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Chile

Chile: Labor Tribunes Can Hear Appeals Over Minimum Services During Strikes, Court Says

By Tom Azzopardi

Labor tribunes can hear appeals over how many workers unions must provide during a strike to guarantee minimum services, the Santiago Court of Appeals held Dec. 4 in a ruling that could open the gates to a raft of appeals on the matter.

Last year's reform of Chile's labor code allowed unions and employers to negotiate about which employees must continue to work during a strike to prevent damage to installations, individuals, and the environment. If the two sides cannot agree, the decision passes to the labor authority and finally to its national director. Labor courts have declared themselves unable to intervene if either party is unhappy with the labor authority decision given that the law (Law No. 20,940) makes no mention of such decisions being appealable.

The Santiago court, however, held that Chile's 26 labor courts can hear such cases because an article in the Labor Code gives the courts authority to hear all matters related to collective negotiations.

'Logical Arguments'

While under Chile's Civil Law the decision does not establish a binding precedent, lower courts are likely to follow the Court of Appeals guidance, according to Luis Parada, a labor lawyer at BAZ DLA Piper.

"More judges are going to feel they have authorization to hear these cases because the ruling has logical and easy-to-understand arguments," Parada told Bloomberg Law Dec. 7, although the Labor Authority is likely to continue appealing these cases until the Supreme Court rules on the matter.

The ruling surprised labor lawyers because in October the same appeals court supported a labor court's refusal to hear such an appeal from workers at retail bank Banco Ripley (Case No. 1,635/2017). The union's lawyers are appealing the case to the Supreme Court.

The latest decision could open the door to a significant number of appeals in similar cases where labor courts have refused to rule.

Workers at the BHP-controlled Escondida mine, the world's largest copper operation, are studying an appeal after the Labor Authority concluded in November that more than 170 staff must remain at their posts in case of a strike, and workers at BancoChile, the country's second largest bank, are already considering an appeal in a similar case.

"The Labor Authority has been quite small-minded in some cases and unreasonable in the area of minimum services," Parada said, "so it is logical that there is a possibility of revising its ruling in the courts."

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For More Information

For more information on Chilean HR law and regulation, see the Chile primer.

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