



## German Federal Labor Court Approves Strikebreaker Premium

The German Federal Labor Court ("BAG") held, on August 14, 2018, that it is permissible for an employer to promise employees a premium if they refuse to participate in a strike.

The plaintiff in this case was an employee who participated in a union strike and then sued the employer for payment of a strikebreaker premium. The employee claimed to be entitled to the premium on grounds of equal treatment.

The BAG, like the first and second instance labor courts before, rejected the claim. It held that the promise of such a premium is a legitimate means of industrial action. It further argued that there is, indeed, unequal treatment between employees on strike and employees not on strike, but the unequal treatment is justified. Offering such a premium to strikebreakers is a legitimate reaction from the employer when a union calls for a strike. The BAG only added that the measure must meet appropriateness criteria. However, it was not seen as inappropriate that the offered premium (initially, €200 and, later, €100 per day) far exceeded the daily earnings of the employee in question (€1,480 per month).

The decision shows that employers must not be afraid of strikebreaker premiums, and such premiums may become a more effective employer response than lockouts (*Aussperrungen*).



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