

□ Procedure No.: PS/00012/2021

RESOLUTION R/00254/2021 TERMINATION OF THE PROCEDURE FOR PAYMENT
VOLUNTEER

In the sanctioning procedure PS/00012/2021, instructed by the Spanish Agency for
Data Protection to A.A.A., in view of the complaint filed by B.B.B., and based on
the following,

BACKGROUND

FIRST: On February 12, 2021, the Director of the Spanish Agency for
Data Protection agreed to initiate a sanctioning procedure against A.A.A. (onwards,
the claimed), through the Agreement that is transcribed:

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Procedure No.: PS/00012/2021

AGREEMENT TO START A SANCTION PROCEDURE

Of the actions carried out by the Spanish Data Protection Agency and in
based on the following:

FACTS

FIRST: Ms. B.B.B. (hereinafter, the claimant) dated September 27,
2019 filed a claim with the Spanish Data Protection Agency. The
claim is directed against D. A.A.A. with NIF ***NIF.1 (hereinafter, the claimed one).
The claimant states that the owner of the hairdressing salon where she was working (the
claimed) provided without his consent his letter of dismissal and his document of
settlement settlement to another company, MD-IMAGE MAQUILLAJE S.L.

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And, provide the following documentation:

-Document of allegations of MD-IMAGE MAQUILLAJE, S.L.

addressed to

Town hall of Boadilla del Monte signed and dated by MD-IMAGE MAQUILLAJE

S.L on 05/31/2019 and by the City Council of Boadilla del Monte on 06/06/2019 where

consists:

“14. On March 11 and again via WhatsApp, he informs us that he has found a

work and requests the refund of the amount of the missing modules, it is provided

Document No. 6. I tell him to go see ***POST.1, since I'm on sick leave

for maternity and she knows it. ***C.C.C. explains that the company's policy is not to

return the money except in very exceptional cases: serious illness and death. Y

It is explained to him that this is stated in the registration that he signed at the beginning of the course. is provided the

Document No. 1 mentioned above.

15. On March 15, 2019, you will be issued a certificate for the modules you have

completed: five of six training modules. The sixth that she claims are practices

in a company that the school does not invoice them. The amount of the modules depends on the

cost for the School: the ones she has carried out are the most expensive since they require

products (dyes, permanent liquid, shampoos, creams, toners, water, etc.)

being the last module: ADVICE AND SALE OF PRODUCTS AND

SERVICES FOR PERSONAL IMAGE a merely theoretical module that does not

requires no additional cost to the School. Document No. 7 is provided.

16. That in the letter we received on May 29, the student alleges in her points

THIRD and FOURTH that we are not going to continue with the training and that

neither do we give convincing explanations when it has been demonstrated with their

WhatsApp messages that she is the one who voluntarily leaves the course because he got a job.

17. That in view of these uncertain allegations on which the claim, we proceeded to request the hairdresser who has hired him to provide some evidence of this hiring, which was the actual cause of your abandonment, and he sends us the letter of dismissal where it can be seen that he has been working for him for 2 months, from March 08, 2019 to May 14, 2019. She left the course on March 08, 2019. The aforementioned dismissal letter is provided as Document No. 8 and a document of the relationship of the students is provided, where The date of withdrawal of the student is recorded as Document No. 9.” They appear as attachments to this document of allegations, among others:

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a.

a.

“LIQUIDATION AND SETTLEMENT DOCUMENT” dated 05/14/2019

without signature and where the company D.A.A.A., the identifying data of the claimant in the "WORKER DATA" section and the settlement breakdown.

Document letter of dismissal of the claimant by Mr.

A.A.A. without signature stating the date of termination of the claimant and the amount of compensation.

Screenshots of WhatsApp message dated “Mon, Mar 11”

C.

with the interlocutor “***B.B.B. ...” where the text “I don't know if they will have told you commented that he has made me a normal work contract and that I have left two modules. I would like to know if the money from those modules Could you return and when please? And if you do another private course I finish it because at the moment I couldn't and I don't know what I'm going to do in the future because of that I prefer the corresponding return of the modules”.

SECOND: In view of the facts denounced in the claim and the documents provided by the claimant and the facts and documents of which he has had knowledge of this Agency, the Subdirectorate General for Data Inspection proceeded to carry out preliminary investigation actions for the clarification of the facts in question, by virtue of the investigative powers granted to the control authorities in article 57.1 of the Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter RGPD), and in accordance with the provisions of Title VII, Chapter I, Second Section, of the Law Organic 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (hereinafter LOPDGDD).

As a result of the research actions carried out, it is found that the responsible for the treatment is the claimed.

In addition, the following extremes are noted:

On December 19, 2019, the respondent states:

In the first place, it points out that the remittance of the dismissal letter is a legitimate means to prove the employment relationship, making it clear that it had ended and that the www.aepd.es

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It does not contain any personal data that MD IMAGE did not have due to the claimant of that center.

On the other hand, it accredits a relevant labor fact for the sanctioning file processed against MD IMAGE, with economic data derived directly from applying the agreement and the rest of the applicable regulations.

In addition, it states that if it is considered that the dismissal and the previous date of hiring or passing the letter of dismissal to MD IMAGE, it was deprived to

This is a very relevant fact for his defense.

On the other hand, obtaining the consent of the claimant was not possible due to her status of whistleblower against MD IMAGE, and that he considered that a file sanctioning was assimilable to a judicial procedure.

Likewise, it indicates that proceeding with the claim would mean allowing the instrumentalization of data protection rights to restrict the rights of the opposing parties.

It also states that there has been no negligence on its part in matters of data protection nor any benefits.

On July 30, 2020, MD IMAGE MAQUILLAJE, S.L. refer to this Agency the following information and statements:

Copy of registration with MD IMAGE SCHOOL logo signed by the

1.
student and by MD IMAGE MAQUILLAJE, S.L., dated 10/10/2018 where it is stated:

- a.
- b.
- c.

d.

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The identification data of the claimant.

Enrollment in the "HAIRDRESSING" course of 710 hours.

An amount to pay of €1,800 in a single payment.

The following text at the bottom of the page:

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“* In the event that the student decides not to start the course, the amount of the

Enrollment will only be returned if the withdrawal is caused by changes

in dates and times of training or cancellation of it.

* If the student decides to withdraw without carrying out the training action

complete will not imply a reduction in the total price, the course must

be paid in full.

* In case of receiving a scholarship, the expenses of the course materials

will be at the student's expense.

On September 7, 2020, the claimant sends this Agency the following

information and manifestations:

1.

Copy of claim before the OMIC without date, without signature and in which there is no

proof of presentation to the OMIC. In said document, the claimant

states that:

a.

a.

The center told him that it was not going to continue teaching the modules that were missing to complete the training cycle, without having offered convincing explanations about the reasons for non-delivery of the modules that remained to be taught.

That of the total course (710h), only 410h have been certified and for Therefore, 300 hours would be pending for a value of €760.56.

A copy of the document "Proof of Approval of Modules Formative of the Certificate of Professionalism of Hairdressing" of March 15 of 2019 and stamped by MD Image Makeup, S.L. where they are studied by the claimant five training modules (MF0347_2 of 90 hours, MF0058_1 of 40 hours, 90 hours MF0348_2, 120 hours MF0349_2, 70 hours MF0350_2 hours) corresponding to the Certificate of Professional Hairdressing course (IMPQ0208) and where it is stated that the modules have been made since the October 31, 2018 to March 7, 2019.

A hairdressing professional certificate sheet is provided (IMPQ0208) with logo of the Ministry of Employment and Social Security where there are eight modules MF0347_2 of 90 hours, MF0058_1 of 40 hours, MF0348_2 of 90

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hours, MF0349_2 of 120 hours, MF0350_2 of 70 hours, MF0351_2 of 120 hours, MF0352_2 of 60 hours, MP0115 "Module of professional practices not labor" with 120 hours with a total of all modules of 710 hours, but 590 being the hours corresponding to training modules.

FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of the RGD recognizes to each control authority, and according to the provisions of articles 47 and 48 of the LOPDGDD, The Director of the Spanish Agency for Data Protection is competent to initiate and to solve this procedure.

II

The defendant is accused of committing an infraction for violation of the Article 6 of the RGD, "Legality of the treatment", which indicates in its section 1 the assumptions in which the processing of third party data is considered lawful:

"1. The treatment will only be lawful if at least one of the following is met conditions:

- a) the interested party gave their consent for the processing of their data personal for one or more specific purposes;
- b) the treatment is necessary for the execution of a contract in which the interested party is a party or for the application at the request of the latter of measures pre-contractual;

(...)"

III

Sections b), d) and i) of article 58.2 of the RGD provide the following:

"2 Each supervisory authority shall have all of the following powers corrections listed below:

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(...)

b) sanction any person responsible or in charge of the treatment with warning when the processing operations have violated the provisions of this Regulation;"

(...)

"d) order the person responsible or in charge of the treatment that the operations of treatment comply with the provisions of this Regulation, where appropriate, in a specified manner and within a specified period;"

"i) impose an administrative fine in accordance with article 83, in addition to or in instead of the measures mentioned in this paragraph, depending on the circumstances of each particular case;

The infringement is typified in Article 83.5 of the RGPD, which considers as such:

"5. Violations of the following provisions will be sanctioned, in accordance with section 2, with administrative fines of a maximum of EUR 20,000,000 or, in the case of a company, an amount equivalent to a maximum of 4% of the global total annual turnover of the previous financial year, opting for the largest amount:

a) The basic principles for the treatment, including the conditions for the consent under articles 5,6,7 and 9."

The Organic Law 3/2018, on the Protection of Personal Data and Guarantee of the Digital Rights (LOPDGDD) in its article 72, under the heading "Infringements considered very serious" provides:

"1. Based on the provisions of article 83.5 of the Regulation (U.E.) 2016/679 are considered very serious and the infractions that suppose a substantial violation of the articles mentioned in it and, in

particularly the following:

(...)

a) The processing of personal data without the concurrence of any of the conditions of legality of the treatment established in article 6 of the Regulation (EU) 2016/679.”

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IV

The documentation in the file offers evidence that the claimed, violated article 6.1 of the RGPD, since the actions practiced, it follows that the respondent processed the data without legitimacy to do so the claimant, that is, she provided her dismissal letter and her settlement document I terminate another company.

In this sense, the respondent acknowledges the facts.

v

In accordance with the precepts indicated, and without prejudice to what results from the instruction of the procedure, in order to set the amount of the sanction to be imposed in the present case, it is considered appropriate to graduate the sanction to be imposed in accordance with the following criteria established in article 83.2 of the RGPD:

As mitigating criteria:

-

The nature, seriousness and duration of the offence, taking into account the nature, scope or purpose of the processing operation in question,

as well as the number of stakeholders affected and the level of damage and

damages they have suffered, (paragraph a).

- The degree of cooperation with the supervisory authority in order to remedy

to the infraction and mitigate the possible adverse effects of the infraction, (paragraph

F).

The balance of the circumstances contemplated in article 83.2 of the RGPD, with

Regarding the infraction committed by violating what is established in article 6, it allows establishing

a penalty of 1,500 euros, (one thousand five hundred euros).

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Therefore, in accordance with the foregoing, by the Director of the Agency

Spanish Data Protection.

HE REMEMBERS:

START: PUNISHMENT PROCEDURE against D. A.A.A., with NIF ***NIF.1, for In-

section of article 6 of the RGPD regarding the processing of personal data, sanctions

tionable in accordance with the provisions of art. 83.5 of the aforementioned Regulation.

APPOINT: Mr. ***D.D.D. as Instructor, and Ms. ***E.E.E. as secretary, indicating that

any of them may be challenged, where appropriate, in accordance with the provisions of the

art 23 and 24 of Law 40/2015, of October 1, on the Legal Regime of the Public Sector

(LRJSP).

INCORPORATE: to the disciplinary file, for evidentiary purposes, the international claim

put by the claimant and their documentation, the documents obtained and generated

by the Subdirector General for Data Inspection during the investigation phase.

nes, all of them part of this administrative file.

WHAT: for the purposes provided in art. 64.2 b) of Law 39/2015, of October 1, of the

Common Administrative Procedure of the Public Administrations, the sanction that

could correspond would be 1,500 euros (one thousand five hundred euros), without prejudice to what resulting from the investigation of this file.

NOTIFY: this agreement to initiate sanctioning proceedings to D.A.A.A., with

NIF ***NIF.1, granting a hearing period of ten business days to formulate

the allegations and present the evidence it deems appropriate.

If within the stipulated period it does not make allegations to this initial agreement, the same

may be considered a resolution proposal, as established in article

64.2.f) of Law 39/2015, of October 1, of the Common Administrative Procedure of

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Public Administrations (hereinafter, LPACAP).

In accordance with the provisions of article 85 of the LPACAP, in the event that the

sanction to be imposed was a fine, it may recognize its responsibility within the

term granted for the formulation of allegations to this initial agreement; it

which will entail a reduction of 20% of the sanction to be imposed in

this procedure, equivalent in this case to 300 euros. With the application of

this reduction, the sanction would be established at 1,200 euros, resolving the

procedure with the imposition of this sanction.

Similarly, you may, at any time prior to the resolution of this

procedure, carry out the voluntary payment of the proposed sanction, which

will mean a reduction of 20% of the amount of the same, equivalent in this case

at 300 euros. With the application of this reduction, the sanction would be established in

1,200 euros and its payment will imply the termination of the procedure.

The reduction for the voluntary payment of the penalty is cumulative with the corresponding

apply for the acknowledgment of responsibility, provided that this acknowledgment

of the responsibility is revealed within the period granted to formulate

arguments at the opening of the procedure. The voluntary payment of the referred amount

in the previous paragraph may be done at any time prior to the resolution. In

In this case, if it were appropriate to apply both reductions, the amount of the penalty would be

set at 900 euros (nine hundred euros).

In any case, the effectiveness of any of the two reductions mentioned will be

conditioned to the abandonment or renunciation of any action or resource in via

administrative against the sanction.

If you choose to proceed to the voluntary payment of any of the amounts indicated

above, you must make it effective by depositing it in account number ES00

0000 0000 0000 0000 0000 opened in the name of the Spanish Agency for the Protection of

Data in Banco CAIXABANK, S.A., indicating in the concept the number of

reference of the procedure that appears in the heading of this document and the

cause of reduction of the amount to which it is accepted.

Likewise, you must send proof of payment to the General Subdirectorate of

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Inspection to proceed with the procedure in accordance with the quantity

entered.

The procedure will have a maximum duration of nine months from the date of the start-up agreement or, where appropriate, of the draft start-up agreement.

Once this period has elapsed, it will expire and, consequently, the file of performances; in accordance with the provisions of article 64 of the LOPDGDD. By

Finally, it is pointed out that in accordance with the provisions of article 112.1 of the LPACAP,

There is no administrative appeal against this act.

Sea Spain Marti

Director of the Spanish Agency for Data Protection.

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: On April 6, 2021, the claimant has proceeded to pay the

SECOND

penalty in the amount of 900 euros making use of the two reductions provided for in the Start Agreement transcribed above, which implies the recognition of the responsibility.

THIRD: The payment made, within the period granted to formulate allegations to the opening of the procedure, entails the waiver of any action or resource in via administrative action against the sanction and acknowledgment of responsibility in relation to the facts referred to in the Initiation Agreement.

FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of control, and as established in art. 47 of the Organic Law 3/2018, of 5 December, of Protection of Personal Data and guarantee of digital rights (in hereinafter LOPDGDD), the Director of the Spanish Agency for Data Protection is competent to sanction the infractions that are committed against said

Regulation; infractions of article 48 of Law 9/2014, of May 9, General

Telecommunications (hereinafter LGT), in accordance with the provisions of the article 84.3 of the LGT, and the infractions typified in articles 38.3 c), d) and i) and 38.4 d), g) and h) of Law 34/2002, of July 11, on services of the society of the information and electronic commerce (hereinafter LSSI), as provided in article 43.1 of said Law.

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II

Article 85 of Law 39/2015, of October 1, on Administrative Procedure

Common to Public Administrations (hereinafter, LPACAP), under the rubric

"Termination in sanctioning procedures" provides the following:

"1. Started a sanctioning procedure, if the offender acknowledges his responsibility, the procedure may be resolved with the imposition of the appropriate sanction.

2. When the sanction is solely pecuniary in nature or it is possible to impose a pecuniary sanction and another of a non-pecuniary nature, but the inadmissibility of the second, the voluntary payment by the alleged perpetrator, in any time prior to the resolution, will imply the termination of the procedure, except in relation to the replacement of the altered situation or the determination of the compensation for damages caused by the commission of the infringement.

3. In both cases, when the sanction is solely pecuniary in nature, the competent body to resolve the procedure will apply reductions of, at least, 20% of the amount of the proposed sanction, these being cumulative with each other.

The aforementioned reductions must be determined in the notification of initiation of the procedure and its effectiveness will be conditioned to the withdrawal or resignation of any administrative action or recourse against the sanction.

The reduction percentage provided for in this section may be increased regulations.

In accordance with the above, the Director of the Spanish Agency for the Protection of Data RESOLVES:

FIRST: TO DECLARE the termination of procedure PS/00012/2021, of in accordance with the provisions of article 85 of the LPACAP.

SECOND: NOTIFY this resolution to A.A.A.

In accordance with the provisions of article 50 of the LOPDGDD, this Resolution will be made public once it has been notified to the interested parties.

Against this resolution, which puts an end to the administrative procedure as prescribed by the art. 114.1.c) of Law 39/2015, of October 1, on Administrative Procedure Common of the Public Administrations, the interested parties may file an appeal contentious-administrative before the Contentious-administrative Chamber of the National Court, in accordance with the provisions of article 25 and section 5 of the fourth additional provision of Law 29/1998, of July 13, regulating the Contentious-Administrative Jurisdiction, within a period of two months from the day following the notification of this act, as provided in article 46.1 of the aforementioned Law.

Sea Spain Marti

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