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When "Restructuring" Is Asserted but Not Documented

Federal Supreme Court, decision 4A_390/2025 of 14 July 2026 - abusive dismissal under the Swiss Code of Obligations

Every dismissal file eventually reduces to one question: whose story does the evidence support? Swiss law gives the employer wide freedom to terminate and puts the burden of proving abuse on the employee - an allocation that sounds employer-friendly until you notice how much of the proof lies in the employer's own drawers, servers and correspondence with counsel. This ruling is a short lesson in how quickly that advantage inverts when the business rationale is asserted rather than documented.

The Case

An assistant mechanic had worked for the company since 1999. In May 2020, board member C. bought out his fellow director and adversary D., becoming sole director; he regarded D. as "an enemy whose objective is to destroy him and his work", and the employee as D.'s ally. The termination notice followed in June 2020, officially because of a post-takeover restructuring and a COVID-19 sales decrease.

Two documents said otherwise: C.'s 2019 e-mail to company counsel claiming the employee was on sick leave "on D.'s orders", and counsel's onward message calling the situation "deliberate sabotage" and urging that "the employees should be sanctioned". The Federal Supreme Court dismissed the employer's appeal against the Neuchâtel Cantonal Court decision of 16 June 2025, confirming CHF 15'000 net in compensation.

What the Decision Confirms

Dismissal is abusive when it rests on reasons inherent to the employee's personality, as the Code of Obligations provides - and what counts is the real, decisive motive, not the label given to it.

The employee must prove the abuse. But under settled case law, once the employee produces enough indications that the employer's stated reason is not the true one, the court may presume abuse. This eases the employee's task without formally reversing the burden of proof. For the employer, this means that, in line with this case law, it must produce evidence supporting the dismissal on objective grounds to avoid losing the case.

Procedural discipline can be (quite) unforgiving: generally, objections must be raised at the cantonal appeal stage. The employer's claim that the two e-mails were unlawfully obtained evidence came too late and was therefore not examined by the Federal Supreme Court.

What Is New

A share purchase is not per se a restructuring. A buyer may legitimately impose its own vision, but the transfer of shares alone can be qualified as insufficient proof: concrete measures, new objectives and an explanation of why this particular position became redundant must be shown.

Hiring behaviour can discredit a crisis defence. A witness's reference to a "tense period" was not enough, and the company had replaced staff and hired on-call personnel in the same months - while producing no accounts, balance sheet or income statement.

Files can create risks if not appropriately secured. Internal correspondence, including with the company's lawyer, became the decisive evidence of motive - and the objection to its admissibility came one instance too late.

Takeaways for Employers

Where the indications point to a personal motive, only clean documentation and a coherent hiring record will hold. Compensation for abusive dismissal is capped at six months' salary, and the employee must object in writing before the notice period expires and file suit within 180 days of the end of the employment relationship. In this case, the employer also bore roughly CHF 4'000 in court and party costs and had to issue a corrected reference letter to the employee. Accordingly, litigation does not end simply with winning or losing: the allocation of court and party costs can leave a tangible financial after-effect.

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