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Italy

GKN redundancies blocked by court

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GKN tried to bypass the union, keeping it in the dark about its intentions for a long time. Using an excuse related to the production process, it had planned the temporary closure of the site of Campi Bisenzio for 9 July, the same day it wanted to open the redundancies procedure. The real intention was not to reopen it again, since on the previous afternoon the management knew very well that a board of directors had been convened with the agenda of dismantling the factory.

The Labour Court of Florence upheld the rights of the workers and outlined the duties of the company so it revoked the company's decision to open a procedure for mass redundancies. The Fiom CGIL union, which had challenged the redundancy measures initiated against the 422 employees, was right. The multinational company, controlled by the Melrose investment fund, had violated Article 28 of the Workers' Statute by engaging in anti-union behaviour. After the ruling, the company announced that it had "immediately implemented" the judge's decision, revoking the procedure "without this being considered acquiescence" and "with all reservations of appeal".

The case of GKN had opened in July when workers were informed by email that they had lost their jobs, without any prior discussion with the union, a *modus operandi* laid down not only by the national collective agreement but also by a specific agreement of June 2020 between the unions and the company. GKN's intention, established at a board meeting convened the previous day, was to relocate the production of axle shafts to Poland, closing the site that had been owned by Fiat until 1994.

The order signed by Judge Anita Maria Brigida Davia, seen by *Ilfattoquotidiano.it*, is very harsh. The text states that in "partial acceptance of the appeal, having ascertained the anti-union conduct" of GKN in dismissing 422 employees via email, she has "revoked the letter of opening of the procedure under L.233/91" and "put in place the procedures for consultation and dialogue in Article 9, first part of the National Collective Labour Agreement and in the company agreement of 9 July 2020". GKN moreover, will have to publish "the full text" of the ruling in five newspapers and pay the legal costs to Fiom, which had promoted the appeal through the lawyers Andrea Stramaccia and Franco Focareta.

The judge went over in detail the whole genesis of the dismissal procedure opened by Gkn, censuring at several points the attitude of the multinational, from a formal and substantial point of view. The court considers "unquestionable" that the union "had notice of the intention" to dismiss "only after the letter of initiation" of the procedure was sent. But the employer's obligation, writes Davia, "is not limited to the communication of the decision taken, but extends to the phase of formation of the decision itself". And that's not all: in July last year, in a company agreement, GKN had 'expressly committed' to discussions with trade union representatives 'in the event of changes in the current context and market conditions'. In short, the multinational company, reads the ruling, was "required to inform" the union "not only of the data relating to the performance of the company, but also the fact that the framework outlined by the data was leading the company management to question the future" of the plant. And all the documentation produced, the court also stressed, "violated the information obligations incumbent on it".

It is the same letter of opening of the procedure, writes the judge, that should "demonstrate" that "the decision to close" the site of Campi Bisenzio "was the result of a complex analysis initiated" by the group: "The issue had been evident for some months," reads the judge's ruling. Despite this, "no information appears to have been provided to the union about the alarming nature of the data relating to the company in relation to the directives received from the group management and the possible fallout" on "employment dynamics".

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Not even in the days leading up to the closure of the plant, despite the fact that the union had asked for a discussion after GKN had explained on 8 June that there would be possible redundancies in 2022, with a maximum of 29 workers, had the company acted correctly. The workers' representatives had proposed solutions to avoid these redundancies on 29 June, without receiving answers. So on 6 July, "facing a closed door", the unions returned to urge GKN "to expressly request a meeting". The company agreed, but "omitted any reference" to the board of directors meeting that was to be held just two days later 'with the decision to close the plant and lay off all staff on the agenda'.

In the judge's opinion, this behaviour constituted a "clear violation of the rights" of the trade union, which was "faced with a fait accompli" and "deprived of the right to intervene in the decision-making process". This is not the only modus operandi censured by the judge: "The intent to delegitimize the union with initiatives aimed at eliminating or in any case reducing the possibility of reaction is also found in the manner in which the cessation of activity was implemented and ordered," the ruling states. On 29 June, in fact, the company had agreed with the union a day of closure on the 9 July, justifying the decision with the reduction of an order from a customer. The date is not accidental, the judge suggests, because on 8 July the board of directors had been convened to decide on the cessation of activities. Thus, the site "closed at the end of the shift" on the 8 July and "never started working again" as all employees were put on paid leave from the following day. Although there was no question of rejecting the right of a company to make "discretionary" business decisions, the court pointed out that "business decisions must be made in a manner that respects the principles of good faith and contractual fairness, as well as the role and prerogatives of trade unions".

Instead, GKN, in "deciding the immediate cessation" of production, has "simultaneously decided to eliminate the labour" of the 422 employees "without giving a specific reason or any other appropriate explanation. Behaviour, reflected the judge,that is contrary to good faith and makes plausible the intention to limit the activities of the union. On "respect for the role" of trade union representatives, it adds, "the 24 hour closure does appear significant since the "motivation was subsequently revealed as specious and artfully scheduled for the following day that set to decide on the closure", so as to communicate it "with the plant already closed".

For all these reasons, the judge concluded, the anti-union behaviour was "clear", since the workers' representatives were prevented from "speaking" as they were entitled to do "in the delicate phase of deciding to proceed with the total cessation of business activity". Hence, the need to revoke the letter of initiation of the collective dismissal procedure and to "put in place the procedures for consultation and confrontation" with the trade union provided for by both the national collective agreement and the company agreements of 2020. The multinational, if it really wants to pursue its objective, will have to do so starting from scratch and respecting the law. In other words, first of all by starting a real and preventive dialogue with its employees.

Translated by ***International Viewpoint*** from **ilfattoquotidiano.it**.

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