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## LEGAL REGULATION OF SUSPENSION FROM WORK OF TRANSPORT WORKERS

The article investigates legal regulation of suspension from work of transport workers. Analysis of the current legislation helped to conduct the theoretical study of legal regulation of suspension from work of transport workers. The article highlights problematic issues related to legal regulation of suspension from work of transport workers.

It was concluded that the main purpose of suspension from work of transport workers is termination of unlawful behavior of an employee, traffic safety, prevention of possible inevitable consequences when using transport vehicles or reduce its negative impact on both a worker and persons involved in the safe movement of transport vehicles, and also on people who use transport services.

**Key words:** legal regulation, suspension from work, transport workers, employer, wages.

**Statement of the problem.** Research of legal regulation of suspension from work of transport workers obtains high actuality, as far as established approaches for solving of this issue are outdated and require rethinking. In the absence of the definition of “suspension from work” in legislation and judicial practice employers often make mistakes in practice. In particular, identification of suspension from work of transport workers with such legal categories as “transfer”, “discharge” or “downtime” results violation of labor rights of transport workers.

**Level of exploration.** The problem of suspension from work was the subject of research in works of many scientists, in particular, in works of M. Aleksandrov, V. Protsevskiy, V. Petrov, P. Stavyskiy, D. Trubitsyn, S. Urzhynskiy, V. Scherbyna, N. Khutorian, O. Yaroshenko and others.

However, it should be noted that scientific works on complex analysis of legal regulation of suspension from work of transport workers are absent at the moment.

In this regard, **the purpose of this publication** is to study legal regulation of suspension from work of transport workers, to determine the aim and the reasons of suspension from work of transport workers, as well as the to develop proposals aimed to improve the norms on the issue.

**Presentation of the basic material.** Legal regulation of suspension from work of transport workers is prescribed by general norms of labor legislation (Art. 46, the Code of labor laws of Ukraine), and by specific sectoral norms, that proofs that working at transport has own peculiarities in legal regulation.

Thus, in accordance with para. 2, art. 50 of the Air Code of Ukraine a holder of aviation personnel certificate should be suspended from performing of job duties and responsible under the law in case the use of psychotropic substances was established. Also, according to para. 3, 4, art. 58 of the Air Code of Ukraine crew members of an aircraft are prohibited to perform their job duties if a crew member is under the influence of any drug that affects work efficiency and may threaten safety of a flight or feels badly that also may threaten flight safety. And secondly, to drink alcohol less than eight hours before the specified job time in flight or announcement of ready mode; to overstep flight duty period with an alcohol level in blood which exceeds 0.2 ppm; and to drink alcohol during a flight or in standby mode<sup>1</sup>.

The decree of the State service of Ukraine for aviation safety “On approval of Rules of medical provision and control of civil aviation of Ukraine”, December 5, 2005, № 920<sup>2</sup> established crew members are not permitted to fly, and dispatchers are not allowed to air traffic management in case of identifying the signs of disease, fatigue, consumption of alcohol or drugs, and in case of expiration of a medical certificate, in the absence of six-month medical examination and in avoidance of medical examination. Also crew members after the aircraft accident are not allowed to perform flight. They are subjects to immediate medical examinations and special medical certification.

<sup>1</sup> *Повітряний кодекс України 2011* (Верховна Рада України). *Офіційний сайт Верховної Ради України*. <<http://zakon1.rada.gov.ua/laws/show/3393-vi>> (2015, April, 20).

<sup>2</sup> *Наказ про затвердження Правил медичного забезпечення і контролю польотів цивільної авіації України 2005* (Державної служби України з нагляду за забезпеченням безпеки авіації). *Офіційний сайт Верховної Ради України*. <<http://zakon2.rada.gov.ua/laws/show/z0044-06>> (2015, April, 20).

To avoid the facts of alcohol consumption crew members of aircraft at airports of Ukraine pass selective control test on alcohol consumption of departing crews, regardless the nationality of the aircraft. If there is a suspicion of alcohol consumption by a crew member (dispatcher) a medical examination in accordance with current legislation should be conducted.

Flight attendants, who have not passed inspection and preventive medical examination and which health books have no relevant records, should be suspended from performing flights with board meals.

A crew member (dispatcher), who was suspended from flight due to illness, should be sent to an aviation doctor, and in his absence to a head of a medical institution at aviation enterprise. In case of removal of a crew member (dispatcher) due to illness outside the working hours of medical institutions an appropriate certificate is given.

Herewith, in accordance with part 1 of para. 5.2.1. of The Decree the decision on admission of crew members to flights takes an aircraft commander on the basis of oral interrogation about health and preflight rest. In case of complaints for health condition an aircraft commander takes measures to conduct medical examination of a sick crew member at the nearest medical facility, that is suspend a crew member from performing of job duties. However, the decision on admission to a flight of crew members, including a commander of an aircraft, should be taken by a doctor of an aviation company, as far as a commander of an aircraft has no medical education, so health condition of a worker can not be objectively assessed. So, in my opinion, part 1 of para. 5.2.1. of this Decree is advisable to exclude.

It should also be noted that suspension from work on grounds of presence at a workplace while intoxicated, under influence of drugs or toxic substances, is legal only if state of intoxication was proved by the employer. Thus, according to clause №25 of Resolution of the Supreme Court of Ukraine “On practice of consideration of labor disputes by courts”, condition of alcoholic, narcotic or toxic influence should be confirmed by a medical report, and by other types of evidence, including testimony of witnesses, an act of an employer and others<sup>1</sup>. But according to art. 57 of the Civil Procedure Code of Ukraine such evidence may be any information by means of which a court establishes presence or absence of circumstances justifying claims and objections of parties and other circumstances relevant to solving of a case<sup>2</sup>.

According to the art. 65 of the Merchant Shipping Code of Ukraine captain of the vessel has a right to remove individuals from a ship's crew from their duties in case and in the order prescribed by applicable labor laws. However, the captain has a right to isolate in a separate room any person who is on board (for crew members this is a suspension from work) if actions of this person are not criminal, but threaten safety of a vessel, people or property, located on the vessel during the voyage<sup>3</sup>. The disadvantage of this rule, in my opinion, is the absence of a list of illegal actions of a person which are the basis of isolation in a separate room, which in turn may lead to violations of labor rights by captain of a ship.

The Law of Ukraine “On Road Traffic”, June 30, 1993 p. № 3353-XII defines that officials responsible for operation and technical condition of vehicles (i.e. employer) are required to prevent vehicles driving of people who have no right to drive a vehicle of corresponding category, have not passed medical examination within the prescribed period, or in a state of alcoholic, narcotic or other intoxication, or under the influence of drugs, reducing attention and speed of reaction (p. 2, Art. 12)<sup>4</sup>.

The Decree of the Ministry of Health of Ukraine and Ministry of Internal Affairs of Ukraine “On approval of Provisions for medical examination of vehicle drivers and candidates for vehicle drivers”, January 31, 2013 p. № 65/805 defines that in the event when a driver refuses to pass a medical examination a carrier should take measures to prevent that driver from driving. The grounds for recognition of a driver as incapable for safe driving is the increase or decrease of blood pressure, heart rate, or significant deviations from individual norm of each driver; state of alcoholic, narcotic or other intoxication of a driver or influence of drugs that reduce attention and reaction. Drivers suspended from work due to specified

<sup>1</sup> *Постанова про практику розгляду судами трудових спорів 1992* (Пленум Верховного Суду України). *Бюлетень законодавства і юридичної практики України*, 2006, 2, 68–83.

<sup>2</sup> *Цивільний процесуальний кодекс України 2004* (Верховна Рада України). *Відомості Верховної Ради України*, 40-41, 42, 492.

<sup>3</sup> *Кодексу торговельного мореплавства України*, ст. 65, гл. 2, р. III (1995) (Верховна Рада України). *Відомості Верховної Ради України*, 47/52, 349.

<sup>4</sup> *Закон про дорожній рух 1993* (Верховна Рада України). *Відомості Верховної Ради України*, 31, 338.

<sup>5</sup> *Наказ про затвердження Положення про медичний огляд кандидатів у водії та водіїв транспортних засобів 2013* (Міністерство охорони здоров'я України та Міністерство внутрішніх справ України). *Офіційний вісник України*, 17, 98.

grounds are sent for examination to a health institution.

The Charter of Ukrainian railways, approved by the Cabinet of Ministers of Ukraine, April 6, 1998, № 457 determines that employees of railway sidings enterprises that are associated with the movement of trains and shunting on railway tracks should know the Rules of technical exploitation of railways in Ukraine, Instructions on trains traffic and signaling, and employees who manage loading and securing of cargos should know Technical conditions. The order and terms for verification of that knowledge establishes Ukrainian Railway. Knowledge of other employees of railway sidings company associated with the movement of trains and shunting on railway tracks checks commission appointed by a head of an enterprise. Those who have not passed verification of the appropriate knowledge is not allowed to work. Also during performance of official duties on tracks of a railway workers of railway sidings enterprises are required to have a certificate that confirms examination for ability to perform such work<sup>1</sup>. So we may conclude that in the absence of these documents employee may be suspended from work without payment.

According to para. 1.10 of Rules of technical exploitation of railways in Ukraine approved by the Ministry of Transport of Ukraine, December 20, 1996, № 411 employees of railway transport in a condition of alcoholic, toxic or narcotic intoxication are not permitted to perform job responsibilities. Individuals found in state of intoxication are immediately removed from work and are subjects to a disciplinary punishment<sup>2</sup>.

According to the Resolution of the Cabinet of Ministers of Ukraine “On provisions about working discipline of railway transport employees”, January 26, 2003, № 55 employee, who has committed misconduct, which consequences threaten safety of trains, life and health of citizens should be suspended from work until the end of the working shift (para.16)<sup>3</sup>.

The Decree of the Ministry of Transport and Communication of Ukraine “On approval of the Procedure for conducting of medical examinations of workers of certain categories of railway transport, subway and enterprises of intersectoral industrial railway transport of Ukraine” April 29, 2010, № 240<sup>4</sup> determines that managers of enterprises (or structural units), institutions, organizations suspend from work those workers, which according to medical conclusion can not perform such work for health reasons. The issue about temporary or permanent employment of an employee to another job is decided in accordance with applicable law.

According the Procedure for supervision of safety in transport, approved by the Cabinet of Ministers of Ukraine in March 4, 1997 № 204 agencies that have supervision functions for traffic safety, have the right to propose a suspension of an employee whose actions may cause disasters, accidents, events or pose a threat of its occurrence. Supervision for all means of transport is carried out by Ministry of Infrastructure, State Aviation Service, Ukrainian Transport Inspection, Ukrainian Sea and River Transport Inspection and Ukrainian Railways in collaboration with other government agencies<sup>5</sup>.

Thus, suspension from work of transport workers is primarily a limitation of their labor rights, that caused by actions of an employee or by circumstances. Moreover, art. 46 of the Code of labor laws of Ukraine, which prescribes that suspension from work of an employee is also possible in cases provided by law<sup>6</sup>, may be considered as contrary to para. 6, part 1 of art. 92 of the Constitution of Ukraine<sup>7</sup>. As far as

<sup>1</sup> *Постанова про затвердження Статут залізниць України 1998* (Кабінет Міністрів України). *Офіційний сайт Верховної Ради України*. <<http://zakon3.rada.gov.ua/laws/show/457-98-п>> (2015, April, 20).

<sup>2</sup> *Наказ про затвердження правил технічної експлуатації залізниць України 1996* (Міністерство транспорту України). *Офіційний вісник України, 1997, 8, том 2, 212*.

<sup>3</sup> *Постанова про положення про дисципліну праці працівників залізничного транспорту 2003* (Кабінет Міністрів України). *Офіційний сайт Верховної Ради України*. <<http://zakon4.rada.gov.ua/laws/show/55-93-п>> (2015, April, 20).

<sup>4</sup> *Наказ про затвердження Порядку проведення медичних оглядів працівників певних категорій залізничного транспорту, метрополітенів та підприємств міжгалузевого промислового залізничного транспорту України 2010* (Міністерство транспорту та зв'язку України). *Офіційний сайт Верховної Ради України*. <<http://zakon2.rada.gov.ua/laws/show/z0537-10>> (2015, April, 20).

<sup>5</sup> *Постанова про затвердження Порядку здійснення нагляду за забезпеченням безпеки руху на транспорті 1997* (Кабінет Міністрів України). *Офіційний сайт Верховної Ради України*. <<http://zakon4.rada.gov.ua/laws/show/204-97-%D0%BF>> (2015, April, 20).

<sup>6</sup> *Кодекс законів про працю України*, ст. 46, гл. 3 (1971) (Верховна Рада України). *Офіційний сайт Верховної Ради України*. <<http://zakon1.rada.gov.ua/laws/show/322-08/page>> (2015, April, 20).

<sup>7</sup> *Конституція України*, п. 6, ч.1, ст. 92, р. IV (1996) (Верховна Рада України). *Офіційний сайт Верховної Ради України*. <<http://zakon1.rada.gov.ua/laws/show/254к/96-вр>> (2015, April, 20).

regulation of suspension from work of transport workers by subordinate normative acts is a violation of constitutional rights and freedoms, that's why on my opinion, legal regulation of suspension from work of transport workers should be executed at the level of law.

**Conclusions.** Thus, the research of legal regulation of suspension from work of transport workers gives the possibility to formulate following conclusions.

Suspension from work of transport workers is a temporary prohibition of an employer or an authorized state body, in cases defined by law, for employee to perform his professional functions provided by employment contract with the preservation of work function, workplace, and usually with the termination of wages.

The main purposes of suspension from work at transport are to stop illegal behavior of an employee, traffic safety, prevention of possible inevitable consequences of the use of vehicles or to reduce negative impact on both an employee and people involved in safe movement of vehicles, as well as people who use services of transport organizations.

The specific features of suspension from work of transport workers are the following: an employee is forcibly prohibited to perform own professional functions provided with an employment contract; the process of suspension from work of an employee is initiated by an employer or an authorized state body; suspension from work has temporary character; suspension from work is possible only in cases defined by applicable laws and regulations; for a period of suspension an employee retains his work function and workplace, but wages is usually terminated in cases prescribed by applicable regulatory acts; suspension from work may become a prerequisite as for changing conditions of an employment contract with an employee, so for its termination.

Legal regulation of suspension from work of transport workers should be regulated exclusively by laws that clearly establish grounds, define mechanism of suspension from work of transport workers and prescribe legal responsibility for an employer and state authority for unlawful suspension from work.

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