every message can be considered as evidence. Personal correspondence, even if it contains information of legal significance, cannot be used as evidence. For an employer, the presentation of personal correspondence in court may violate the constitutional right to privacy and, thus, such evidence loses its admissibility. However, corporate correspondence can be considered as evidence, provided it is notarized. However, this evidence will not be considered judicial evidence in disputes over the recognition of an employment relationship.

Witness testimony, as one of the types of judicial evidence in labor disputes, is usually not widely used in comparison with other types of evidence due to their subjective nature. However, they can be taken into account together with written

documents.

Expert and specialist opinions are also often used as a means of proof. Forensic examination has the greatest strength in the evidence base, since experts and specialists are responsible for the reliability of their conclusions and may be subject to criminal liability for providing false information.

Consequently, the employee has a number of options for using the means of proof, but it is worth noting that the employer usually has a more extensive evidence base.

Collecting evidence in labor court hearings remains one of the pressing issues, and discussions continue in the legal field about who has to bear the burden of proof. Although usually the party demanding something must provide evidence, according to the Resolution of the Plenum of the Supreme Court of the Russian Federation, in some cases the court shifts the burden of proof to the defendants and relieves the plaintiffs of this burden [6]. These cases include:

1. Disputes about reinstatement at work and challenging the legality of the imposed disciplinary penalty.

2. Disputes about the conclusion of a fixed-term employment contract with an employee, where the defendant is obliged to prove that the conclusion of an indefinite contract with this employee was impossible.

3. Disputes on the reinstatement of persons whose employment contract was terminated in accordance with clause 7, Part 1, Article 77 of the Labor Code of the Russian Federation or on the recognition of illegal changes in the essential terms of the employment contract when the employee continues to work without changing

the labor function in accordance with Article 73 of the Labor Code of the Russian Federation.

However, some scholars argue that in such disputes, where the defendant is required to prove the validity of his actions, the plaintiff must also provide relevant documents confirming his claims. Despite the fact that large resources are usually available to the employer to collect evidence, not all employment relationships are formalized, and in some cases employers take measures to avoid conflict situations and maintain their reputation. Nevertheless, with due effort and under such difficult circumstances, the employee has a chance to recover at work.

According to the results of the proceedings in the Kirovsky District Court of Ufa, Republic of Bashkortostan, the plaintiff G. filed a lawsuit against the banking organization aimed at his reinstatement at work and recovery of unpaid wages. The plaintiff argued his claims that his dismissal, carried out under paragraph 2 of Article 81 of the Labor Code of the Russian Federation, was due to a reduction in the staff of this organization.

The Commission of the banking organization held a meeting during which issues of staff reduction were considered. At this meeting, candidates for dismissal from the position of Deputy Chairman of the Management Board were considered. The plaintiff held the position of Chairman of the Management Board in a banking organization. The dismissal was due to a decrease in the number of employees, while it was argued that G.'s employee has lower qualifications and labor productivity, and does not have priority to save his job. Despite the total length of service of plaintiff

G., which at that time amounted to 20 years and 3 months, another employee, N., had an experience of 14 years and 10 months. It should not be overlooked that employee G. did not have disciplinary penalties, while citizen N., applying for a position, was reprimanded for improper performance of official duties.

It is also taken into account that during the period of staff reduction, the banking organization hired new employees, such as citizen A., who took the position of head of the payment card department, as well as two more employees in the plastic card department, citizens B. and V. G. did not offer these vacancies to the plaintiff, which appears to be a violation of Part 3 of Articles 81 and 180 The Labor Code of the Russian Federation.

The defendant's representatives justified the dismissal, citing labor productivity, the nature of the work performed, and the workload of employees. They stressed that citizen N. took a more responsible position and managed the risks of the organization, while plaintiff G. was excluded from this list. According to the organizational structure, Citizen N.'s subordination included a larger number of departments, departments and employees than citizen G. It should be noted that Citizen N.'s work experience was 11 years, while Citizen G.'s was 5 years and 3 months. Citizen N. also received an award in the form of the honorary badge "Honored Banker" and completed training courses. It is noted that the plaintiff G. was repeatedly provided with vacancies that meet the requirements of Part 3 of Article 81 of the Labor Code of the Russian Federation, but he refused them.

The court, having considered the arguments of both sides and studied the case

materials, concluded that the employer violated the dismissal procedure by not offering the plaintiff all available vacancies. In particular, it was proved that during the period of reduction in the number of employees, the banking organization hired new employees, but did not provide the plaintiff with these vacancies. Such a court decision complies with the requirements of Part 3 of Articles 81 and 180 of the Labor Code of the Russian Federation [7].

In accordance with Resolution No. 2 of the Plenum of the Supreme Court of the Russian Federation dated March 17, 2004 "On the Application by the Courts of the Russian Federation of the Labor Code of the Russian Federation it is provided that, in accordance with the requirements of the third part of Article 81 of the Labor Code of the Russian Federation, the courts should take into account that the employer is obliged to provide the employee with all relevant vacancies available to him in the in this geographical area. When deciding on the transfer of an employee to another position, it is also necessary to assess the real ability of this employee to perform the job offered to him, taking into account his education, qualifications and work experience [8].

At the same time, it is worth noting that the termination of an employment contract with an employee under paragraph 2 of part one of Article 81 of the Labor Code of the Russian Federation is allowed only on condition that the employee does not have a preferential right to retain his workplace, as defined in Article 179 of the Labor Code of the Russian Federation. The employee must also be notified personally and sign the notification at least two months before the planned dismissal, according

to part two of Article 180 of the Labor Code of the Russian Federation.

Based on the above-mentioned normative provisions of substantive law and taking into account their legal significance for the correct resolution of the dispute, according to the requirements of Article 56 of the Code of Civil Procedure of the Russian Federation, the court must establish the availability of vacant positions in the organization in the period from the moment of notification of a citizen of G. about his upcoming dismissal to the day of actual dismissal from work.

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