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Restitution of Damages After Reversal of a Reinstatement Order in Dismissal Disputes

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Maria Di Giorgio [Contributing Scholar]
Attorney at the Rome Bar
Author Profile & Bibliography: https://www.metodogiuridico.it/en/authors/maria-di-giorgio/
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ABSTRACT
The boundary between retroactive invalidation of a judicial order and protection of a temporarily restored employment relationship governs restitution claims following appellate reversal. By Order no. 28750 of 9 November 2026, the Labour Division of the Italian Corte di Cassazione clarifies that the external expansive effect under Article 336, paragraph 2, of the Code of Civil Procedure sweeps away statutory damages paid under Article 18 of Law no. 300 of 1970, while leaving untouched wages accrued after the employer recalled the worker to comply with the first-instance reinstatement order. The employer's discretionary choice to exempt the reinstated employee from rendering work, despite the worker's tender of performance, constitutes an autonomous organisational act insulated from retroactive cancellation under Article 2126 of the Civil Code. Conversely, where compensatory sums remain subject to restitution, systematic coordination with tax and social-security case law confirms that recovery is strictly limited to net amounts actually received by the employee, leaving the employer to seek reimbursement from the tax authority.

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Restitution of Damages After Reversal of a Reinstatement Order in Dismissal Disputes

External expansive effect under Article 336 of the Code of Civil Procedure, unilateral employer exemption from work performance, and net restitution of undue sums in Italian Supreme Court of Cassation, Labour Division, Order no. 28750 of 9 November 2026

MG Maria Di Giorgio Labour & Employment Law & Dismissals & Termination 9 November 2026

Reading time 10 min

Current Legal Framework as of 17 November 2026: By Order no. 28750 of 9 November 2026, the Italian Supreme Court of Cassation, Labour Division consolidates the non-recoverability of wages accrued after recall to service even where the employer exempts the worker from performing duties, confirming its separation from the net-basis restitution regime for compensatory damages established by Orders no. 6673/2023 and no. 19948/2022.

ABSTRACT

Restitution of Damages After Reversal of a Reinstatement Order in Dismissal Disputes — The boundary between retroactive invalidation of a judicial order and protection of a temporarily restored employment relationship governs **restitution claims** following appellate reversal. By Order no. 28750 of 9 November 2026, the **Italian Supreme Court of Cassation, Labour Division** clarifies that the external expansive effect under Article 336, paragraph 2, of the Code of Civil Procedure sweeps away statutory damages paid under Article 18 of Law no. 300 of 1970, while leaving untouched **wages accrued** after the employer recalled the worker to comply with the first-instance reinstatement order. The employer's discretionary choice to **exempt the employee** from rendering work, despite the worker's tender of performance, constitutes an autonomous organisational act insulated from retroactive cancellation under Article 2126 of the Civil Code. Conversely, where compensatory sums remain subject to restitution, systematic coordination with tax and social-security case law confirms that recovery is strictly limited to net amounts actually received by the employee, leaving the employer to seek reimbursement from the tax authority.

Key Takeaways

- **Dual orbit of the expansive effect:** Appellate reversal of a reinstatement judgment extinguishes *ex tunc* the duty to restore the post and compensatory damages under Article 18, yet leaves intact managerial acts adopted within an actually reactivated employment relationship.
- **Non-recoverability of wages despite exemption:** Recalling the employee to the company and subsequently exempting them from work duties, against a valid tender of labour, constitutes an exercise of organisational prerogative under Article 2094 of the Civil Code and shields wages under Article 2126 of the Civil Code.
- **Net-basis restitution of compensatory damages:** Sums paid as damages remain recoverable from the employee strictly within the net amounts actually received after tax, social-security, and welfare withholdings, while the withholding agent may claim tax reimbursement directly under Article 38 of Presidential Decree no. 602/1973.
- **Doctrinal friction and litigation defence:** Departing from earlier restrictive rulings on pre-2012 exemptions, the 2026 case law centres on the reactivated contractual bond and requires defence counsel to plead net-basis quantification specifically on appeal to prevent internal *res judicata*.

CASE DOSSIER

JURISDICTION
Italy (Civil Law)

SUBJECT AREA
Labour & Employment Law & Dismissals & Termination

LEADING DECISION
Italian Supreme Court of Cassation, Labour Division, Order no. 28750 of 9 November 2026 — Excludes restitution of wages accrued a

Legal Principle / Editorial Headnote

Appellate reversal of a reinstatement order sweeps away compensatory damages, yet leaves intact wages earned after actual restoration of the employment relationship, even where the employer exempts the worker from performing duties.

COMPARATIVE & EUROPEAN LEGAL FRAMING

Institutional & EU Nexus: In Italy, the Labour Division of the Supreme Court of Cassation safeguards statutory labour protections by harmonising civil-procedure restitution under Article 336, paragraph 2, of the Code of Civil Procedure with constitutional wage guarantees (Article 36 of the Constitution) and the reinstatement regime (*tutela reale*) of Article 18 of Law no. 300/1970, within a European framework preserving effective judicial protection without eroding core employment standards. **Comparative Common Law Lens:** Whereas UK and US courts rarely decree specific performance of employment contracts and instead award damages or back pay subject to appellate restitution for unjust enrichment, Italian Civil Law treats provisional recall as reactivating the bilateral employment contract (*rapporto di lavoro subordinato*). Accordingly, placing a recalled employee on paid non-attendance mirrors Common Law *garden leave* economically, yet triggers mandatory wage protection (*principio della prestazione di fatto*) barring recovery upon reversal.

01. INTRODUCTION: ITALIAN SUPREME COURT OF CASSATION, LABOUR DIVISION, ORDER NO. 28750/2026 AND THE LIMITS OF THE EXPANSIVE EFFECT

The structural tension between the retroactive invalidation of an appealed judgment and the stability of patrimonial transfers already performed resurfaces in Order no. 28750 of 9 November 2026 issued by the **Italian Supreme Court of Cassation, Labour Division**[1]. That ruling delineates the boundaries of the **external expansive effect** (*effetto espansivo esterno*) governed by Article 336, paragraph 2, of the Code of Civil Procedure. Whenever an appellate court declares a dismissal lawful, a clear line must be drawn between two distinct categories of payments. On one side stands the restitution of compensatory damages following reversal of a reinstatement order; on the other side endures the legal status of **wages accrued** after the employee was recalled to active service.

At this juncture, the substantive balance of employment interests enters into direct friction with the restorative logic of civil procedure. An employer exonerated from an adverse first-instance judgment seeks full recovery of all sums disbursed under provisional enforcement. Yet an employee readmitted into the corporate organisation cannot be subjected to a legal fiction that erases concrete managerial acts adopted by the undertaking. The dividing line thus separates the **compensatory obligation** from the reactivated **wage-for-work synallagma**.

This analysis first examines why unilateral exemption from performing duties does not reduce reinstatement to a mere administrative appearance. It then clarifies the net-basis restitution regime governing compensatory sums and reconciles this approach with the divergent ruling issued in 2023.

02. THE PROCEDURAL HISTORY AND STATUTORY FRAMEWORK BETWEEN REINSTATEMENT AND EXEMPTION

The dispute resolved by Order no. 28750 of 2026[1] originated from the challenge to a disciplinary dismissal served by Rete Ferroviaria Italiana S.p.A. The Court of Rome had annulled the termination and ordered **reinstatement in the workplace**. In February and March 2017, the company accordingly recalled the employee, delivered monthly payslips, and paid regular salaries. Shortly thereafter, however, management ordered his **exemption from work performance**, notwithstanding the employee's ongoing tender of his labour. In 2018, the Court of Appeal of Rome reversed the judgment and upheld the lawfulness of the dismissal.

In subsequent restitution proceedings, by judgment of 22 October 2025, the Court of Appeal of Rome granted the employer's claim covering both compensatory damages and **net wages paid** after restoration of the relationship. According to the appellate court, the absence of actual work rendered reinstatement merely administrative and *pro forma*. The employee lodged an appeal on points of law, alleging misapplication of Article 18 of Law no. 300 of 1970, Article 336 of the Code of Civil Procedure, and Articles 1206, 1207, 1372, 1453, 1460, and 2126 of the Civil Code. Crucially, the challenge targeted exclusively the amounts disbursed after compliance with the reinstatement order, leaving the compensatory damages head uncontested.

The governing statutory perimeter rests primarily on Article 336, paragraph 2, of the Code of Civil Procedure, as amended by Law no. 353 of 26 November 1990. That provision no longer conditions the **external expansive effect** upon the reversal judgment becoming final and unappealable (*passaggio in giudicato*). Instead, the appellate decision immediately displaces the judgment below and extends its legal effects to dependent acts. Consequently, removing the employee from the workforce following reversal does not constitute a new dismissal; rather, it simply records the restored *ex tunc* terminating efficacy of the original dismissal.

Within this procedural architecture sits the sharp divide between compensatory damages and a reactivated employment bond under Article 2094 of the Civil Code. Following Law no. 108 of 1990 and Law no. 92 of 2012, sums payable between dismissal and reinstatement carry a strictly compensatory nature. Paragraphs 2 and 4 of Article 18 confirm that classification by mandating the deduction of external earnings (*aliunde perceptum*) and, in cases of unjustified dismissal, also earnings obtainable through diligent job search (*aliunde percipiendum*). Conversely, once the employer recalls the worker to the company, the mandatory statutory regime of subordinate employment protected by Article 2126 of the Civil Code takes hold.

03. RESTITUTION OF DAMAGES AFTER REVERSAL OF REINSTATEMENT AND MANAGERIAL ACTS

3.1 — The Ratio Decidendi on Organisational Exemption Following Recall to Service

The **ratio decidendi** of Order no. 28750 of 2026[1] separates the direct consequences of the reversed judgment from managerial acts adopted after restoration of the employment relationship. Once the undertaking recalls the employee to service and issues regular payslips, the **bond of subordination** regains full legal force under Article 2094 of the Civil Code. Subsequent dispensation from duties does not undo that reactivation. Rather, it embodies the discretionary exercise of the employer's **organisational and managerial prerogatives**.

The Labour Division expressly relies upon the comprehensive restatement set out in Order no. 24033 of 25 July 2026[2]. In that earlier controversy, reinstated employees had been assigned via an **unlawful transfer** to another corporate facility, preventing them from rendering work. Across both scenarios, work performance is absent owing to choices attributable to the employer's sphere, not to any breach by the employee. Article 336, paragraph 2, of the Code of Civil Procedure cannot therefore sweep aside the mandatory rules governing an ongoing employment relationship.

As previously examined in this journal regarding the external expansive effect and worker reinstatement[D1], such managerial acts connect only indirectly to the initial reinstatement order. Cancellation of the judicial title neither reduces the enterprise's exercised prerogatives to non-existent facts nor excludes the safeguard of Article 2126 of the Civil Code. That provision prevents **unjust enrichment** on the part of an employer who enjoyed the legal availability of the employee's labour.

The **autonomy of organisational decisions** thus breaks the direct causal nexus required by the procedural rule. Insofar as the employee tendered performance after being recalled, the employer's decision not to utilise that work falls within ordinary **enterprise risk**. Sums disbursed up to the appellate reversal remain intangible remuneration.

> Once an employer reactivates the employment bond, unilateral exemption from work duties remains a discretionary enterprise decision and does not convert paid wages into recoverable undue sums.

3.2 — Net-Basis Restitution of Compensatory Damages Between Article 38 of Presidential Decree no. 602/1973 and the Income Tax Consolidation Act (TUIR)

On the distinct plane of sums payable for the period preceding reinstatement, appellate reversal preserves the employer's right to recovery. In Order no. 28750 of 2026, that head of judgment fell outside the scope of the appeal. Determining the regime applicable to compensatory damages after reversal therefore requires coordination with the Civil Code rules

on **objective undue payment** (*indebito oggettivo*). Once the civil wrong imputed to the employer falls away, both the Article 18 indemnity and the indemnity in lieu of reinstatement lose their **legal justification**.

Quantification of that restitutionary duty does not, however, extend to gross figures, as established by the Italian Supreme Court of Cassation, Labour Division, in Order no. 6673 of 6 March 2023[3]. There, the Court rejected Trenitalia S.p.A.'s claim for EUR 148,747.01 gross and upheld restitution limited to the EUR 86,394.70 net actually received by the employee. Because the tax obligation ceases to exist *ex tunc*, the payment remitted by the **withholding agent** (*sostituto d'imposta*) falls within the total non-existence of the tax duty governed by Article 38, paragraph 1, of Presidential Decree no. 602 of 1973. Accordingly, it rests with the payor (*solvens*) to pursue **tax reimbursement** directly before the revenue authority.

This solution aligns with both statutory tax provisions and social-security case law. Article 150 of Law Decree no. 34 of 2020, converted into Law no. 77 of 2020, inserted paragraph 2-bis into Article 10 of Presidential Decree no. 917 of 1986 (Income Tax Consolidation Act, TUIR), prescribing from 1 January 2020 onwards that restitution occurs **net of the withholding suffered**. Along the same trajectory, Order no. 19948 of 21 June 2022[4] excludes from recovery under Article 2033 of the Civil Code not only income tax deductions, but also **social-security and welfare withholdings** that never entered the employee's patrimonial sphere.

Separation of Restitution Regimes Following Appeal

Pre-reinstatement compensatory damages are recoverable strictly net of tax, social-security, and welfare withholdings, with fiscal recovery pursued by the withholding agent against the revenue authority, whereas wages earned after actual restoration remain protected even if the employer exempted the worker from service.

3.3 — The Divergence from the Pre-2012 Exemption Line of Authority and Summary of Precedents

The 2026 line of authority exhibits significant doctrinal friction with Order no. 27317 of 26 September 2023[5]. In that dispute, governed by Article 18 in the version prior to Law no. 92 of 2012, an employee reinstated by interim order had actually worked from 10 July to 7 October 2006 before being exempted from service. In affirming the appellate decision that had barred restitution solely for the quarter worked, the Supreme Court reasoned that **Article 2126 of the Civil Code** applies only where material work activity is performed. Absent rendered work, sums disbursed remained tied to the **recoverable compensatory obligation**.

Comparing these holdings reveals a distinct dogmatic shift. The 2023 decision viewed exemption as an employer risk assumed in anticipation of the final judgment, tethering **wage protection** strictly to physical execution. Conversely, the 2026 orders relocate the threshold to the **reactivated contractual bond** arising upon recall and to the autonomy of **organisational prerogatives**. The following table summarises the five controlling authorities.

Judgment / Authority	Judicial Stance	Core Legal Principle
Italian Supreme Court of Cassation, Labour Division, Order no. 28750 of 9 November 2026	Evolving	Following recall to service with delivery of payslips, unilateral exemption from work performance is an autonomous organisational act shielding wages from restitution under Articles 2094 and 2126 of the Civil Code.
Italian Supreme Court of Cassation, Labour Division, Order no. 24033 of 25 July 2026	Consistent	The external expansive effect under Article 336, paragraph 2, of the Code of Civil Procedure does not extinguish the wage obligation where non-performance stems from unlawful managerial acts adopted after re-employment.
Italian Supreme Court of Cassation, Labour Division, Order no. 6673 of 6 March 2023	Consistent	Restitution of undue sums upon reversal is limited to net amounts received by the worker, leaving the employer to seek tax reimbursement under Article 38 of Presidential Decree no. 602/1973 in accordance with Article 10, paragraph 2-bis, TUIR.
Italian Supreme Court of Cassation, Labour Division, Order no. 19948 of 21 June 2022	Consistent	Recovery under Article 2033 of the Civil Code excludes both tax deductions and social-security and welfare withholdings that never entered the employee's patrimonial availability.
Italian Supreme Court of Cassation, Labour Division, Order no. 27317 of 26 September 2023	Divergent	Under the regime prior to Law no. 92/2012, excludes Article 2126 of the Civil Code absent material work performance after exemption, confirming recoverability of sums lacking functional restoration.

04. CRITICAL APPRAISAL, BORDERLINE CASES, AND EVIDENTIARY STRATEGY IN LITIGATION

4.1 — When Sums Remain Recoverable After Reinstatement: Distinguishing Exemption from Non-Restoration

Amounts disbursed after a first-instance judgment remain recoverable solely where the employer failed to restore the employment relationship and confined itself to provisional enforcement payments without recalling the worker. Conversely, once the **contractual bond regains force** through managerial acts, unilateral exemption preserves **wages accrued** up to appellate reversal.

By way of *distinguishing*, Order no. 28750 of 2026[1] isolates two scenarios excluded from wage protection. Non-recoverability does not operate where the employer refuses reinstatement or where an interim order *ante causam* is later revoked, since the employee's mere tender of performance creates no wage title. A comparable outcome of recoverability likewise follows where successive dismissals prevent functional reactivation, as examined in Order no. 27317 of 2023[5]. Nevertheless, a critical grey zone persists along the operational boundary. A recall letter issued solely to avert sanctions, coupled with immediate exemption, may mask a **merely formal reinstatement** devoid of genuine management. As

Order no. 24033 of 2026[2] demonstrates regarding **unlawful post-reinstatement transfers**, holding that boundary turns on concrete factual scrutiny of exercised **managerial and organisational powers**.

4.2 — Proving Restoration of the Employment Relationship and Defending Against Gross-Basis Claims

In restitution litigation, an employee sued for recovery bears the **burden of proof** under Article 2697 of the Civil Code to establish actual reactivation of the relationship. To discharge that burden, counsel should exhibit the recall notice, ordinary payslips, and the written exemption measure. Counsel must also document the timely **tender of work performance** under Articles 1206 and 1207 of the Civil Code.

As already examined in this journal regarding the recoverability of wages after reinstatement[D2], the employer's defence must instead prove the total absence of managerial acts. Where re-entry onto the company payroll followed by dispensation from duties is shown, the restitution claim over that period must fail.

With respect to sums that remain recoverable, defence counsel for the worker must raise a **specific plea on net quantification** from first instance onwards, producing tax and social-security schedules. Failing to articulate a targeted ground of appeal consolidates **internal *res judicata*** on the gross amount. Merely filing summary accounting tables does not avert inadmissibility before the Supreme Court.

One practical vulnerability endures for an employer acting as withholding agent after protracted proceedings. Order no. 6673 of 2023[3] held irrelevant within labour proceedings the constitutional challenge concerning the **48-month statutory forfeiture period** (*decadenza*) under Article 38 of Presidential Decree no. 602 of 1973. Consequently, the enterprise remains bound by the net-basis ceiling confirmed by Order no. 19948 of 2022[4] and must defend before the tax court that time runs only from the appellate reversal.

Sound litigation strategy therefore demands disaggregating both **heads of claim** immediately in the initial pleading. That accounting and legal separation safeguards both **wages genuinely accrued** and net-basis fiscal recovery.

05. CONCLUSIONS: STRIKING THE BALANCE BETWEEN EXTERNAL EXPANSIVE EFFECT AND ORGANISATIONAL RISK

Supreme Court case law establishes a clear bipartition between compensatory remedies and provisional performance of a subordinate contract. Order no. 28750 of 2026[1] removes the period following **effective reactivation of the bond** under Article 2094 of the Civil Code from the invalidating reach of Article 336, paragraph 2, of the Code of Civil Procedure. Employer exemption from duties does not therefore erode wages protected by Article 2126 of the Civil Code. Exercising **managerial and organisational prerogatives** remains anchored to the risk of the enterprise that deploys them.

On the mirror side, restitution of compensatory damages after reversal follows the *ex tunc* lapse of the judicial title within strict quantitative boundaries. Pursuant to Article 2033 of the Civil Code, Article 38 of Presidential Decree no. 602 of 1973, and Article 10, paragraph 2-bis, TUIR, the employee restores solely the **net sum actually received** into their patrimony[3]. Income tax and social-security withholdings instead follow direct recovery channels against the recipient authorities.

This equilibrium reconciles the constitutional safeguards of labour under Articles 35 and 36 of the Constitution with procedural *restitutio in integrum*. In future litigation, establishing the threshold between mere formal

enforcement and genuine managerial resumption of the relationship will remain decisive.

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Statutory Provisions

- Constitution, Articles 35 and 36 — Constitutional protection of labour and right to proportionate and sufficient remuneration
- Code of Civil Procedure, Article 336, paragraph 2 (as amended by Law no. 353 of 26 November 1990) — Immediate external expansive effect of appellate reversal or cassation of a judgment
- Law no. 300 of 20 May 1970, Article 18 (as amended by Laws no. 108/1990 and no. 92/2012) — Reinstatement protection and compensatory damages for unlawful dismissal
- Civil Code, Articles 1206, 1207, 1372, 1453, 1460, 2033, 2094, 2126, and 2697 — Creditor default, contractual binding force, termination, recovery of undue payments, subordination, de facto work performance, and burden of proof
- Presidential Decree no. 602 of 29 September 1973, Article 38, paragraph 1 — Reimbursement of direct tax remittances for total or partial non-existence of the tax obligation
- Presidential Decree no. 917 of 22 December 1986 (TUIR), Article 10, paragraph 1, letter d-bis, and paragraph 2-bis (inserted by Article 150 of Law Decree no. 34/2020, converted into Law no. 77/2020) — Restitution of sums subject to withholding tax net of the withholding suffered

Case Law Cited

1. **Italian Supreme Court of Cassation, Labour Division, Order no. 28750 of 9 November 2026** — Excludes restitution of wages accrued after actual recall to service of a reinstated employee, classifying unilateral exemption from duties as an autonomous organisational act outside Article 336, paragraph 2, of the Code of Civil Procedure. Outcome: quashed and remanded. Para.: points 5-12 of the Reasons for Decision.
2. **Italian Supreme Court of Cassation, Labour Division, Order no. 24033 of 25 July 2026** — Confirms that managerial acts adopted during temporary restoration following a reinstatement order generate a wage obligation under Articles 2094 and 2126 of the Civil Code even where non-performance is attributable to the employer. Outcome: dismissed. Para.: points 5-10 of the Reasons for Decision.

3. **Italian Supreme Court of Cassation, Labour Division, Order no. 6673 of 6 March 2023** — Holds that following reversal of a provisionally enforceable monetary award, the employer may recover solely net sums actually received by the employee, while the withholding agent seeks tax reimbursement under Article 38, paragraph 1, of Presidential Decree no. 602/1973 in accordance with Article 10, paragraph 2-bis, TUIR. Outcome: dismissed. Para.: points 4-11 of the Grounds.

4. **Italian Supreme Court of Cassation, Labour Division, Order no. 19948 of 21 June 2022** — Reaffirms that restitution of undue compensatory sums under Article 2033 of the Civil Code excludes not only tax withholdings, but also social-security and welfare deductions never received by the payee. Outcome: dismissed. Para.: single ground of the Grounds.

5. **Italian Supreme Court of Cassation, Labour Division, Order no. 27317 of 26 September 2023** — Declares inadmissible on grounds of internal *res judicata* the challenge against gross-basis restitution and, on the merits under the pre-Law no. 92/2012 framework, denies application of Article 2126 of the Civil Code for periods without physical work after exemption. Outcome: dismissed. Para.: points 8-9.5 of the Grounds.

Legal Scholarship Cited

D1. Metodo Giuridico, *Reintegra riformata: salvi retribuzione e atti di gestione* [Reinstatement Reversed: Wages and Managerial Acts Preserved]. Analysis of the exclusion of employer managerial acts from the external expansive effect under Article 336 of the Code of Civil Procedure.

D2. Metodo Giuridico, *Reintegra riformata: le retribuzioni non si restituiscono* [Reinstatement Reversed: Wages Are Not Subject to Restitution]. Contribution on the non-recoverability of wages disbursed during effective restoration of the subordinate employment relationship.

MG

Maria Di Giorgio

AUTHOR • METODO GIURIDICO

Attorney at the Rome Bar

Practises labour and social security law, as well as civil law and the law of succession. For Metodo Giuridico she analyses Supreme Court case law across employment, social security, inheritance, and civil litigation.