Denmark: perfect example of balanced employment protection?

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Denmark is often quoted as a good example of a labour market that combines flexibility with social justice. Just as “Danish design” is often used as a label of exemplary quality in furniture, home styling, footwear and many other products, the term “Danish model” has often been taken as synonymous with an optimal balance between efficiency and equity. Is the Danish system of employment protection truly the shining example calling for imitation in other countries? We will argue below that some traits are indeed very attractive, but it is not perfect, as will be illustrated with a remarkable case of management misconduct.

Labour market flexibility enhances welfare. A large share of national productivity growth, sometimes estimated as large as one half, is accounted for by reallocation of labour, from low to high productivity firms. Terminating inefficient labour relationships can be very beneficial. At the same time, protecting the individual worker against the vulnerability from dismissal at will can prevent inefficient dismissals as well as unfair hardship befalling on the worker. Unions can provide a countervailing power, but so can legislation. Denmark uses both methods. Blue collar workers enjoy no statutary protection. All regulation on notification periods, severance pay and the like is left to collective bargaining. With powerful unions to protect the worker, this brings the advantages of respecting specific local conditions that come with decentralised arrangements.

For white collar workers (“salaried workers”) dismissal is regulated by law. The notification period starts with 1 month, increases to 3 months after 6 months of employment, and then increases by 1 month for every 3 years of employment, up to a maximum of 6 months. Severance pay is at most 1, 2 or 3 months salary after 12, 15 or 18 years of service, respectively. Compensation for unfair dismissal can only be claimed after 12 months of service. It is constrained to the salary over half the notification period. When the employee is over 30 years of age, the maximum is 3 months salary. With tenure surpassing 10 years, the maximum is 4 months salary, with tenure surpassing 15 years it is 6 months salary. While these rules are clear enough, disputes may arise over the true reason of dismissal: fair or unfair, i.e. “considered to be reasonably justified by the conduct of the employee or the circumstances of the enterprise”. In case of failure to agree, both parties can request a conciliator to be present at the negotiations. The conciliator is appointed by an administrative authority (the Industrial Court or the prefect of the

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1 Consolidation Act No. 68 of 21 January 2005, The Employers' and Salaried Employees' (Legal Relationship) (Consolidation) Act, translated by the Danish Ministry of Employment. The focus of this article is exclusively on individual dismissal; ignoring collective dismissal regulation.
county) and cost is shared equally by parties. The conciliator cannot impose a binding arrangement. The employee can also take the case to court.

As the devil is in the details, we specify an example that shows how things can go terribly wrong in spite of the simple regulation. The example gives a revealing insight in the workings of a supposedly harmonious system of labour relations.

An embarrassing farce

The general situation in a secondary school in Southern Jylland, up to about a year ago, was pretty bad. High student absentee rates, poor motivation, intimidation by small groups of students who use drugs and alcohol, even during class hours, and come to school with weapons and knives. Part of the problem roots in the students’ need to attend school to qualify for financial support (scholarship income). The school tolerates this intimidating and undisciplined behaviour.

When the director retires, his successor implements new rules. He appoints a new manager for the section vocational training with views about good school administration similar to his own. Clear rules of conduct are consistently maintained. The disturbing intimidating students are forced to obey or to leave. The new rules rapidly show effect. Parents and students indicate their satisfaction, the reputation of the school improves, the budgetary situation strongly improves. After an inspection the Ministry of Education dedicates a cover story of their webmagazine to the school’s successful turnaround, management receives invitations to speak at conferences.

As the laid-back tolerant attitude of teachers is banned, privileges of teachers are abolished and financial extravagance is constrained, resistance grows among part of the old management and some of the teachers. Confrontation becomes inevitable. Employers in the board of the school want to merge with another school in town. The director includes the option of a merger in a strategic plan for the school’s future. Opposition among management and teachers seizes an opportunity to depict the director as incompetent with unproven gossip (drunkenness, sexual relationships with students etc.) and the suggestion that he frustrates the plan for a merger. A board meeting is set to fire the director on the spot. The attempt fails as students at the last moment get information on the plan and drop into the meeting with a petition in favor of the director. Remarkably, the minutes of the meeting have disappeared forever. Still, the opposition gets its victory. The director gets a phone call from his union representative (!), on a Sunday: he had better resign, as 15 managers and teachers had expressed lack of trust in him. He is advised to contact the board immediately, and bargain over exit conditions. The director, stunned, terminates his union membership and hires a lawyer. In the end, he departs “voluntarily”, with severance pay that would never be paid in case of voluntary departure, and hence, can only be interpreted as a muteness premium (indeed, the director

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2 For press coverage, see Jydske Vestkysten, February 20, 2012 (MagasinSoendag JV 11) and February 28, 2012 (Indland 3).
is not allowed to give any information). The incident leaves its mark. After applying for comparable jobs in the region the director is never invited, in spite of recommendation by recruitment agencies. Protesting students are also targeted: the school board has seriously investigated the option to remove the students that signed the petition on some usable pretext (like too much absenteeism).

Out of the blue, the manager of vocational education is summoned to appear before a board meeting, with the intention to dismiss him on the spot, charged with activating student opposition to dismissal of the director. The manager denies, and formally protests against the intimidating action. Without a shade of evidence, the action fails, but the vice-chairperson of the board resigns, regretting this imposing action. The manager calls his union representative for support, with negative effect, as the manager “has been cut from the same wood as the dismissed director”.

The manager is notified of dismissal, under reference to a consultant report that the board has commissioned. The report recommends the chairperson of the board to resign (which happens) and draws up a profile for a new manager vocational training. The report is destroyed after no one but the board members have read it. Just prior to publication, and after intimidation and harassment, the student representative is removed from the board, on the argument that the student council has decided so. However the student council never discussed the case. The student representative on the board has left the school, after a period of sick leave. The profile for the new manager, which becomes public, perfectly matches experience and background of the present manager.

While the manager has been sent on sick leave, the school board and the manager’s lawyer argue over severance pay. The school also refuses the manager to pay his bonus, awarded to him (in writing!) for good performance. The school obstructs the bargaining and makes several obvious procedural errors. Without agreement on compensation the manager is formally on sick leave, preventing him for applying for a new job.

Lessons from a drama

What is striking about this case is the outright misconduct of the school administration, apparently under the assumption that it can get away with it. Even more striking, the assumption has not been disproven, as anyone who might have intervened and spoken up, has remained silent. The case is not a single incident, and points to structural problems. It is more than a common labour conflict, where right can be done by union intervention or taking the case to court.

I have known and often admired the Danish system of social and labour relations for a long time. Harmonious, conflict evading, equitable and efficient. I thought. The example, however, shows a suffocating system that can squeeze a single individual by collective silence. I found this most surprising. Not the attempt to protect benefits and privileged

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4 Similar cases occurred in Skjern-Ringkøbing, where the vice president of the school addressed the board to get the principal removed during the principal’s 14 days of leave, Varde Handelsskole, and longer ago, Handelsjojskolen Syd in Sonderborg.
positions is shocking, not the attempt to foul play is shocking; this happens always and everywhere. Shocking is the lack of countervailing power, the lack of openness, of easily accessible paths to justice.

1. Power corrupts

As noted above, the case is not an isolated incident. In the Danish context, unions are strongly integrated in the institutions. If a power base extends throughout the institutions, an individual can go nowhere for support. The vulnerability of employees in this case is illustrated by the reaction of a prominent Danish economics professor: “This case is not exceptional. I know several similar cases. The best advice to a manager under threat is to sit quiet and hope the problems will pass. Contacting an ombudsman, the Ministry of Education or some administrative organization increases vulnerability”.

The case described above has been presented extensively in the press, as cited above. The reaction of responsible public authorities (local politicians, Ministry of Education, Parliament) was silence. In fact a local city counselor/member of the school board admitted in the press “hearing about rumours, but seeing no reason to believe them.” While in the same newspaper item, the former school director stated that he had to resign to protect his family.

2. No power without countervailing power.

It’s an old adagium: power should be constrained by countervailing power. If manifest misconduct like in the example does not lead to intervention, it is essential that victims can use a simple alarm button to activate a social fire brigade. Clearly, this cannot be left to the union if the union is part of the problem: it would be the judge in its own case. In such conditions, a union should not itself take the job of supporting and defending an employee, but provide independent, external, legal assistance.

3. Accessible appeal is essential.

Protection of employees against unfair practice is an essential component of an acceptable social system. In the end, if formal and informal power suffocate the system, an individual can get nowhere but to the court. But it is a lengthy, costly and inefficient route, in fact the last option.

It is obvious in the case above that basic procedural errors have been made and that many arguments are false. Hence, the manager under threat can go to court, but the maximum compensation is double severance pay, 3 months extra salary. Going to court can take much time and legal advice can easily cost a few monthly salaries. The other party knows this and obstructs solving the case by agreement. A better alternative is necessary to restore the balance of power.

4. Lessons for the Netherlands

Soenderborg Ugeavis, February 15 (front page).
The Netherlands is debating a major revision of its employment protection legislation. Lowering severance pay, testing by the courts ex post rather than ex ante. An essential ingredient in a recent parliamentary proposal ("Lente akkoord") is a compulsory hearing on intended dismissal. Details still have to be worked out. The Danish example shows that a dominant role for independent, external experts is essential.

One might consider a system that operates in stages. If an employee accepts a proposal by the firm, the case is settled. If parties agree, there is no need to add bureaucracy. If there is no agreement, both firm and employee can ask for a hearing: a light, swift procedure, before a committee of independent, external conciliators. This can sift out obviously unacceptable offers. If the proposal made by the hearing committee is not acceptable, a party can take the case to court. The court determines severance pay and can also decide that the loosing party should pay (part of) the other party’s legal cost, in case of obviously unreasonable obstruction. Hearing committee proposals and court settlements should be accessibly published, to inform parties on what they might obtain.