

EXAMPLE CASES

Summary dismissal following an anonymous tip-off about expenses

AREA OF LAW Employment contract law	CANTON Aargau	NORMS CITED 15
DECISIONS CITED 16	COMPUTED ON 10.09.2026	AI MODEL global, after anonymisation

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INPUT

Facts

This is everything that was entered — anonymised, with the questions of the request.

I am 52 and have been working since March 2014 as Head of Field Sales at a trading company in Baden AG. Monthly salary 11'500 gross, 13th monthly salary, notice period three months. At the beginning of July 2026, management received an anonymous tip-off that over two years I had claimed private restaurant visits as customer meals. They reviewed my expenses and confronted me with this on 21 July. Two items are correct, I dispute the rest — my line manager tolerated this practice for years and claimed expenses the same way himself. The total amount is around 9'400 francs. The board of directors dealt with the matter at its meeting of 12 August, and on 14 August I received the summary dismissal. 14 days of holiday and the pro rata 13th monthly salary are still outstanding. I have an offer for a new position starting 1 October, where I will earn around 15 % less.

QUESTIONS

1. Was the summary dismissal permissible?
2. Was the employer allowed to take its time from 3 July to 14 August?
3. What am I entitled to if it was not justified, and how should I proceed?

CLARIFICATION

Follow-up questions from the pre-analysis

Before the analysis runs, LEXchat asks about what the facts leave out. Only what the text already stated was answered.

- 1 **When exactly was the summary dismissal served?**

Answer: On 14 August 2026 — I received it on that day.

- 2 **Before the confrontation on 21 July 2026, was the person concerned made aware of the criticised expense claim practice, or was there oral or written toleration by the line manager?**

left open

RESULT

First analysis

The result, unedited. Every cited norm and decision is linked and can be checked.

Summary of the situation

This concerns an employment relationship under private law (a trading company in Baden AG), and thus Art. 337 et seq. OR; federal personnel law and cantonal personnel law do not apply. Two questions are central: first, whether the employer can prove good cause under Art. 337 para. 2 OR even though the expense practice was allegedly tolerated and itself followed by the line manager, and second — this is the stronger lever — whether the termination, declared only on 14 August 2026 after certain knowledge (confrontation on 21 July 2026), was still timely. Prognosis: The prospects of having the summary dismissal qualified as unjustified (Art. 337c paras. 1 and 3 OR) are good, subject to the evidence on toleration and the court's discretion regarding the reaction time; the compensation under Art. 337c para. 3 OR is likely to be in the lower to middle range because of the two admitted items and the follow-on position from 1 October 2026.

Analysis

Legal assessment

1. Applicable law, contract data

Employment relationship with a private trading company since March 2014, monthly salary CHF 11'500 gross plus a 13th monthly salary, contractual notice period of three months. Art. 319 et seq. OR therefore apply; Art. 335c para. 1 OR (three months from the tenth year of service) and the contractual agreement under Art. 335c para. 2 OR lead to the same result: a notice period of three months to the end of a month. The public-law provisions (Art. 34b BPG, Art. 13 IGE-PersV, Art. 15 of the Swissmedic Personnel Ordinance) and Art. 9 SpesenV/AG do not apply; decisions on federal personnel law (BVGer A-1508/2020, A-4618/2021, A-6447/2023; BGer 8C_311/2023) may be consulted only as interpretive aids for the identical concept of good cause. Likewise, Art. 29 para. 2 BV does not apply in a private employment relationship: there is no statutory duty to hear the employee — the confrontation of 21 July 2026 is, however, significant for when the time limit begins to run (see no. 3).

2. Question 1 / Task 1: Formal and substantive validity of the summary dismissal

Formal: Art. 337 para. 1 OR does not require any form for summary termination; all that is owed is a written statement of reasons **upon request**. No formal defect is therefore apparent. The dismissal was — as stated in response to a follow-up question — served on 14 August 2026 and received on that day; the termination takes effect upon receipt. The information on the start of the time limit needs clarification: the facts describe the tip-off as received "at the beginning of July 2026", while the question refers to 3 July 2026; the two dates are so close that the result does not change, but the exact date of receipt must be clarified for the chronology.

Substantive: Good cause under Art. 337 para. 2 OR requires a circumstance that makes continuation unreasonable in good faith; the court decides at its discretion (Art. 337 para. 3 OR). According to [BGE 124 III 25](#), a breach of the duty of loyalty (Art. 321a para. 1 OR) weighs particularly heavily where an employee in a position of trust obtains pecuniary advantages at the employer's expense by means of false expense claims and deliberately conceals the manipulations; similarly [BGer 4A_685/2011](#), according to which a stricter standard applies to managerial staff and the breach of duty must be objectively capable of destroying the basis of trust and must actually have done so. The position of "Head of Field Sales" is a managerial function; systematically false expense claims over two years amounting to around CHF 9'400 would therefore in principle be capable of constituting good cause. Likewise [BGE 116 II 145](#) consid. 6, according to which only particularly serious misconduct suffices that is objectively capable of shaking the basis of trust and has actually done so [web, not verified; retrieved 10 September 2026 — please check].

Protection against dismissal at an inopportune time does not stand in the way of the termination here: the blocking periods of Art. 336c para. 1 OR (military service, illness/accident through no fault of the employee, pregnancy, etc.) are not met on the facts described. For the settlement option of converting the dismissal into an ordinary termination, it must nevertheless be borne in mind that a termination declared during a blocking period would be void and that a notice period declared beforehand would be suspended and extended to the next end date (Art. 336c paras. 2 and 3 OR) — an incapacity for work in the period up to 30 November 2026 could therefore postpone the end date.

The decisive factor is therefore the evidence. The burden of proving good cause lies with the terminating employer (Art. 8 ZGB; [BGer 4A_583/2012](#); [BGer 4A_511/2010](#); see also [High Court C-15339-2019](#)). It must specifically prove for **each** individual disputed item that it was a private occasion and not one occasioned by business. Only two items have been admitted; in the overall assessment of all circumstances, their weight is considerably lower than the alleged total volume of CHF 9'400.

3. Question 2: Permissible reaction time from receipt of the tip-off to 14 August 2026

The right to summary dismissal must be exercised without delay once there is certain knowledge; anyone who waits forfeits it, because waiting indicates that observing the ordinary notice period was subjectively reasonable. According to [BGer 4A_431/2014](#), the dismissal must be declared as soon as the ground is known with certainty and as completely as possible; there must be no unreasonably long wait between the decision to dismiss and the declaration, otherwise the dismissal is ineffective. [BGer 4A_64/2013](#) holds that the time for reflection is short and may not be extended until ancillary questions have been clarified (there: repayment of a withheld amount).

Application: The period from receipt of the tip-off (beginning of July) to the confrontation on 21 July 2026 is in principle permissible as an investigation phase — investigations and a hearing may justify the reaction time, provided they are carried out purposefully and without idle periods ([BGer 4A_685/2011](#): duration of the review not impermissible per se, provided it is not arbitrary or disproportionate; likewise for public service law [BGer 8C_311/2023](#), according to which, however, the procedure may not lie dormant for a longer period). The phase **after** 21 July is problematic: with the confrontation, the facts had been established from the employer's point of view to such an extent that it could decide on the dismissal; nevertheless, the matter was only dealt with at the board of directors' meeting of 12 August and the dismissal was declared on 14 August — around 24 days of inactivity without any discernible further investigation. Under the standard of [4A_431/2014](#) and [4A_64/2013](#), this is a considerable risk for the employer. Its counter-argument will be that the decision-making power lay with the

collective body and that its next ordinary meeting was 12 August; case law in fact grants collective bodies somewhat more time, but requires that the decision be brought about with the necessary speed — if necessary by an extraordinary resolution. Whether 24 days of waiting are tolerated is a matter of discretion (Art. 337 para. 3 OR) and open as to the outcome; under the standard cited here, the assessment tends to favour the client.

Subsequent reliance on further grounds: According to [BGE 124 III 25](#), the employer may, under narrow conditions, rely on circumstances that only became known subsequently, insofar as these have definitively destroyed the basis of trust; according to [BGE 142 III 579](#), a ground put forward subsequently may also be of a different kind than the one stated in the dismissal, whereby it must be examined whether the totality of the circumstances asserted could have caused the required loss of trust. This must be expected if it continues to work through the expense receipts.

4. Task 2: Toleration by the line manager

Two directions of effect must be distinguished:

- *Level of the elements:* If the expense practice was known to, tolerated and itself followed by the line manager with authority to give instructions (Art. 321d para. 1 OR), there is no breach of duty, or at any rate no proof of it. This corresponds to the rationale of [BGer 4A_583/2012](#): the unjustified nature of the benefits obtained is not established if, in the given circumstances, the employee could claim the same benefits as others; the employer must specifically prove that the benefit claimed lay outside the prevailing practice. Applied here: if there was a practice regarding entertainment expenses that was tolerated in the company and supported by the line manager, proving a serious breach of the duty of loyalty is made considerably more difficult. Any lump-sum expense agreements (Art. 327a para. 2 OR), under which no individual proof is owed, are also relevant.
- *Level of discretion:* Even if a breach of duty is affirmed, the employer's own organisational and control failures have a mitigating effect. [BGer 4A_353/2024](#) confirmed the assessment as unjustified because the misconduct was not serious enough **and** the employer itself had breached control obligations.

Counterweight: [BGer 4A_64/2013](#) holds that the toleration of earlier breaches of duty does not change the assessment of the current breach of contract. The employer will rely on this and argue that a line manager cannot give valid permission to charge private expenses to the company. The toleration defence therefore carries weight more at the level of evidence and seriousness than as a ground of justification; it is nevertheless the most important substantive defence argument.

5. Question 3 / Task 4: Claims in the event of unjustified dismissal

- *Art. 337c para. 1 OR:* Compensation for what would have been earned until the expiry of the ordinary notice period. With service on 14 August 2026 and a three-month notice period to the end of a month, the hypothetical end date is **30 November 2026**.
- *Art. 337c para. 2 OR:* Earnings from the new position from 1 October 2026 (around 15 % less) and savings are to be credited. The permanent loss of salary of 15 % **after** 30 November 2026 is not recoverable under Art. 337c para. 1 OR; it may, however, be taken into account in the assessment under para. 3.
- *Unemployment insurance:* If there is a gap between 14 August and 1 October 2026 and daily allowances are claimed, there is a risk of suspension of entitlement due to self-inflicted unemployment (Art. 30 para. 1 let. a AVIG); the duration depends on the degree of fault and amounts to a maximum of 60 days (Art. 30 para. 3 AVIG). A waiver of salary or compensation claims against the former employer to the detriment of the insurance (Art. 30 para. 1 let. b AVIG) must also be avoided — this must be taken into account without fail when wording a settlement with a full-and-final-settlement clause.
- *Art. 337c para. 3 OR:* Compensation at the court's discretion, up to a maximum of six monthly salaries (here: CHF 69'000). It is generally awarded; refraining from doing so requires extraordinary circumstances ([BGer 4A_353/2024](#); [District Court C1-22-204](#): reduction or exclusion only in the case of significant fault of one's own). There is no schematic minimum compensation; rapid re-employment puts the amount into perspective because it reduces economic disadvantages and the impairment of personality ([BGer 4A_660/2010](#)); the

duration of the employment relationship, the employee's conduct and the economic consequences must also be taken into account ([BGer 4A_135/2013](#); [BGer 4A_56/2026](#)). Given 12½ years of service and age 52, but a follow-on position after 6½ weeks and two admitted items, around one to three monthly salaries (CHF 11'500–34'500) are realistic; the range is a matter of discretion.

- *Further damages:* Art. 337b OR concerns termination caused in breach of contract; Art. 336a para. 2 OR reserves claims on other legal grounds. Specific additional heads of damage are not currently apparent (pension damage under Art. 10 para. 2 BVG in the event of a gap in September to be examined if applicable).

If damage going beyond Art. 337c para. 1 OR is claimed, Art. 42 OR applies: the damage must in principle be proven (Art. 42 para. 1 OR); if it cannot be proven in figures — for example pension damage from the contribution gap in September 2026 — the court estimates it at its discretion, taking into account the ordinary course of events and the measures taken by the injured party (Art. 42 para. 2 OR). The efforts to mitigate the damage (rapid job search, taking up the new position) must therefore be documented.

- *Abusiveness:* Art. 336/336a OR is not the primary remedy in the case of summary dismissal; if it is asserted in the alternative, a written objection by the end of the notice period and an action within 180 days after termination are required (Art. 336b paras. 1 and 2 OR). A precautionary objection is therefore advisable.
- *Employment reference:* Regardless of the outcome, there is an entitlement to a full reference covering the nature and duration of the employment, performance and conduct (Art. 330a para. 1 OR); upon specific request, a reference limited to the nature and duration must be issued (Art. 330a para. 2 OR). Such a limited reference is often the more favourable option where the ground for termination is disputed and is suitable as a settlement position.

6. Task 3: Calculation of holidays and 13th monthly salary

Holiday entitlement of at least four weeks (Art. 329a para. 1 OR), pro rata for an incomplete year of service (Art. 329a para. 3 OR); the prohibition on compensation under Art. 329d para. 2 OR applies only during the ongoing employment relationship; on termination, the days not taken must be paid out. For holidays, the "entire salary attributable to them" is owed (Art. 329d para. 1 OR), which supports including the 13th monthly salary in the basis of assessment. For the hypothetical notice period, it must be noted that holiday compensation is owed only insofar as the purpose of recovery could not be achieved ([High Court LA160004](#)); the 14 days accrued up to 14 August are not affected by this.

Item	Calculation	Amount (CHF)
Holidays 14 days, without 13th in the basis	$(11'500 \times 12) / 260 = 530.77 \times 14$	7'430.75
Holidays 14 days, with 13th in the basis	$(11'500 \times 13) / 260 = 575.00 \times 14$	8'050.00
13th pro rata to 14 August 2026 (owed in any event)	$7 \text{ months} + 14/31 = 7.4516/12 \times 11'500$	approx. 7'141.00
13th pro rata to 30 November 2026 (only if unjustified)	$11/12 \times 11'500$	10'541.65
Salary compensation 15–31 August 2026	$17/31 \times 11'500$	6'306.45
Salary compensation September 2026	11'500	11'500.00
Salary compensation Oct./Nov. 2026 (difference after crediting 15 %)	$2 \times (11'500 - 9'775)$	3'450.00

The holiday basis (with/without 13th) and the pro rata clause for the 13th must be verified against the employment contract and the staff regulations; the divisor (260 working days or 21.75 days/month) changes the result only marginally. All claims fall due upon termination (Art. 339 para. 1 OR); default interest of 5 % from the reminder or the due date (Art. 102 para. 1, Art. 104 para. 1 OR).

7. Counterclaim and set-off

The employer will raise the CHF 9'400 as a claim for restitution (Art. 62 paras. 1 and 2 OR) or as damages (Art. 321e para. 1 OR) and will seek to set it off (Art. 120 para. 1 OR). Limits: set-off against salary claims only insofar as they are attachable, but unlimited for claims for compensation for intentionally caused damage (Art. 323b para. 2 OR); in addition, Art. 125 no. 2 OR for indispensable salary balances. The employer also bears the burden of allegation and proof for the counterclaim (Art. 8 ZGB; cf. [BGer 4A_431/2014](#) on the substantiation of counterclaims). If toleration is proven, it is already questionable whether the payments lacked a legal basis.

The criminal law risk must also be borne in mind: private expenses systematically declared as customer meals could be qualified as fraudulent deception causing financial loss with the intent of unjust enrichment (Art. 146 para. 1 StGB), and, in the case of serial commission, with the aggravating element of acting for commercial gain (Art. 146 para. 2 StGB). A criminal complaint must be anticipated as a means of pressure by the opposing party; conversely, an expense practice tolerated within the company and approved by the line manager already considerably weakens the element of deceit.

Insofar as the employer claims damages under Art. 321e para. 1 OR, Art. 44 OR must also be observed: if circumstances for which the injured party is responsible — here its own control and organisational failures and the expense practice supported by the line manager — contributed to the damage, the court may reduce the liability or waive it entirely (Art. 44 para. 1 OR). Conversely, the two admitted items may be weighed against the client under the same provision.

8. Procedural aspects

The court at the employer's registered office or at the usual place of work has territorial jurisdiction (Art. 34 para. 1 ZPO), i.e. Baden AG. Conciliation proceedings must be conducted first (Art. 197 ZPO); a unilateral waiver is not possible, and a joint waiver only where the amount in dispute is CHF 100'000 or more (Art. 199 para. 1 ZPO). The authorisation to proceed entitles the claimant to file an action within three months (Art. 209 para. 3 ZPO). The expected amount in dispute is made up of salary compensation (around CHF 21'250 gross after crediting), the 13th share (around CHF 10'500), holiday compensation (around CHF 8'050) and compensation (around CHF 23'000 at two monthly salaries), thus approaching CHF 63'000; it therefore exceeds CHF 30'000, which is why the simplified procedure (Art. 243 para. 1 ZPO), exemption from costs (Art. 113 para. 2 let. d, Art. 114 let. c ZPO) and the inquisitorial maxim under Art. 247 para. 2 let. b no. 2 ZPO do not apply; the quantification must be refined once the new employer's salary confirmation is available. The prayers for relief must be quantified (Art. 84 para. 2 ZPO); insofar as the crediting under Art. 337c para. 2 OR is still open, an unquantified action for payment with a minimum value could be considered (Art. 85 para. 1 ZPO). For any appeal to the Federal Supreme Court, the threshold amount in dispute of CHF 15'000 in employment law cases is met (Art. 74 para. 1 let. a BGG).

The set-off defence and the counterclaim of CHF 9'400 to be expected from the employer must procedurally be raised in the statement of defence; there, the defendant must set out in detail which factual allegations it admits and which it disputes (Art. 222 para. 2 ZPO). On this basis, it can be established item by item which expense items remain undisputed and which the employer must substantiate.

Limitation: five years for claims arising from the employment relationship (Art. 128 no. 3 OR), starting from the due date (Art. 130 para. 1 OR); interruption, among other things, by a request for conciliation or an action (Art. 135 no. 2 OR). Art. 341 para. 1 OR must be observed: mandatory claims cannot be waived during the employment relationship and for one month thereafter — full-and-final-settlement clauses in an agreement are only safe after 14 September 2026.

Gap: The wording of Art. 343 OR is not available; no statements are therefore made on procedural and cost privileges based on it.

Prospects of success

For the client (significant):

1. *Reaction time.* From the time of certain knowledge (21 July 2026) to the declaration (14 August 2026), around 24 days passed without any apparent further investigation. According to [BGer 4A_431/2014](#) and [BGer 4A_64/2013](#), this is a sound forfeiture defence. This point can be proven by documents (minutes, correspondence) and is easier to prove than the question of toleration.
2. *Employer's burden of proof for each disputed item* (Art. 8 ZGB; [BGer 4A_583/2012](#), [BGer 4A_511/2010](#)). Relying on an anonymous tip-off is not sufficient; the employer must specifically prove the private occasion.
3. *Control failures and a tolerated practice* reduce the seriousness ([BGer 4A_353/2024](#)).
4. *Compensation is generally awarded where the dismissal is unjustified* ([BGer 4A_353/2024](#); [District Court C1-22-204](#)).

Against the client:

1. *Managerial function and systematic nature.* If private expense claims over two years can be proven even for only a relevant part, this weighs heavily according to [BGE 124 III 25](#) and [BGer 4A_685/2011](#); a stricter standard applies to managerial staff. The two admitted items are an entry point for the opposing party.
2. *The employer's argument on timing.* The duration of an investigation is not impermissible per se ([BGer 4A_685/2011](#)); the competence of the board of directors and the frequency of its meetings may partly justify the delay. The outcome depends on discretion.
3. *Toleration argument weak in terms of evidence.* The burden of proving that the line manager knew of the practice and followed it himself lies with the client insofar as he relies on permission within the company; witnesses from field sales and the line manager's receipts are central. Moreover, [BGer 4A_64/2013](#) holds that earlier toleration does not cure the current breach of duty.
4. *Crediting and reduction.* The follow-on position from 1 October 2026 reduces the salary compensation (Art. 337c para. 2 OR) and dampens the compensation ([BGer 4A_660/2010](#)).

Overall assessment: In my assessment, the probability that the summary dismissal will be qualified as unjustified is well above 50 %, with the forfeiture defence likely to be decisive. Realistically achievable: salary compensation after crediting of around CHF 21'000–22'000 plus the 13th share, holiday compensation of around CHF 7'400–8'050 and compensation of one to three monthly salaries. The undisputed claims (holidays, 13th up to 14 August) exist regardless of the outcome of the dismissal question; in economic terms, the subject of the proceedings is thus reduced to salary compensation and compensation, against which the counterclaim of CHF 9'400 stands. Cost risk: since the amount in dispute exceeds CHF 30'000, court costs are incurred and, if unsuccessful, a party compensation; a settlement in conciliation (full and final settlement, waiver of the expense reimbursement claim, neutral reference, requalification as an ordinary termination) is often the most efficient solution in economic terms.

Recommended next steps

1. **Safeguarding time limits and contesting (Immediately):** Registered letter to the employer with (a) contestation of the good cause, (b) request for the written statement of reasons under Art. 337 para. 1 OR, (c) assertion of the claims under Art. 337c paras. 1–3 OR with a payment deadline and a reservation of default interest (Art. 102 para. 1, Art. 104 para. 1 OR), (d) contestation of the expense reimbursement claim and objection to any set-off (Art. 323b para. 2, Art. 125 no. 2 OR), (e) **precautionary objection under Art. 336b para. 1 OR** in case abusiveness is asserted in the alternative, and (f) request for a full reference to be issued.
2. **Building a "reaction time" forfeiture file:** Request disclosure/production of the date of receipt of the anonymous tip-off, the audit report, the minutes of the confrontation of 21 July 2026, the board of directors' minutes of 12 August 2026 and internal correspondence; prepare a chronology in table form with proof that no further investigations took place between 21 July and 12 August. Legal basis: [BGer 4A_431/2014](#), [BGer 4A_64/2013](#).
3. **Preparing proof of toleration (Task 2):** Securing one's own copies of expense claims, the line manager's approval notes/initials on the disputed claims, the expense regulations, any lump-sum agreement (Art. 327a

para. 2 OR), e-mails on the practice; list of witnesses (field sales colleagues, accounting, line manager); request for production of the line manager's expense claims for the same period. Aim: motion for evidence showing that the items corresponded to the practice actually followed within the company ([BGer 4A_583/2012](#)).

4. **Item-by-item breakdown of the CHF 9'400:** Table with date, amount, occasion, participants, initials, status (admitted/disputed) — the basis both for the defence against the counterclaim and for the assessment of seriousness.
5. **Finalising the calculation of claims (Task 3):** Verification of the employment contract, 2026 payslips, holiday account and staff regulations (holiday basis with/without 13th; pro rata clause for the 13th); then a quantified statement of claims in accordance with the table under no. 6 of the assessment, including the items to be credited under Art. 337c para. 2 OR (salary confirmation from the new employer from 1 October 2026, including whether a 13th is paid there).
6. **Clarifying pension and ancillary consequences:** Check the BVG exit statement and coverage for September 2026 (Art. 10 paras. 2 and 3 BVG); record any pension damage as an additional head of damage (Art. 336a para. 2 OR by analogy as a reservation of other legal grounds).
7. **Preparing a request for conciliation at the justice of the peace's office at the registered office/place of work in Baden** (Art. 34 para. 1, Art. 197 ZPO), with a quantified prayer for relief (Art. 84 para. 2 ZPO); note the three-month time limit for filing an action from the authorisation to proceed (Art. 209 para. 3 ZPO); note the interruption of limitation by the request for conciliation (Art. 135 no. 2 OR).
8. **Settlement strategy:** Prepare an offer with conversion into an ordinary termination as of 30 November 2026, payment of salary until then with crediting of new earnings, waiver by the employer of the expense reimbursement claim, compensation for holidays and the 13th, a neutral employment reference; have the full-and-final-settlement clause signed only after expiry of the blocking period of Art. 341 para. 1 OR (from 15 September 2026).
9. **Assessing the criminal law risk and AVIG consequences:** Before concluding any settlement, check whether the employer is threatening a criminal complaint for fraud (Art. 146 StGB), and word the settlement so that there is no waiver of salary claims to the detriment of unemployment insurance (Art. 30 para. 1 let. b AVIG).

References

Key decisions

Decision	Ratio decidendi	Significance for the mandate
BGer 4A_431/2014	A summary dismissal must be declared as soon as the ground for dismissal is known with certainty and as completely as possible; there must be no unreasonably long wait between the decision and the declaration (Art. 337 OR).	Main basis for the forfeiture defence: 24 days of inactivity between the confrontation (21 July 2026) and the declaration (14 August 2026).
BGer 4A_64/2013	The time for reflection after knowledge of the good cause is short and may not be extended to clarify ancillary questions; the toleration of earlier breaches of duty does not change the assessment of the current breach of contract.	Supports the complaint about the reaction time, but at the same time limits the scope of the toleration argument — anticipate this in the argumentation.
BGer 4A_583/2012	Good cause must be proven by the terminating employer; the unjustified nature of benefits obtained is not established if, in the given circumstances, the employee could claim the same benefits.	Core argument on toleration: if the expense practice corresponded to the practice actually followed within the company, proof of a breach of duty fails.
BGE 124 III 25	If an employee in a position of trust breaches the duty of loyalty by obtaining pecuniary advantages (false expense claims, bribes), there is good cause; circumstances that only became known subsequently may also be relied on under narrow conditions.	The opposing party's strongest precedent; at the same time the basis for expecting the employer to put forward further grounds subsequently.

Decision	Ratio decidendi	Significance for the mandate
BGer 4A_353/2024	An unjustified summary dismissal gives rise to salary compensation and, as a rule, to compensation under Art. 337c para. 3 OR; refraining from this is possible only in extraordinary circumstances, and the employer's own control failures put the seriousness of the misconduct into perspective.	Supports the claim and its assessment under Art. 337c para. 3 OR as well as the argument of the employer's organisational/control failures.
BGer 4A_660/2010	Compensation under Art. 337c para. 3 OR is determined in accordance with law and equity, taking all circumstances into account; there is no schematic minimum compensation, and rapid re-employment can put it into perspective.	Realistic management of expectations regarding the amount: the follow-on position from 1 October 2026 dampens the compensation.

Overview of key provisions

Article	Content	Doctrinal significance
Art. 337 OR	Summary termination for good cause; good cause is any circumstance that makes continuation unreasonable in good faith; decision at the court's discretion.	Central standard of review; basis both for the assessment of seriousness and — via the requirement of immediate exercise — for the forfeiture defence.
Art. 337c OR	In the case of summary dismissal without good cause, compensation for earnings until the expiry of the notice period (para. 1), crediting of savings and substitute earnings (para. 2), compensation of up to six monthly salaries (para. 3).	Basis of the claim for salary compensation and compensation; para. 2 is the central reduction provision because of the follow-on position from 1 October 2026.
Art. 321a OR	Employee's duty of care and loyalty, safeguarding the employer's legitimate interests in good faith.	Provision of duty whose breach the employer must prove for good cause; point of reference for the expense allegations.
Art. 8 ZGB	Whoever derives rights from an alleged fact must prove it.	Rule on the burden of proof: the employer bears the burden for each disputed expense item and for the counterclaim.
Art. 335c OR	Notice periods (three months from the tenth year of service) to the end of a month; modification by written agreement permitted.	Determines the hypothetical termination date (30 November 2026) and thus the extent of salary compensation under Art. 337c para. 1 OR.
Art. 329d OR	For holidays, the entire salary attributable to them must be paid; compensation during the employment relationship is prohibited.	Basis of the holiday compensation for the 14 outstanding days and of the question whether the 13th falls within the basis of assessment.
Art. 323b OR	Salary payment with a written statement; set-off of counterclaims only insofar as the salary is attachable, unlimited for intentionally caused damage.	Defence provision against the set-off of the alleged expense reimbursement claim of CHF 9'400.
Art. 339 OR	Upon termination of the employment relationship, all claims arising from it fall due.	Provision on the due date for holidays, the 13th and salary compensation; starting point for default interest and the start of the limitation period.
Art. 336c OR	Blocking periods for termination by the employer (service, illness/accident, pregnancy, etc.); nullity of termination declared during the blocking period, suspension and extension of the running notice period to the next end date.	Decisive for the settlement option of converting to an ordinary termination as of 30 November 2026: an incapacity for work could postpone the end date.
Art. 330a OR	Entitlement to a reference covering the nature and duration of employment, performance and conduct; upon specific request, limitation to nature and duration.	Basis for the demand for a full reference or — as a settlement position — for a neutral confirmation of employment.

Article	Content	Doctrinal significance
Art. 42 OR	Proof of damage; damage that cannot be proven in figures is estimated by the court at its discretion.	Supports the assertion of pension damage and other disadvantages that cannot be precisely quantified.
Art. 44 OR	Reduction or elimination of liability in the case of contributory fault or contributing circumstances on the part of the injured party.	Central reduction provision against the counterclaim for damages: the employer's control failures and tolerated practice have a reducing effect.
Art. 146 StGB	Fraud: fraudulent deception causing financial loss with the intent of unjust enrichment; aggravated penalty for acting for commercial gain.	Measures the criminal law risk of the expense allegations and thus the negotiating position; a tolerated practice weakens the element of deceit.
Art. 30 AVIG	Suspension of entitlement, among other things, in the case of self-inflicted unemployment and in the case of a waiver of salary claims to the detriment of the insurance; duration up to 60 days depending on the degree of fault.	Relevant for the gap until 1 October 2026 and for the wording of full-and-final-settlement or waiver clauses in the settlement.
Art. 222 ZPO	Statement of defence; the defendant must set out in detail which factual allegations are admitted and which are disputed.	Procedural framework for the set-off defence and the counterclaim: obliges the employer to comment on the expenses item by item.

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