

936-150719

Procedure No.: PS/00174/2019

RESOLUTION R/00585/2019 TERMINATION OF THE PROCEDURE FOR PAYMENT

VOLUNTEER

In sanctioning procedure PS/00174/2019, instructed by the Agency

Spanish Data Protection to GENERAL CONFEDERATION OF LABOR,

In view of the complaint filed by A.A.A., and based on the following,

BACKGROUND

FIRST: On October 23, 2019, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against CONFEDERATION

GENERAL LABOR (hereinafter, the claimed party), by means of the Agreement

transcribe:

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Procedure No.: PS/00174/2019

AGREEMENT TO START A SANCTION PROCEDURE

Of the actions carried out by the Spanish Agency for Data Protection and

based on the following

FACTS

FIRST: A.A.A. (hereinafter, the claimant) on October 4, 2018 filed

claim before the Spanish Data Protection Agency against CONFEDERATION

GENERAL LABOR, TARRAGONA INTERCOMMERCIAL FEDERATION with NIF

G79196614 (hereinafter, the claimed one).

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The reasons on which the claim is based are that without your consent the

claimed on September 4, 2018, the union members received

assembly call for September 18 has spread by email to

four hundred members of said union, personal information of the claimant regarding:

Information about your personal and family relationship.

- Details of the ongoing procedure for the verbal abuse and harassment that you have suffered.

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- Data on your pregnancy status

- Address of your home address.

SECOND: In view of the facts denounced in the claim and the documents

provided by the claimant, the General Subdirectorate for Data Inspection proceeded to

carrying out preliminary investigative actions to clarify the facts

in question, by virtue of the investigative powers granted to the authorities of

control in article 57.1 of Regulation (EU) 2016/679 (General Regulation of

Data Protection, hereinafter RGPD), and in accordance with the provisions of the Title

VII, Chapter I, Second Section, of Organic Law 3/2018, of December 5, of

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 data controller is the claimed party.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each authority

of control, and according to what is established in arts. 47 and 48.1 of the LOPDPGDD, the Director of

The Spanish Agency for Data Protection is competent to resolve this process.

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Article 6.1 of the RGDPR establishes the assumptions that allow the legalization of the treatment of personal data.

For its part, article 5 of the RGDPR establishes that personal data will be:

“a) processed in a lawful, loyal and transparent manner in relation to the interested party

("legality, loyalty and transparency");

b) collected for specific, explicit and legitimate purposes, and will not be processed

subsequently in a manner incompatible with those purposes; according to article 89,

section 1, further processing of personal data for archiving purposes in the interest

public, scientific and historical research purposes or statistical purposes shall not be considered

incompatible with the original purposes ("purpose limitation");

c) adequate, pertinent and limited to what is necessary in relation to the purposes for

those that are processed ("data minimization");

d) accurate and, if necessary, updated; all measures will be taken

reasonable for the erasure or rectification without delay of the personal data that is

inaccurate with respect to the purposes for which they are processed ("accuracy");

e) maintained in a way that allows the identification of the interested parties during

no longer than is necessary for the purposes of processing the personal data; the

personal data may be kept for longer periods as long as they are processed

exclusively for archival purposes in the public interest, scientific research purposes or historical or statistical purposes, in accordance with article 89, paragraph 1, without prejudice to the application of the appropriate technical and organizational measures imposed by this Regulation in order to protect the rights and freedoms of the interested party ("limitation of the term of conservation");

f) processed in such a way as to ensure adequate security of the data including protection against unauthorized or unlawful processing and against their accidental loss, destruction or damage, through the application of technical measures or appropriate organizational measures ("integrity and confidentiality").

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The controller will be responsible for compliance with the provisions in section 1 and able to demonstrate it ("proactive responsibility")."

III

According to the evidence currently available, and without prejudice to what results from the investigation, it is considered that the facts denounced, that is, spread by email to four hundred union members claimed, personal information of the claimant about their personal and family relationship, their state of pregnancy and their private address, thus incurring in the violation of the article 5.1 f) of the RGPD, which governs the principles of integrity and confidentiality of the personal data, as well as the proactive responsibility of the data controller to demonstrate compliance.

IV

Article 72.1.a) of the LOPDGDD states that “according to what is established in the article 83.5 of Regulation (EU) 2016/679 are considered very serious and will prescribe the three years the infractions that suppose a substantial violation of the articles mentioned therein and, in particular, the following:

a) The processing of personal data violating the principles and guarantees established in article 5 of Regulation (EU) 2016/679

v

Article 58.2 of the RGPD provides the following: "Each supervisory authority shall have all of the following corrective powers listed below:

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

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

i) impose an administrative fine under article 83, in addition to or instead of the measures mentioned in this section, according to the circumstances of each case particular;

SAW

This infraction can be sanctioned with a fine of €20,000,000 maximum or, in the case of a company, an amount equivalent to a maximum of 4% of the volume

of total annual global business of the previous financial year, opting for the one with the highest amount, in accordance with article 83.5 of the RGPD.

Likewise, it is considered appropriate to graduate the sanction to be imposed in accordance with the following criteria established by article 83.2 of the RGPD:

As aggravating the following:

☐ In the present case we are dealing with unintentional negligent action, but significant (article 83.2 b)

☐ Basic personal identifiers are affected (name, surnames, domicile), according to article 83.2 g)

Therefore, based on the foregoing,

By the Director of the Spanish Data Protection Agency,

HE REMEMBERS:

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FIRST: START A SANCTIONING PROCEDURE against the CONFEDERATION

GENERAL LABOR, TARRAGONA INTERCOMMARCAL FEDERATION with NIF

G79196614 for the alleged infringement of article 5.1 f) of the RGPD, typified in article 83.5 a) of the GDPR.

SECOND: ORDER the GENERAL CONFEDERATION OF WORK, FEDERATION

INTERCOMARCAL TARRAGONA with NIF G79196614, in accordance with the provisions of the article 58.2 d) of the RGPD, so that within ten days it proceeds to order the responsible or in charge of the treatment, that the treatment operations comply with the provisions of the GDPR.

THIRD: APPOINT R.R.R. as instructor. and, as secretary, to S.S.S., indicating that any of them may be challenged, where appropriate, in accordance with the provisions of the Articles 23 and 24 of Law 40/2015, of October 1, on the Legal Regime of the Sector Public (LRJSP).

FOURTH: INCORPORATE to the disciplinary file, for evidentiary purposes, the claim filed by the claimant and their documentation, the documents obtained and generated by the Subdirector General for Data Inspection during the investigation phase, as well as such as the report of previous inspection actions.

FIFTH: THAT 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 5,000 euros (five thousand euros) without prejudice to what is of instruction.

SIXTH: NOTIFY this agreement to the GENERAL CONFEDERATION OF THE LABOR, TARRAGONA INTERCOMARCAL FEDERATION with NIF G79196614 granting him a hearing period of ten business days to formulate the allegations and Submit whatever evidence you deem appropriate. In your statement of arguments, you must Provide your NIF and the procedure number that appears in the heading of this document.

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

The same may be considered a resolution proposal, as established in article

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

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 acknowledge its responsibility within the term granted for the formulation of allegations to this initial agreement; what it will take coupled with a reduction of 20% of the sanction to be imposed in the present process. With the application of this reduction, the sanction would be established in 4,000 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 entail the reduction of 20% of its amount. With the application of this reduction, the sanction would be established at 4,000 euros and its payment will imply the termination of the procedure.

The reduction for the voluntary payment of the sanction is cumulative to the one

It is appropriate to apply for the acknowledgment of responsibility, provided that this acknowledgment of responsibility is revealed within the period granted to formulate arguments at the opening of the procedure. The voluntary payment of amount referred to in the preceding paragraph may be made at any time prior to the resolution. In this case, if it were appropriate to apply both reductions, the amount of the penalty would be set at 3,000 euros.

In any case, the effectiveness of any of the two reductions mentioned will be conditioned to the withdrawal or renunciation of any action or resource in via administrative against the sanction.

In the event that you choose to proceed with the voluntary payment of any of the amounts indicated above, (4,000 or 3,000 euros) must make it effective by depositing it in account number ES00 0000 0000 0000 0000 0000 opened in the name of the Spanish Data Protection Agency at Banco CAIXABANK, S.A., indicating in the concept the reference number of the procedure that appears in the heading of

this document and the cause of reduction of the amount to which it avails itself.

Likewise, you must send proof of payment to the General Subdirectorate of Inspection to proceed with the procedure in accordance with the quantity entered.

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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. elapsed that term will produce its expiration and, consequently, the filing of proceedings; of in accordance with the provisions of article 64 of the LOPDGDD.

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 Data Protection Agency

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: On November 12, 2019, the respondent has proceeded to pay the

SECOND

the sanction in the amount of 3000 euros making use of the two planned reductions in the Startup 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. A sanctioning procedure has been initiated, if the offender acknowledges his responsibility, the procedure may be resolved with the imposition of the sanction to proceed.

2. When the sanction is solely pecuniary in nature or fits

impose a pecuniary sanction and another of a non-pecuniary nature but it has been justified 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 each. The aforementioned reductions must be determined in the notification of initiation of the procedure and its effectiveness will be conditioned to the withdrawal or Waiver of any administrative action or recourse against the sanction.

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

According to what was stated,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: TO DECLARE the termination of procedure PS/00174/2019, of in accordance with the provisions of article 85 of the LPACAP.

SECOND: NOTIFY this resolution to the GENERAL CONFEDERATION OF THE WORKED.

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.

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