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THEORETICAL AND LEGAL PROBLEMS CONCERNING DISCIPLINARY RESPONSIBILITY OF TRANSPORT WORKERS

Svitlana SYNENKO,

PhD, associate professor,

Department of civil law and legal provision of tourism,
Kyiv University of tourism, economics and law

Summary

The article investigates theoretical and legal problems of disciplinary responsibility of transport workers. Analysis of current legislation allowed to research legal regulation concerning disciplinary responsibility of transport workers. Opinions of different legal scientists on the subject were described. The article highlights problematic issues concerning legal regulation of disciplinary responsibility of transport workers. The expediency for regulation of disciplinary responsibility of transport industry workers by the Law of Ukraine «On discipline of transport workers» was grounded, as far as they involved in the process of continuous and safe traffic and proper fulfillment of their duties affects lives and health of ordinary people.

Key words: labor discipline, disciplinary responsibility, disciplinary penalty, disciplinary offence, transport workers.

Аннотация

Статья посвящена исследованию теоретико-правовых проблемам дисциплинарной ответственности работников транспорта. На основе анализа норм действующего законодательства проведено исследование правового регулирования дисциплинарной ответственности работников транспорта. Отражены правовые позиции ученых по данному вопросу. В статье освещены проблемные вопросы правового регулирования дисциплинарной ответственности работников транспорта. Обоснована целесообразность урегулирования вопросов дисциплинарной ответственности работников транспортной отрасли, которые задействованы в непрерывном и безопасном процессе движения транспорта, и от надлежащего выполнения трудовых обязанностей которых зависит жизнь и здоровье людей, Законом Украины «О дисциплине работников транспорта».

Ключевые слова: дисциплина труда, дисциплинарная ответственность, дисциплинарное взыскание, дисциплинарный проступок, работники транспорта.

Statement of the problem.

The study of theoretical and legal problems concerning disciplinary responsibility of transport workers receives acute relevance, as far as the compliance of labor discipline by workers of this industry is an important way to ensure safety in transportation, since non-fulfillment of duties by this category transport workers endangers life and health of road users, passengers, threatens to delivery and storage of cargos.

Issue of disciplinary responsibility has always drawn attention of labor law scholars, in particular, it was considered in the works of V. Venedyktova, A. Matsiuk, M. Danchenko, V. Scherbyna, N. Khutorian, O. Yaroshenko and many other scientists, that laid the foundation for further research concerning problems of disciplinary responsibility of workers.

However, it should be noted that the issue about disciplinary responsibility of transport workers, by mischance,

did not find its proper reflection in scientific works. Some separate issues of disciplinary responsibility of railway workers were researched in papers of A. Apanasenko and L. Yerofieienko.

The purpose of this paper is to research and to distinguish problematic issues in field of legal regulation of disciplinary responsibility of transport workers and to formulate suggestions, directed on improvement of legal norms, which regulate this problem.

Presentation of the basic material. Disciplinary responsibility is considered by labor law scientists as a form of legal responsibility that comprises duty of a worker to bear responsibility for committed disciplinary offence and to be subjected to disciplinary penalty provided by labor legislation of Ukraine [1, p. 352; 2, p. 537; 3, p. 413; 4, p. 15; 5, p. 14].

However, N. Khutorian focuses on the next aspect: the legality of disciplinary responsibility lies primarily in the fact that,



firstly, it is applied only for disciplinary offenses; secondly, it may be used only by bodies and officials vested with disciplinary authority; thirdly, disciplinary penalties are applied in compliance with limitation periods and established order of imposing penalties; fourthly, for the same violation of labor discipline only one penalty may be imposed [6, p. 106].

V. Prokopenko focused his attention on the fact that disciplinary responsibility aims to ensure proper conduct of employees while performing their labor duties [3, p. 413].

Some researchers define disciplinary responsibility through responsibility [7, p. 509], which is a failure on my opinion, because disciplinary responsibility involves not answerableness of a worker, but his or her duty to bare responsibility for committed offense and to be subjected to specified by labor law disciplinary sanctions with negative consequences for the employee (receiving of a reprimand or dismissal).

Analysis of the listed above views of scientists allows to determine the following features of disciplinary responsibility of transport workers: firstly, disciplinary offense is the ground to bring the employee to disciplinary responsibility; secondly, only bodies and officials vested with disciplinary authority may apply disciplinary responsibility; thirdly disciplinary responsibility is applied in compliance with limitation periods and order of imposing penalties established by law; fourthly, for the same violation of labor discipline only one penalty may be imposed; fifthly, disciplinary responsibility has non-judicial nature. The purpose of disciplinary responsibility is to prevent crimes and offences at any enterprise, institution or organization and to help an employee to understand the consequences that may occur in case of noncompliance of labor discipline.

Taking to account the complexity of labor process and the specificity in performance of labor duties by employees and depending on the legal status of a worker, the labor legislation of Ukraine distinguishes general and special disciplinary responsibility.

In this case, the idea of Y. Adushkin seems very reasonable; Y. Adushkin noted that such differentiation of disciplinary responsibility may be explained by the next reasons: firstly, the inclusion of

a person in a particular type of labor collective; secondly, attachment of a person to an organization of a certain type (for instance, responsibility of enterprise workers and workers of institutions of various transport ministries, prosecutors, judges and others is specifically regulated); thirdly, by the nature of functions performed by a person in a particular organization [8, p. 28].

General disciplinary responsibility is characterized by the fact that there are universal standards regulated by the Code of labor laws of Ukraine and applicable to all workers who involved in labor relations in case if in accordance with the norms of labor legislation they are not subjected to a special disciplinary responsibility.

Special disciplinary responsibility is prescribed by special legislation. As labor law scientists note, it differs from the general one by a broader understanding of labor offense and stricter measures of disciplinary penalty or effect [9, p. 365; 10, p. 173; 11, p. 131; 2, p. 543, 544].

Thus, we may conclude that special disciplinary responsibility is prescribed only for those categories of workers which defined in special legislation (laws, statutes and regulations about discipline).

According to the art. 17 of the Law of Ukraine «On Transport», which is the basis for regulation of relations in the transport sector Ukraine, discipline of workers of particular types of transport is regulated by statutes (regulations) about discipline approved by the Cabinet of Ministers of Ukraine after consultation with the relevant trade unions [12].

Herewith, this norm contradicts to the rule of paragraph 6 and paragraph 22 of article 92 of the Constitution of Ukraine, according to which exclusively laws of Ukraine may define fundamentals for regulation of labor and responsibility for disciplinary offenses. Therefore, regulation of workers' discipline of particular types of transport should be implemented at the level of law [13].

Analyzing rules of basic laws governing relations with workers of particular types of transport, specifically the laws of Ukraine «On automobile transport» [14], «On urban electric transport» [15], Air Code of Ukraine [16], Code of commercial navigation [17] is necessary to note these acts do not contain any chapter or article concerning

disciplinary responsibility of transport workers in cases of labor violations.

Article 17 of the Law of Ukraine «On railway transport» determines that the discipline of railway workers is governed by laws of Ukraine and the Regulation «About discipline of railway transport workers of Ukraine» [18].

Thus, we may conclude that workers of automobile, aviation and water transport are subjected to general disciplinary responsibility in accordance with the Labor Code of Ukraine, but railway transport workers are subjected both to general and special disciplinary responsibility.

According to the Regulation About discipline of railway transport workers, approved by the Cabinet of Ministers of Ukraine dated January 26, 1993 № 55 (hereinafter – the Regulation), railway transport workers may be subjected to the following disciplinary penalties: reprimand; deprivation of a locomotive driver of his right to drive and deprivation of motor and rail transport driver's certificate and locomotive driver assistant's certificate; dismissal [19].

Deprivation of a locomotive driver of the right to drive, deprivation of motor and rail transport driver's certificate and locomotive driver assistant's certificate is carried in case of revelation of worker's fault in disaster or accident, for passage of restraining signals (regardless of consequences) and appearance (or staying) at work under influence of alcohol, drugs or toxic substances, that confirmed in the prescribed manner. When applying this type of penalty worker is provided with job not associated with a locomotive driving and motor-rail transport for up to one year.

A disciplinary penalty in form of dismissal is applicable exclusively to those railway workers and only for those violations which are clearly defined in the List of discipline violations, consequences of which threaten the security of trains traffic, life and health of citizens, also categories of employees subject to the disciplinary action in form of dismissal, which is an indispensable addendum of the Regulations.

Disciplinary penalty may be imposed by a manager who hired an employee which made a disciplinary offense. Disciplinary penalty in form of deprivation of a locomotive driver of



the right to drive, deprivation of motor and rail transport driver's certificate and locomotive driver assistant's certificate may be imposed by chiefs of railways and subways. Higher manager may fully exercise disciplinary rights belonging to the lower manager.

A worker who committed an offense, which consequences threaten the security of trains traffic, life and health of citizens should be removed from work until the end of a working shift.

Before the imposition of a disciplinary sanction manager should require a written explanation from a worker who committed an offense. A refuse to represent explanation does not release the manager from imposition of penalties and a worker from disciplinary responsibility. In determining disciplinary penalties manager should consider the severity of the violation, the degree of a worker's fault, harm caused by this violation, the circumstances of commitment and prior service of that worker.

Before renewal of the worker at job associated with movement of trains, he must pass relevant exams.

The main purpose of such a detailed description of this issue in the Regulation is to establish the increased responsibility of certain categories of railway workers, prevention of significant negative effects, the onset of which is directly connected with failure or improper performance of labor duties by this category of workers.

But, on my opinion, traffic safety depends not only on proper implementation of specific work functions by railway transport workers, but workers of other types of transport involved in a continuous movement of vehicles, as far as non-performance of functional duties by this category of transport workers creates danger to life and health of participants in the movement of vehicles, passengers, threatens to timely delivery and cargo safety and preservation of entrusted to their employer property. Therefore it is necessary to set specific measures of disciplinary penalties for this category of automobile, aviation and water (sea and river) transport workers.

In the fullness of time, realizing the seriousness and specifics of transport sector, in addition to general legal norms concerning disciplinary responsibility which addressed all transport sector workers, special rules for certain types

of transport workers were introduced and enshrined in the Charter about discipline of civil aviation workers [20], which was invalidated by order of the Council of Ministers of USSR «On recognition of some decisions of the Government of the USSR in civil aviation such as lost their power» from September 14, 1989 № 754 [21], the Charter of the discipline of maritime transport workers, approved by the Council of Ministers on May 25, 1984 № 496 [22] and the Charter of discipline of USSR river transport workers, approved by the Council of Ministers on August 26, 1985 № 812 [23]. The listed charters, unlike the Code of labor laws of Ukraine, set more stringent types of disciplinary penalty. In particular, there were the following types of sanctions as remark, reprimand, severe reprimand, and transfer to less paid work for up to three months or demotion for the same term. These penalties were applied to employees of civil aviation, river and sea transport, and warnings about service conformity were used only to employees of civil aviation and river transport.

Herewith, civil aviation workers were subjected to such types of penalties as exemption from flight operations or from air traffic control, and from any other work aimed to ensure the safety of flights, and reassignment at other job considering profession (specialty) for the period up to one year; dismissal from a post related to flight operations, air traffic control or other work aimed to ensure the safety of flights, with or without a withdrawal of relevant certificate, with work providing considering profession (specialty). River transport workers were subjected to such penalties as transfer to a vessel with lower wage level or at work not related to the movement of vessels or passenger service, considering profession (specialty) for a period up to one year; deprivation of rank of a person from commanders of vessel with a withdrawal of the diploma (qualification certificate) for a period from six months up to two years with provision by work considering the profession (specialty). Maritime transport workers were subjected to such penalties as: cancellation from a vessel (with subsequent transfer to a vessel of lower group or shore based job considering professional qualification for up to 1 year); cancellation from a vessel with a withdrawal of the diploma (certificate)

for the specialist of maritime merchant fleet of the USSR, with provision by work considering profession or skills.

Given statutes also set a special circle of persons who have the right to impose disciplinary penalty. Moreover, it was determined the specific procedure for imposing and appealing of disciplinary measures. For example, higher manager, within its own rights, had the right to cancel, mitigate or enhance, disciplinary penalty imposed by lower manager. All disciplinary penalties were announced to a worker against a receipt and recorded in the prescribed by the Minister of Civil Aviation manner to a personal file or personal employee cards; complaints of workers on illegal or improper imposition of disciplinary penalty or violation of granted by that Charter rights were considered by superior officer within ten days after a complaint [20].

Conclusions. The study of theoretical and legal problems concerning disciplinary responsibility of transport workers allows to formulate a conclusion that transport workers should be provided with specific measures of coercion, as far as most of traffic accidents that sometimes take lives of many people are caused because of the «human factor». At the same time, today special disciplinary responsibility is prescribed only to railway transport workers and is regulated by the regulation that contradicts to paragraph 22 of Art. 92 of the Constitution of Ukraine as far as issues of disciplinary responsibility should be regulated exclusively by the laws of Ukraine. That's why, in my opinion, there is a need to develop the Law of Ukraine «On discipline of transport workers» aimed to regulate disciplinary responsibility of certain categories of transport sector workers, involved in the process of continuous and safe traffic, as far as proper fulfillment of their duties affects lives and health of ordinary people.

The Law of Ukraine «On discipline of transport workers» should consist of three sections: Section 1 – «General provisions», section 2 – «Encouragement» and section 3 – «Disciplinary penalties». The first section, firstly, should define workers, which will be subjected to this law, and secondly, to fix obligations of employee and employer to ensure the observance of labor discipline and, thirdly, to identify measures for achieving of labor discipline, fourthly, to



determine the definitive concepts such as «labor discipline of transport workers», «disciplinary offense» etc. Second section should define the types of encouragements (for example, announcement of gratitude, bonuses, rewarding with valuable gift, conferring of the title of «best worker» in profession, etc.), the right of chiefs for application of encouragements and an order of application of encouragements. The third section should define the types of disciplinary penalties; the list of discipline violations for which disciplinary penalty may be imposed and the list of professions (positions) of workers, to which these types of disciplinary penalty will be applied; the rights of chiefs to impose disciplinary penalty; an order of imposition of disciplinary penalty; terms for imposition of disciplinary penalties; a procedure for appealing of disciplinary penalty; terms of appealing of disciplinary penalty.

Herewith, in my opinion, the Code of labor laws of Ukraine should contain a referential norm to this Law about special disciplinary responsibility of transport workers.

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