EQUAL RIGHTS? SOCIAL INEQUALITIES AND THE COMPLIANCE OF LABOUR LAW

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Paper prepared for presentation at the

17th ILERA World Congress, 7 -11 September 2015, Cape Town, South Africa

PRELIMINARY DRAFT-WORK-IN-PROGRESS –

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DRAFT: February, 27, 2015

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1 Introduction

In the German context of non-standard work, the protection of labour law is one of the most developed labour legislations in the world. By labour law standard and non-standard workers should be treated equally and a substantive understanding of equality at work is achieved. However, on a micro sociological level different practices regarding the compliance of labour law can be stated. Not every employer entitles non-standard workers according to labour law. But: In spite of feeling discriminated or knowing that they are being discriminated non-standard and sometimes even standard employees accept such incorrect treatment. The research question that arises here is: Why do employees not demand the compliance of labour law, although they had the right to. This question is crucial for understanding how labour law is being applied. Our empirical study shows that the non-compliance of labour law is not only subject of legal conflicts being brought to court. It is also due to employees not claiming their legitimate rights. From a juridical point of view, the law protects employees in order to let them claim their rights. However in reality, there are more aspects that have to be taken into account.

The research project starts from the statutory regulations that provide for the equal treatment of persons in atypical employment and persons in normal employment relationships under labour law. This concerns, for example, the claim for equal compensation, sick pay, paid leave or participation in company training programmes. Little is known about how these regulations have been implemented in company practice. Against this backdrop, the Institute for Employment Research (IAB) has entered into a research collaboration with the Federal Ministry of Labour and Social Affairs (BMAS) to study the labour-law situation of persons in atypical employment and persons in normal employment relationships. The aim is to investigate the legal regulations relevant in practice (compensation, leave entitlement, practices in case of sickness, working hour issues etc.) and to identify whether regulations become controversial issues in companies. The investigation focuses on part-time employees, employees with fixed-term contracts and persons in marginal part-time employment. At present, 43 interviews are available for the qualitative analysis. Qualitative semi-structured interviews (Froschauer/Lueger 2003; Gläser/Laudel 2010; Kaufmann 1999) were conducted with ten experts, six managers, seven members of works or staff councils, eight persons in marginal employment, eight part-time employees (three of whom under fixed-term contracts) and four full-time employees. The empirical interviews were thematically coded, analysed and interpreted (Przyborski/Wohlrab-Sahr 2014; Rosenthal 2011).

The questions of whether labour-law claims in a company are asserted and enforced is relevant not only at the level of legal disputes, but also at the upstream level of the less formalised processes taking place between employees and their superiors. This article is therefore structured to follow the hierarchy of negotiation levels (Müller-Jentsch 1997). First, we look at the difficulties involved in legal disputes. We then investigate the negotiation processes between employees and their superiors followed by an exploration of the reasons why employees do not assert legal rights.

2 A Big Step: Taking the Matter to Labour Court

"Employees, even employees with an unlimited contract, only rarely enforce a claim by legal action under existing employment contracts. Civil servants with unlimited contracts are most likely to take legal action to achieve a higher pay level. (…) But in other cases, this is extremely rare. Lawsuits are usually filed after termination of the contract." (10/307–313)

Ludwig Meister made this experience during his long-term professional career as an employment law solicitor and it highlights the problem with regard to labour law: Because employees depend existentially on their employment relationship to continue, they weigh carefully whether, when and how to take action against their employers in case of labour law infringements. Legal action seems to be the last means employees resort to even if the prospects for a decision in their favour are good. The fear of negative consequences in their day-to-day work or of losing their job outweighs the wish to be granted labour rights in a legal sense. At least this is true for actions that have to be filed individually.

The experience made by the interviewed labour law expert is also a recurrent theme in the perspectives of the employees we interviewed. In only one company of our study did the chairwoman of the works council refer to a successful lawsuit which an employee had filed against the management. Over several years, the employee in question had successively been given fixed-term one-year contracts for the same job on the grounds that the municipality only assured financing for another year, respectively. The legal dispute focused on the question of whether the job could still be defined as project-based in this case. The court decided that this was not the case and the employee now has an unlimited contract.

Unfortunately, we could not interview this employee. Even though he was keen to tell us about his case and his experience, he withdrew his consent after consultation with his lawyer.

He justifies his reticence with the fear of problems with his employer, should the latter identify him despite being anonymised. He repeatedly points out during the phone conversation that he depends on his job and cannot stand any more of the pressure he had experienced during the legal dispute, nor subject his family to the stress. Nevertheless, his refusal also describes an important connection: The court decided in favour of the employee. On the face of it, knowing to have the law on one's side could lead to a position of strength. However, during the dispute the employee concretely experienced his employer's power, which is latent at all times (Offe/Wiesenthal 1979). This experience has obviously left marks and made the employee more careful – and that still three years after the legal dispute. Nevertheless, Mr. N. still fears negative consequences when recounting the matter anonymously. So winning in court does not necessarily seem to have a supporting effect, but can even increase insecurity as in this case. The positive outcome of having secured an unlimited contract by referring the matter to the labour court goes along with the negative experience of the employer's pressure and of being stigmatised as a conflict maker which the employee does not wish to repeat.

Even though the employee's fear and insecurity are palpable when talking to him, his example has an important function in the company. The chairwomen of the works council uses the case as an occasion to inform about legal foundations for fixed-term contracts and current jurisdiction in this matter during works meetings – without going into the actual case. Also co-workers refer to the case and point out the encouraging effect of knowing that a legal dispute in this area can be successful. Such as Sabine Wagner. Wagner has worked under similar circumstances as her colleague for eight years. She is successively given fixed-term one-year contracts with the justification of limited municipal financing for one year. For a long time she considered this contract relationship to be normal and felt helpless. Additionally, she says that this method is quite common in her field of work. She only starts to deal with her legal situation in a critical way when her colleagues get informally networked and she learns as a

result that her colleague took legal steps in a comparable situation and enforced an unlimited contract. It is only since she got into contact with this colleague and with the works council that she has been unwilling to accept the continuation of her fixed-term employment without contradiction. She says: *"Because it is unlawful after all. I haven't informed myself about all legal details yet, but he has enforced his claim with the help of a lawyer and won. This means that I could take legal action if the worst comes to the worst knowing that a colleague has already succeeded." (32/487–493)*

Being networked and informed are, in her own words, the prerequisites for Sabine Wagner's changed perspective and her willingness to seek conflict if necessary. Two aspects are relevant in this context: At the individual level, the fact to have won a legal dispute does not necessarily result in a stronger position inside the company. Accordingly, employees are reluctant to talk about their experiences inside the company or to researchers. Nevertheless, such cases can motivate other employees to take legal action to assert their labour-law claims. This requires a communication structure in the company, established in this case via the works council and the networking of a specific professional group. Additional such networks suitable to obtain information and express interests exist among employees connected by trade union, nationality or neighbourhood, professional groups and status groups and members of certain hierarchical groups (Cox 1991;Frerichs/Morschhäuser/Steinrücke 1989; Hofmann 1981; Promberger 1990). So not only the knowledge about legal claims, but also experiences in dealing with these legal claims are relevant for in-company legal practice and this knowledge is communicated via such group affiliations.

Asserting individual labour-law claims in court is thus associated with fears and high hurdles as the previous statements have shown. Against this backdrop, according to our interviewees labour-law claims are asserted less via disputes in court, but initially rather at the negotiation

level between employee and employer, if they are asserted at all. The explicit, implicit or supposed power relationship between the individual employee and the employer as a person and as a company representative and his powerful position in terms of labour policy acts as a filter for what is actually negotiated and brought up. At this level, too, negative consequences are anticipated, mental costs and chances of success are weighed against each other by the interviewees, which can lead to legal claims not being asserted in case of doubt. We can derive two questions from this dynamic process:

- In which situations are employees willing to assert legal claims in the first place?
- What factors decide whether they seek or avoid conflict?

3 "Sometimes you're just going to have to resort to extreme measures": Asserting Legal Rights in the Company as a Development Process

Precisely because asserting legal rights takes courage and effort and employees often decide against it, there are only very few corresponding narratives to be found in the interview material. Two strongly contrasting cases have been chosen for the analysis at hand. When compared and contrasted, both cases indicate which kind of dynamics is needed to make employees assert their legal rights.

Alongside her studies, Kerstin Kässler is working in marginal part-time employment. She is working as a patient attendant in a hospital. After graduating from school, she trained as a nurse and continued to work in the same hospital for five more years. Even during her training, she encountered obstacles typical of her profession: overtime, but also tasks which a trainee is legally prohibited from doing. Even though she enjoyed what her job was about and she liked working in a hospital, she felt that the extent of her working hours and responsibility were too much. After enquiring with her superior to no avail, she received support from the German Youth and Trainees Council and the works council: “They were really the right peo-

ple to talk to, every time. They'd always say, ‘These are your rights, these are your duties. And you don't have to do this at all.’” (40/156–158)

Initially, Kerstin Kässler assumed that the works council was a regulatory agency. During the counselling sessions, it became clearer to her what she was obliged to do, what she did not have to do, and what she was not even permitted to do in the first place. For her, it was already helpful to know when she could rightfully object. Thanks to this information, the vague uneasiness she was feeling solidified into the self-assurance that she was allowed to defend herself. For Kässler, it became a daily routine “to speak up when there was something I didn't like” (40/210), both during her professional training and subsequent working life. She describes it as a positive experience. Being able to take care of herself by advocating her rights and the improvement of her situation gave her a sense of self-determination and strength. Her colleagues increasingly began to see Kerstin Kässler as an expert whom they turned to when they had any questions about their own situation. Being addressed as a competent labour-law authority and a colleague with conflict-handling experience is a form of recognition which attests to Kässler's actions.

At the same time, Kerstin Kässler also suffered negative consequences, which she ties down to the fact that she fought back and collaborated with the works council. These consequences even included mobbing. Her wishes concerning the duty roster were no longer taken into consideration; relatively often, she was put on the early shift right after working the late shift the night before, which she describes as a very exhausting succession of shifts. Her request for advanced vocational training, which she was expected to attend pursuant to the internal plan for further education, was denied. The reason stated for that was that it was the others' turn first. Even though Kerstin Kässler felt this was strenuous and offending, she did not want to

let her superiors get away with it, and so she kept going back to the works council due to the positive experience she had made in the past.

“I always used to be the first to say, there's another way to do this. I'll just go to the works council then. And for a while, I was there every day, literally. At the end, it was a matter of principle. Because I thought, [...] at some point, there must be a change. And sometimes you're just going to have to resort to extreme measures. Because you won't achieve anything if you don't.” (40/430–437)

So in the case of Kerstin Kässler, the motivation to fight for her rights during training was first sparked by a subjective feeling of being unable to cope. She liked the nature of her job, she says, but the framework conditions led to her no longer feeling at home with it and to her decision that she needed a change in order to be able to continue working in this job and for this employer. This interpretive model can be construed as self-care in an employment context (similar to Flick 2013, Voß 2007). In an employment context, self-care means to take care of maintaining one's own ability to work—be it by preventing health damage or by keeping oneself motivated to do the job. The theoretical concept of caring for oneself, or self-care, is currently under discussion especially in connection with recognition, health, and welfare (cf. Flick 2013). The analyses at hand indicate that it may be worthwhile to add the assertion of labour-law rights to the mix. At any rate, granting rights is also a form of recognition (Honneth 1994: 148).

The passage from the interview cited above makes it clear that Kerstin Kässler's motivation for her commitment changed over time due to negative experiences made with her superiors. Of course, she wanted to continue to assert her own rights, but it also became increasingly a matter of principle, as she puts it herself, and the wish “to make a change.” With this, she no longer applies the assertion of rights only to herself and her own situation, but to basic matters

of appropriate conduct of superiors regarding compliance with labour law and dealing with employees. Looking back, she says she has not achieved so much for herself “but for the ones who came after me, and that was enough for me” (40/440). Thus, in the case of Kässler, an action that started out with a subjective reason took on an altruistic dimension which lasts to this day. On the one hand, she describes the frustration and humiliation which came with these experiences. On the other hand, she developed a conception of herself and a sense of justice which she would like to pass on to others. After her studies, she wants to work as a teacher or trainer in nursing care professions, using her position to encourage students or trainees to stand up for their rights or to seek assistance from the works council.

While Kerstin Kässler fought for her rights with the help of the Youth and Trainees Council, Anneliese Aumann argued her case all on her own. Anneliese Aumann is a nurse, too. Over the course of her employment biography, she has changed jobs several times, because she wanted to broaden the range of her responsibilities. This leads us to conclude that the nature of her professional activity matters a lot to her, and would, when in doubt, take precedence over any loyalty towards her employer or hanging on to a familiar working environment. When her daughter started school, she felt that working in shifts was incompatible with the hours of school, so she applied for a job at the dialysis unit in a major northern German city, where she still works today. Aumann started working there full-time. Before that, she had received further training in the area of HIV prevention. An institution started to set up a mobile care unit for HIV patients in her part of town and offered her to work part-time for this institution. Aumann was happy to do it, so she approached her employer about a reduction of her working hours.

In spite of her right to part-time work, she describes it as very difficult to have this wish granted. At first, her employer refused to grant her a reduction of her working hours. They

claimed to worry that Ms. Aumann may no longer be sufficiently efficient and committed due to her second job. During the interview with this employer, which was conducted as part of the scope of this research project, they referred to the German Act on Part-Time Work and Temporary Employment Contracts and claimed that it went without saying that employees could reduce their working hours; however, they limited this statement exclusively to women who were unable to work full-time any longer due to family reasons. Anneliese Aumann's reason to reduce her working hours did not fit this mould, which considerably diminished the employer's willingness to grant her request. She credits her persistence for the fact that she did receive that reduction after all: “(...) because I simply wouldn't back down, I kept turning up again and again, saying, listen, what's the big deal? I will still do my work and everything.” (16/379–382)

At another point in the interview she recounts how she even went all the way up to the director of the clinic, so people at the management level would hear about her request to switch to part-time work due to a second job. At the end, she reached her goal and got the deal she imagined. The fact that the new rule was temporary at first and that the employer first wanted her to prove that she could continue to perform as required did not worry Ms. Aumann. She was aware of her own efficiency and capability and did not expect anyone at the dialysis unit to complain.

In contrast to Kerstin Kässler, Anneliese Aumann did not seek assistance from the works council, because that was “a bad start” (16/441). In Aumann's opinion, the presence of the works council would probably have weakened her bargaining hand. She felt strong enough to stand up for her own interests. Where did that confidence come from? As described, Aumann changed jobs several times in her professional life because she wanted to improve herself further. This indicates that she defines her own professional goals and accepts, or even actively

seeks, change. This has worked well for her so far, so she can use it as encouragement which confirms that she is regarded as good, suitable and sought-after in her profession. She had learned that it was possible to achieve something that you really want. It can be inferred from Anneliese Aumann's story that she did not know she was actually entitled to part-time. Neither does she point out a legal right to reduced working hours nor that this legal entitlement corroborated her argument and/or that she ever considered taking legal action. Ms. Aumann enforced her wish for suitable working hours against her employer's will because she persisted on her interests and her wish and did not shy away from confrontation.

By contrasting these two very different cases, it is possible to identify a pattern regarding the question as to when employees are bold enough to risk a conflict and stand up for asserting their rights. In both cases, the following three aspects can be identified:

- Desire for change
- A clear stance
- Agency

In both cases, there is a strong subjective desire for a change in the working situation. Kerstin Kässler was unable to bear the strong physical and mental stress any longer; Anneliese Aumann wanted to improve herself further alongside her current employment. So it can be inferred from both stories that—even though their motivation differed strongly—both women could only have continued in their current employment if there was a change. This desire for change, perhaps vague at first, becomes more tangible and turns into a position represented by them, respectively. Kässler claims legal trainee protection, Aumann wants to work part-time. In order to really tackle the conflict, the subjective feeling to be capable of action and bear any possible consequences becomes relevant. Anneliese Aumann draws this feeling of agency from a confidence which springs from her employment biography. Her multiple job changes

lent her qualification on the one hand and on the other hand gave her the security of knowing she would be interesting for other employers as well. This strengthens her own bargaining position. Kässler, a trainee, did not have this feeling at first. She arranges for support in order to strengthen her agency and power of negotiation. Getting in touch with the works council first assures her that she has rights, that she is right, and that she has the right to stand up for that. With the council having her back, she can master the consequences of the conflict, which she indeed suffers—even though it is still not easy for her.

This pattern can also be applied to the story of Sabine Wagner and her thoughts on how to proceed against fixed-term employment from the previous section. Even though the conflict has not really been settled in her case because she is still hoping to receive an unlimited employment contract without having to actually demand it, these three aspects can already be anticipated in her account. By now, her repeat fixed-term employment has become unbearable, and she is aware of her wish to change this situation. This desire for change becomes more concrete in the clear stance that her employer's methods are not legal and that she would take legal action, if push came to shove. The experience of a colleague who sued successfully is a great support for her. His actions encourage her in her agency.

However, the three aspects identified here should not be understood as a sequence or order; they are governed by reflexive dynamics. Especially the clear stance is probably closely connected to agency. The knowledge or subjective feeling that things can be changed sharpens one's perception of what should be changed. This becomes especially clear in Kerstin Kässler's case. In the context of the question at hand—the practice of labour law in the company—the capability of acting, i.e. agency, plays a pivotal role in the assertion of legal claims. Agency does not refer to a position that can be determined objectively. In a legal context, it could theoretically be determined if agency could actually be derived from the fact that one is

right. However, according to our empirical examples due to the asymmetry of power between employees and employers, this does not appear to be the case in labour law. Agency, as shown by previous analyses, must be observed in its respective context and is subject to subjective interpretation and authority (Helfferich 2012). More in-depth statements about the way in which agency translates into concrete action, i.e. the assertion of rights, would require a broader empirical range of cases describing conflict situations. The next section will show, however, that agency also becomes relevant when rights are not asserted. In that case, it is about the lack of agency. These analyses allow for conclusions as to which factors influencing agency become relevant at the different levels.

4 Why Employees Do Not Assert Rights: (Lack of) Agency and Legal Practice

The assertion of legal claims in the context of gainful employment, as revealed by the analyses so far, is connected with certain fears which originate from the asymmetry of power between employers and employees. These fears—this also became clear from the case analyses above—sometimes have a very real background, for employees who assert their rights can indeed suffer negative consequences. Against this backdrop, it becomes plausible that employees do not always necessarily assert any legal claims in practice. For the purpose of this study, however, we ask ourselves: What exactly prevents employees from asserting legal claims? What is the feeling of agency, or lack of agency, based on? As can be shown by the analysis of the interviews, the aspects that become relevant and are presented below are of a structural, socio-economic, and company organisational nature.

Labour Market Situation

A relevant factor also cited by employers with regard to agency is the labour market situation. When companies, due to their regional location or in the case of particular professions, are having troubles finding suitable employees, or indeed any employees at all, they are more

willing to compromise. This is explicitly pointed out by a human resources director in one of the interviews. This HR director describes it as common practice to hire new employees on a fixed-term basis as a rule without stating any pertinent reasons. He adds, however, that he digresses from that usual course as the market dictates, i.e. that it is out of his hands. What he refers to is certain shortages in the supply of workers, either in a particular profession or general shortages in his region. He does not recount the procedure from his own perspective, i.e. he does not point out that he will offer unlimited employment when he believes there are not enough skilled personnel. Instead, he assumes the perspective of an employee whose acceptance of the job hinges on the offer of an unlimited employment contract. In doing so, he attributes the power to determine the nature of the contract and to limit his own action leeway to the employee. Hence, thanks to market rules, applicants can influence HR decisions regarding fixed-term contracts. These decisions in human resource policy do not constitute a labour law infringement in the true sense. They make clear, however, that the application of labour law can very well be dictated by economic framework conditions, which implies a connection between legal practice and social injustice.

Field-Specific Application Practices

Apart from the labour market situation, which causes regional or profession-specific shortages, field-specific practices in the application of labour law can also be determined in connection with agency. This becomes evident in the case of Sabine Wagner, for example, which we already presented. For a total of 12 years, Sabine Wagner worked again and again under contracts which were fixed for one year. For a long time, this did not strike her as problematic, until she learned about her colleague's successful lawsuit for unlimited employment. The fact that she did not insist on an unlimited employment contract has nothing to do with her ignorance of the German Act on Part-Time Work and Temporary Employment Contracts. It was simply because she never associated it with her own situation. She justifies this by citing

the usual hiring practice in her area of work. Since in her line of work, jobs are often available in projects financed by third-party funds, such jobs are almost exclusively offered on a fixed-term basis, and then extended. Unlimited employment is the exception rather than the rule. And this practice has given Sabine Wagner the impression of normality. Therefore, she not only does not gauge any action options for her particular situation, but she does not even see that there are any such options in the first place.

A similar dynamic can be observed for marginal part-time employees. In several interviews, it was said that only those hours would be paid where actual work was done, as if it were the most normal thing in the world. Karin Knack, who works on a 400-euro basis in a small retail business, sums up legal practice in a nutshell in her story: “Well, the thing with 400-euro jobs is that when you work, you get money” (34/484–485). In similar variants, this sentence came up in most of the eight interviews with marginally employed persons that were conducted for this research project. The interviewed employees believe that it is totally inconceivable, even absurd, to suggest to their superiors that they are actually entitled to these claims and to assert these claims accordingly. The non-granting of labour rights becomes a standard for the interviewees, which determines the employees' actions. This causes the labour rights that people are theoretically entitled to, and knowledge of such rights, to lose relevance. Moreover, the agency of the employees who want to assert these rights is significantly limited by this omnipresent practice of employers in their handling of labour rights for marginal part-time employees.

Company Organisation

A slightly different dimension is provided by Jens Jörgensen. He works as a night porter in a hotel that is part of a larger chain. He is employed in a marginal part-time position, and he knows very well that this employment infringes labour law. He names the organisational

structure of the company as one aspect which makes it hard for him and his colleagues to assert their rights: “They say we don't have any vacation entitlement; it even says so boldly on the pay slip: ‘Entitlement for the current year: zero days.’ (...) I already brought this up with the assistant managers. (...) But all I got was, ‘Well, but they're contracts from HQ, they can't be wrong.’” (31/375–385.)

So Jens Jörgensen knows very well that his employer's methods concerning the granting of vacation entitlement are not legal. Armed with this knowledge, he already contacted his superior once in order to bring this grievance to his attention. The superior just pointed out that the contracts were made in the company headquarters and that he was sure they were all right. With this, Jörgensen's superior on the one hand refused his responsibility to take care of these legal matters. On the other hand, he trusted headquarters to take legal provisions into consideration, perhaps because they were in charge of administrative matters. So the straight-line superior delegates responsibility to headquarters, which also means—even though the direct superior may not have made it that obvious—that employees have to contact headquarters if they have any objections to their contracts. The headquarters of the hotel chain, where the administrative office and the human resources department are located, is in a large city several hundred kilometres away from the hotel where Jens Jörgensen works. In the end, Mr. Jörgensen decided against taking his claims to the next organisational instance and instead went without a vacation to which we would actually be entitled in the form of free time.

Efficiency and Economic Contribution

The dynamics which were detailed above in connection with the labour market situation for certain professions or regions can be individualised and broken down to the economic contribution provided by individual employees due to their individual efficiency or their special professional experience. This can be described with the help of the case of a media company.

This company employs approx. 50 people and is not bound by a collective bargaining agreement, there is no works council, and the employment contracts are negotiated individually upon each hiring. In this company, the power of negotiation of the individual employees matters a great deal in determining the conditions under which they are going to work. The interview with the human resources director shows very clearly that customer satisfaction is the highest management priority. Employees are described as a means to reach that end, or rather, it is assumed that the employees will be satisfied when the customers are. This company's focus on customer satisfaction emphasises that employees are above all evaluated based on their contribution to booming business, and that concessions are being made accordingly when they are relevant for the company's economic goal. The following extract from the interview with the HR director substantiates this statement:

“Sometimes it happens in the industry that a customer account manager who leaves the agency takes customers from that agency with him. If that is lucrative, fixed-term agreements are likely to be forgotten very quickly.” (11/330–335)

The media company has a policy of hiring new employees exclusively on a fixed-term basis. New employees will at first receive a contract limited to one year. The HR director states that these are usually commuted into unlimited employment contracts when the initial 12 months have passed. The media company's HR director argues in a way similar to the case of the public administration institution mentioned above, which deviates from its HR policy of hiring new employees on a fixed-term basis without stating any pertinent reasons in the case of hard-to-recruit occupational groups. If an applicant comes with economic resources that are relevant to the company—in this case, a potentially relevant client base—, then the company will deviate from its hiring policy and immediately offer unlimited employment. Hence, the application of labour law in the company depends in this case, among other things, on the economic contribution and thus also the economic efficiency with which the employees are cred-

ited by the company. These dynamics can be interpreted analogous to the structural labour market dimension of agency detailed above; however, the individual performance level comes into play here in addition to the occupation-related shortage.

Not only HR directors argue like that, but also the employees themselves. From the different employees' narratives emerged a connection between individual efficiency and the granting of labour rights. The case of Anneliese Aumann, which was already discussed above, shall serve as an example. Since Ms. Aumann is unaware of her legal right to part-time work, she describes the deal that she made with her employer as a gesture of goodwill concerning her desired working hours.

“It's really super obliging, when you hear it told like that. But, thank God, it's working. (...) And if it didn't work, we agreed I would report it. But that's also what I expect from myself. So I'll deliver the way they expect me to, and everything's fine.” (16/490–498).

In this passage, Ms. Aumann describes her employer's conduct as “super obliging.” She considers it her own responsibility to make sure that the deal they struck is working. She does not only see it as part of the deal, but also as her own expectation of her work and herself with regard to her employer. To her, the relation between the working hours agreement they made and her own performance is obvious. In order to keep the deal practicable, she has to perform “they way they expect [her] to.” She does not specify what exactly is meant by that, but she appears to know. And she is convinced that she is very well able to meet the performance expectations they have of her. She will “deliver” and then “everything's fine.”

So the two cases we described show that the efficiency of employees is connected with the application of labour law, both from a HR director's and the employees' point of view. The economic contribution which employees can make for the company as well as the employees'

ability to meet performance expectations without any problems are made relevant in connection with the application of labour law in the interviews. Hence, labour law must not be considered independently of the economic position of those to whom the respective legal provisions are applied, because the economic contribution which employees can provide is also a catalyst for agency when dealing with one's employer.

Employment Biography Experience

Above, we have already used the example of Anneliese Aumann to illustrate that agency can very well be nourished by employment biography experience. In her case, her self-chosen job changes contribute to a higher self-esteem. This became more concrete in the way she discussed her working hours reduction with her superior. In other interviews as well, the connection between positive employment biography experience and a greater willingness to stand up for one's own interests in the face of employers or superiors became clear.

The case of Möller may serve as a contrast regarding the relation between agency and employment biography experience. She works as a payroll clerk. She has lost her job several times due to the fact that the respective companies chose to outsource their payroll accounting departments. Ms. Möller is in her mid fifties. Due to that combination of age and job instability, she is prepared to put up with a lot in order to remain in her current job, which she has only had for two years, until her retirement. Ms. Möller tries to avoid any conflict in order not to endanger this plan. She will not speak to her superior even when her ability to withstand stress is stretched to the limit.

Marliese Möller is the only one in charge of payroll accounting. At the end of each month, she must prepare the payrolls of almost 50 employees. After she was hired, a new accounting software was introduced, which she first had to familiarise herself with, and which she was

then required to adapt to the needs and procedures of the company. This was additional work on top of the monthly accounting tasks. In order to cope with the workload, Ms. Möller worked late for weeks on end, and even on the weekend. She put in neither overtime nor week-end hours, so that she did not receive any excess work allowance, and nobody became aware of her situation. Ms. Möller recounts how she wanted to meet the requirements and be regarded as a committed employee. Drawing attention to her stressful situation, demanding a relief from her workload, or at least claiming her excess allowance resulting from the company agreements was associated in her mind with the danger of conflict, which may have a negative impact on her continued employment. The following passage makes this clear:

“And, anyway, I'm not one to call in the works council, (I: Okay. Why?) because then it's inevitable, that it ends like, maybe I, I don't know, whatever, I couldn't imagine at this point to get any kind of help, but in the end it means that such a relationship is a bit troubled, I think.” (17/382–387).

The most interesting part of this passage is that where Ms. Möller does not finish her sentences. Calling in the works council might “[end] like, maybe I, I don't know, whatever.” Keeping her employment biography in mind, this can be interpreted like a sense of foreboding: that the works council might evoke a conflict which endangers her continued employment in the company—something she will not risk at any cost. So she does not take any steps to change anything in the company context about her stressful situation. She individualises the problem, which means she makes it her own. Hence, she is more willing to change her own standards—i.e. to do a good job—and even risk dissatisfaction than to recognise her situation in the company as unbearable, thus initiating a change by talking to her superior.

Both case constellations depicted emphasise the connection between employment biography experience and agency. Positive experience can boost one's self-esteem and increase the willingness to stand up for one's own interests. Negative experience can have an adverse effect.

Contractual Security

Another aspect which emerges from the material is contractual security. Employers, works or HR councillors as well as employees all take it more or less for granted that fixed-term employees are less willing to assert legal claims than employees with an unlimited contract. In this context, people quote the fear that they may not be taken on or may lose their job very quickly due to the short notice periods in a fixed-term employment contract. The HR director of a media company puts it as follows: “I: You were saying that overtime compensation depends on that person actually getting in touch. Have you noticed any differences as to whether that person is hired on a fixed-term or unlimited basis? R: Yes, sure. I mean, the former don't do it, of course.” (11/740–746).

This passage makes it clear that the HR director does not even think about this question. To him, it is a clear matter of course that fixed-term employees do not approach him asking for overtime compensation. It is interesting in this context that he does not comment, now or later during the interview, whether the fears of the fixed-term employees that he notices are justified or not. Neither does he mention any procedure on his part as HR director to alleviate these fears. His account rather indicates that he considers this a self-evident matter of course which he cannot, and possibly does not want to, challenge.

The account of the human resources councillor in public administration allows for a different interpretation. In this company, too, new employees are always hired for a fixed term of two years without stating any pertinent reasons. After that, the employees are almost always taken on. Still the HR councillor senses fear in the fixed-term employees: “These fears are just there, but it's not true that they're handled badly here at the company.” (13/386–388). So even though the company's human resources policy implies to the employees that there is great interest in taking them on after the end of the fixed term, the employees still feel some uncer-

tainty and fear, which significantly diminishes their power to negotiate. This leads us to conclude that through the uncertainty which comes with this type of employment relationship, further discriminatory treatment becomes possible and realistic, because the employees are less willing to fight back and assert their legal rights.

5 Conclusion

Labour rights are an important foundation of how the relationship between employers and employees is organised. The option to invoke legal or collectively agreed regulations strengthens the employee's position towards their employer and compensates a little for the asymmetry of power between the two sides. In practice, however, it becomes clear that the assertion of labour rights in cases where legal claims are denied is more difficult than should be expected from a legally positivistic point of view. Employees think long and hard about whether they want a confrontation with their employers. They are simply too afraid of the negative consequences.

The analyses of the interviews have identified the factors on which it depends whether interviewed employees actually assert their legal rights. The assertion of rights on an informal level in direct contact with superiors requires a certain degree of suffering and, resulting from that, a desire for change. For this to lead to concrete action, a sense of agency must be present, feeding from various sources. In this context, agency is not an objective variable but is perceived in different ways. It depends on socio-economic factors. Particularly employees in a weaker position due to the regional or occupational labour market situation consider themselves less equipped to assert their own legal claims. This means that equal rights for all is invaded by practice based on discrimination. For it becomes more likely for someone to assert their labour rights when they are in a favourable socio-economic position.

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