

DECISION

City of Moscow _____ 2013

The Judge of the Tverskoy District Court of the City of Moscow _____, with participation of the defense counsel F.V. Ryabchenko, the state labour inspector _____, having considered in an open court hearing an administrative case on a complaint _____ against Ruling _____ of the state labour inspector of the State Labour Inspectorate in Moscow _____ dated _____ 2013, in accordance with which a director of a branch of Limited Liability Company _____ was acknowledged guilty of committing an administrative offense provided for by Article 5.27 Part 1 of the Code of Administrative Offences of the Russian Federation, and he was sentenced to a penalty of 4,300 rubles,

HAS ESTABLISHED:

On _____ 2013 the state labour inspector of the State Labour Inspectorate in Moscow made a protocol on administrative offense provided for by Part 1 of Article 5.27 of the Code of Administrative Offences of the Russian Federation against the director of the branch of Limited Liability Company _____.

On _____ 2013 the same officer issued Ruling _____ on acknowledgement of _____ guilty of committing an administrative offense provided for by Article 5.27 Part 1 of the Code of Administrative Offences of the Russian Federation, and his sentence to the penalty at a rate of 4,300 rubles.

_____ filed the complaint against the above Ruling, in which he asks to cancel the Ruling, and to send the case to the Labour Inspection for a new consideration on the following grounds. Thus, the state inspector admitted procedural infractions when making the protocol on the administrative offense, since an interpreter was not involved in the process of the protocol making, despite the fact that _____ [the applicant] can not speak Russian, about which he had notified the Inspectorate in his application; _____ [the Complainer] was not properly informed about the Protocol made; the copy of the protocol in English was not sent to _____ [the applicant]. In addition, _____ [the applicant] is not a person responsible for compliance with labour laws. Also in the text of the complaint the applicant states the factual circumstances which, in his opinion were incorrectly established by the state inspector, which precludes the administrative offense in his actions.

At the hearing the defense counsel supported the arguments of the complaint in its entirety, and asked to cancel the contested Ruling.

The state inspector, referring to the lack of procedural violations, believed that the complaint should have been dismissed.

Having checked the materials of the administrative case, and the arguments of the complaint, having heard the participants of the proceeding, the court finds Ruling _____ of the state labour inspector of the State Labour Inspectorate in Moscow _____ dated _____ 2013 - subject to cancellation on the following grounds.

Thus, in accordance with Part 4 of Article 28.2 of the Code of Administrative Offences of the Russian Federation a physical person or a legal representative of a legal person against

whom a case concerning an administrative offense was initiated, shall be granted the opportunity to review a protocol on the administrative offence. These persons are entitled to submit explanations and comments on the content of the protocol, which shall be attached to it.

Persons participating in proceedings on a case of an administrative offense and do not speak the language in which the proceedings are conducted, are guaranteed the right to make statements and give explanations, file petitions and challenges, and file appeals/complaints in their native language or another freely chosen by such persons language of communication, as well as to use services of an interpreter (Part 2 of Article 24.2 of the Code of Administrative Offences of the Russian Federation).

According to the legal position set out in paragraph 4 of the Resolution of the Plenum of the Supreme Court of the Russian Federation dated March 24, 2005 No. 5 “On some issues arising in the courts when applying the Code of Administrative Offences of the Russian Federation”, a significant drawback of a protocol is the lack of data, directly listed in Part 2 of Article 28.2 of the Code of Administrative Offences of the Russian Federation, and other information, depending on its relevance to the particular case of an administrative offense (for example, the lack of information whether a person, against whom the case of administrative offence was initiated, can speak the language on which the proceedings are conducted, as well as the information whether an interpreter was invited when the protocol was made, etc.).

Thus, failure to submit to a physical person or his/her legal representative, or to a representative of a legal entity a translation of a protocol of administrative offense violates their right to get acquainted with the protocol and papers of the case, deprives them of the opportunity to provide explanations and comments on the content of the protocol, the right to make statements and give explanations, file petitions and challenges, that is, in essence, denying them the right to a defense.

Consequently, the absence of the protocol’s translation when the case on the administrative offence was instituted in respect of the person who does not speak the language in which the proceedings are conducted is a reason for the court to return the protocol and the materials of the case in accordance with paragraph 4 of Part 1 of Article 29.4 of the Code of Administrative Offences of the Russian Federation, regardless of whether the petition for transfer was made.

In addition, by implication of Article 28.2 of the Code of Administrative Offences of the Russian Federation concerning preparation of a protocol on administrative offence, a person brought to administrative liability should be duly notified. In the event of nonappearance of a physical person or his/her legal representative, or a legal representative of a legal entity against whom the proceedings on administrative offence are conducted, if they were notified in the prescribed manner, the protocol on administrative offence shall be made in their absence.

In this case, from the submitted materials it follows that _____ [the applicant] was not notified about the time and place of preparation of the protocol on the administrative offence. Thus, in the case papers there is only a requirement dated _____ 2013, for the legal representative to appear before the Labour Inspectorate on _____ 2013 at 10:00.

In addition, on _____ 2013, the representative of the company _____ filed a petition to the Labour Inspectorate about the need to invite an interpreter to participate in the case, in view of the fact that _____ [the applicant] does not speak Russian. However, despite the fact that the protocol on the administrative offence was made on _____ 2013 in the absence of the person called to administrative liability, the protocol states that _____ [the applicant] is a citizen of the United States, the protocol was not

translated into English, and accordingly, the translation was not sent to _____ [the applicant]. The above violations are a significant drawback of the protocol on the administrative offence; however, these violations were not compensated by the officer, and prevented the case consideration on the merits.

In such circumstances, the Ruling made on the case cannot be considered legitimate, since failure to comply with the above requirements of the law resulted in violation of the procedural rights of the applicant, and therefore, Ruling _____ of the state labour inspector of the State Labour Inspectorate in Moscow _____ dated _____ 2013 must be repealed.

At the same time, taking into account that the established by Part 1 of Article 4.5 of the Code of Administrative Offences of the Russian Federation period of limitation for bringing of _____ [the applicant] to administrative liability has expired, by virtue of paragraph 6 of Part 1 of Article 24.5 of the Code of Administrative Offences of the Russian Federation the matter of his responsibility cannot be discussed, and therefore the proceedings of yje case on the administrative offense must be terminated.

Based on the foregoing and guided by Articles 24.5, 30.6-30.7 of the Code of Administrative Offences of the Russian Federation the Court

HAS RESOLVED:

To repeal Ruling _____ of the state labor inspector of the State Labour Inspectorate in Moscow _____ dated _____ 2013, by which the director of the branch of Limited Liability Company _____ was found guilty of committing the administrative offenses provided for by Article 5.27 Part 1 of the Code of Administrative Offences of the Russian Federation, and he was sentenced to the penalty of 4,300 rubles.

To terminate the proceedings in the case of the administrative offense in relation to _____ [the applicant] due to the expiration of the period of limitation for bringing to administrative liability.

The Decision can be appealed in the Moscow City Court within ten days from the date of receipt of a copy of the Decision.

Official seal: Tverskoy District Court of the City of Moscow

Stamp: TRUE COPY

Signatures