

Tribunal Industrijali

Decizjoni Nru. 69

Kaz Nru. 70

Fil-kwistjoni tax-xoghol

bejn

l-Għaqda (Union) Ufficjali Anzjani  
tat-Tarzna (DSESU)

u

il-Management tal-Malta Drydocks.

Data : 31 ta' Lulju 1980.

Chairman : C.J. Mallia

Membri : A.M. Farrugia

A.J. Baldacchino, M.Litt.(Oxon.), D.Pol. Econ.(Oxon.)

Fit-18 ta' Settembru, 1979, il-Ministru tax-Xoghol, Kultura u Ghajnuna Socjali irriferiet lil dan it-Tribunal it-tilwima hawn fuq imsemmija, b'dawn it-terms of remit:

"Rikonoxximent ta' dil-union ghal skopijiet ta' negozjati mill-Management tal-Malta Drydocks."

2. Kompetenza. L-ewwel punt li qam kien jekk din kienetx tilwima li taqa' fil-kompetenza ta' dan it-Tribunal li jiddeciedi. Instab li l-kaz kien jidhol car fid-definizzjoni ta' "kwistjoni tax-xoghol" kif moghtija fl-artikolu 2 ta' l-Att Nru. XXX ta' l-1976, li tahtu huwa kostitwit it-Tribunal Industrijali. Ghalhekk, mill-panels li kienu jezistu, gew maghzula mic-Chairman, bi qbil bejn il-partijiet, is-Sinjuri Alphonse M. Farrugia u Alfred J. Baldacchino, M.Litt.(Oxon.), D.Pol.Econ. (Oxon.), ta' l-ewwel propost mid-DSESU (li minn hawn il-quddiem tissejjah il-Union) u tat-tieni propost mill-Management tal-Malta Drydocks (li minn issa l-quddiem jissejjah id-Drydocks). Din l-ghazla ta' zewg Membri biex jiformaw

parti mit-Tribunal saret taht id-disposizzjonijiet tal-proviso tas-sub-artiklu (2) (b) ta' l-artiklu 26 ta' l-att ta' l-1976 dwar Relazzjonijiet Industrijali.

3. Il-partijiet. Ghall-Union, dehru

Is-Sur Thomas Seychell, President  
Is-Sur Thomas J. Mayo, Vici-President  
Is-Sur Anthony DeGiovanni, Segretarju

Id-Drydocks kienu rraprezentati mis-

Sur Frans Spiteri, Chairman tal-Kunsill  
Is-Sur John M. Calleja, General Manager  
Is-Sur C. D'Amato, Segretarju tal-Kunsill, aktar  
tard sostitwit mis-Sur Laurence Bilocca,  
Segretarju gdid tal-Kunsill.

Il-Maggur Stanley J.A. Clews, Administration & Education  
Manager.

4. Smiegh u xhieda. Wara certu dewmien inevitabbli, beda jinstema' l-kaz fit-18 ta' Marzu, 1980. Inzammu b'kollox ghaxar seduti fil-pubbliku. Barra minn hekk, saru laqghat in camera bejn ic-Chairman u l-Membri tat-Tribunal biex tigi meqjusa d-decizjoni. Instemghet bil-gurament ix-xhieda ta' dawn is-sinjuri li gejjin:

Msejjhin mill-Union

Is-Sur Joseph P. Abela, Hull & Industrial Projects Manager  
Is-Sur Alfred Cachia, Senior Ship Manager  
Is-Sur Victor Debono, Electronics Engineer  
Is-Sur Albert Degabriele, Head of Accounts  
Is-Sur Louis Ellul, Plant & Development Manager  
Is-Sur Thomas J. Mayo, Vici-President tal-Union u  
Development Manager  
Is-Sur Thomas Seychell, President tal-Union u Stores Manager

Is-Sur Salvino Spiteri, President tas-C.M.P.U. u  
President tal-U.H.M.

Is-Sur Anthony Valvo, Chief accountant

Is-Sur Saviour Zammit, General Planning Manager

Msejihin mid-Drydocks

Is-Sur George Agius, Segretarju Generali tal-G.W.U.

Il-Magur S.J.A. Clews, Administration & Education Manager

Is-Sur Carmel Debono, Personnel Manager

Is-Sur Anthony DeGiovanni, Segretarju tal-Union

Is-Sur Edmond W. Micallef, Segretarju Amministrattiv  
tal-Gvern ta' Malta.

5. Registrazzjoni. Imhabba n-natura tat-tilwima, it-Tribunal ottena kmieni certifikat minn ghand ir-Registatur tat-Trade Unions, bid-data 23 ta' April, 1980, li jikkonferma "li l-Ghaqda (Union) Ufficjali anzjani tat-Tarzna (DSESU) kienet registrata bhala trade union b'Certifikat Nru. 144 fit-13 ta' Novembru, 1969, u kienet ghadha fuq ir-Registru tat-Trade Unions sal-lum."

6. Statements of Case. Minn l-istatements of case miktuba, li z-zewg nahat ipprezentaw lit-Tribunal fl-ewwel laqha tat-18 ta' Marzu, 1980, deher malajr li t-"terms of remit," mibghuta lit-Tribunal minn ghand il-Ministru (ara para. 1 hawn fuq), ghad li jirriflettu sew il-vera qalba tal-kwistjoni (li hija wahda pura ta' "recognition"), ma kienux terms of remit li fuqhom qablu z-zewg partijiet, kif setghu kienu skond il-konswetudni fl-istorja ta' l-arbitragg malti. Ghalhekk hawn huwa xieraq li niftakru t-terms of remit kif issottomettiethom separatament kull parti.

7. Terms of remit tal-Union. Il-Union issottomettiet it-termini ta' riferenza taghha hekk:

2. Li t-Tribunal ta' l-Arbitragg:

- 2.1 Jiddikjara l-'Union' bhala l-union xierqa u l-aktar rapprezentativa ghall-impjegati lokali tas-"Senior and Executive Staff" tal-Malta Drydocks kemm fit-30 ta' Settembru, 1978 - meta l-'Union' kienet imgharrfa biz-zamma tal-gharfien - u kemm fit-22 ta' Frar, 1980, meta din l-istqarrija kienet mitluba mit-Tribunal;
- 2.2 Jaghti direttiva lill-'Parti l-Ohra' biex terga' taghti lill-'Union' l-istatus li kellha qabel ta' gharfien eskusiv ghall-impjegati lokali tas-"Senior and Executive Staff", u li jhalliha taghmel rapprezentazzjonijiet u tidhol f'negozjati mal-Management Generali tal-Malta Drydocks f'isem l-imsehbun taghha fl-oqsma kollha tal-hidma trejdunjonistika;
- 2.3 jaghti direttiva lill-'Parti l-Ohra' li terga' tiffurma relazzjonijiet normali ma' l-'Union' u taghti retroattivament l-facilitajiet u l-privileggi kollha li kellhom qabel l-ufficjali taghha fil-qadi ta' dmirijiethom;
- 2.4 jiddikjara li kull ftehim li sar bejn l-'Union' u l-'Parti l-Ohra' qabel iz-zamma tal-gharfien jitqies bhala li baqa' jghodd matul il-perijodu tat-tilwima.

#### 8. Terms of remit tad-Drydocks.

It-terms of remit kif sottomessi mid-Drydocks huma dawn:

"That the Arbitration Tribunal accept that the Management decision, to concede to the GWU claim for full recognition on the grounds that a reasonable number of employees in the Management category have followed all the other categories of employees and joined the GWU, was in the interest of the yard and also to ensure that the successful results achieved so far by Malta Drydocks will in no way be affected."

9. Il-vera kwistjoni. Mill-paragrafi 7 u 8 hawn fuq naraw li, waqt li l-Union trid li terga' tinghata r-recognition li kellha, id-Drydocks iridu jiggustifikaw il-full recognition li taw lill-General Workers' Union meta nehew ir-recognition lill-Union, applikanti, jigifieri d-DSESU. Huwa ghalhekk li t-Tribunal huwa tal-fehma li t-terms of remit kif mibghutin lilu mill-Ministru tax-Roghol, (para. 1 hawn fuq) fil-fatt jissommarizzaw sewwa l-essenza tal-kwistjoni migjuba ghall-arbitragg.

10. Il-kaz ghall-Union. Il-kaz ghal kull wahda mill-partijiet huwa maghmul mill-istatement of case, mix-xhieda, mid-dokumenti esebiti, u mis-sottomissjonijiet waqt is-smiegh u dawk finali. Id-dokumentazzjoni, speċjalment da parti tal-Union, hija voluminuza gmielha, l-aktar meta wiehed iqis in-numru ta' enclosures annessi ma' l-istatement of case u s-sottomissjonijiet finali tal-Union. Id-dokumenti kollha jiffurmaw parti mill-process, li huwa accessibbli ghal kulhadd skond il-ligi. Hawn ma jistax hlief wiehed jissommarizza l-kaz tal-partijiet. Il-Union qalet

- (a) li hi kienet minn mindu nholqot, u ghadha sal-lum, ghaqda li tirrapprezenta kif jixraq l-interessi tas-Senior and Executive Staff tal-Malta Drydocks;
- (b) li hi kellha, u ghad ghandha, l-maggoranza ta' dawn l-impjegati bhala membri taghha u li jridu lilha biss tirrapprezenta l-interessi taghhom;
- (c) li mill-holqien taghha sal-lum ma kien gara xejn li kellu jaffettwa r-recognition li hi kellha mill-Management tad-Drydocks ghal kwazi disa' snin; u

- (d) li ghalhekk it-Tribunal Industrijali ghandu jordna lid-Drydocks biex jergghu jaghtu lill-Union l-istess recognition li kellha qabel, u dan b'effett retroattiv ghad-data tat-twaqqif tar-recognition, biex kollox jerga' jsir bhallikieku ma gara xejn.
- (e) Il-Union semmnet ukoll mill-ewwel, u rribattiet b'aktar sahha aktar tard, li d-dritt ta' "freedom of association" huwa protett mill-Kostituzzjoni tar-Repubblika ta' Malta (artiklu 43), kif ukoll minn convention ta' l-I.L.O. ratifikata minn Malta (I.L.O. Convention No. 87).

11. Il-kaz ghad-Drydocks. Id-Drydocks qalu

- (a) li huma tew 'full recognition' (li wara spjegaw li biha riedu jghidu 'exclusive recognition') lill-General Workers' Union ghaliex numru ragonevoli ta' mpjegati fil-kategorija ta' Management kienu ssiehbu fil-G.W.U.;
- (b) li din id-decizjoni tal-Management kienet fl-interess tad-Drydocks;
- (c) li b'hekk jigi wkoll assigurat li r-rizultati tajbin li s'issa ntlahqu mid-Drydocks ma jigu b'ebda mod affettwati; u
- (d) li ghalhekk it-Tribunal Industrijali ghandu jaccetta din id-decizjoni tad-Drydocks (li f'dan il-kaz id-Drydocks irritenew li timplika c-cahda ta' recognition lill-Union applikanti).

12. L-argumenti principali taz-zewg nahat.

L-argument principali tal-Union huwa

li hi hija l-Union xierqa biex tirrapprezenta l-interessi tas-Senior and Executive Staff fid-Drydocks; li l-maggoranza ta' dawn iridu lilha biss tiehu hsiebhom; li dawn ghandhom dritt taht l-aqwa ligijiet nazzjonali (l-Kostituzzjoni) u internazzjonali (ILO Convention, No. 87) li jissiehbu f'liema Union iridu; u li ghalhekk id-Drydocks ghandhom ikomplu jirrikonoxxu lil din il-Union bhal qabel.

Id-Drydocks, minn naha taghhom, isostnu

li, bid-Drydocks issa taht il-kontroll shih tal-haddiema, li kulhadd ikun f'union wahda igib ftehim, fiducja, kooperazzjoni, u produttivita' ahjar, u jassigura s-success ta' din l-industrija li hija settur importanti ta' l-ekonomija maltija.

13. X'gara fl-imghoddi:Kaz li jixxiebah sew ma dan prezenti kien qam fl-istess ambjent tal-Malta Drydocks fl-1964, u kien mar quddien it-Tribunal ta' l-Arbitragg. Fl-1963, Qorti ta' Inkjesta kienet irrakmandat li l-Malta Technical and Clerical Association kellha tirrapprezenta hi biss l-interessi tan-non-industrial employees fid-Drydocks. Izda r-rakomandazzjoni ta' dik il-qorti ma kienetx torbot iz-zewg nahat, li ma waslux fi ftehim. Ghalhekk, u ghall-hafna ragunijiet ohra msemmijin fl-award tieghu Nru. 25 ta' l-14 ta' Settembru, 1964, it-Tribunal ta' l-Arbitragg, presedut mis-Sinjurija Tieghu s-Sur Imhallel Maurice Caruana Curran, LL.D., B.A., ikkonceda dual recognition fid-Drydocks lin-National Association of Clerical and Supervisory Staff (sezzjoni tal-G.W.U.) u lill-Malta Technical and Clerical Association. It-Tribunal Industrijali

attwali josserva dawn il-punti ta' xebh bejn il-kaz ta' l-1964 u dak tal-lum:

- (1) Fiz-zewg kazi, t-tilwima hi bejn union non-industrijali u l-Management tad-Drydocks.
- (2) L-istess wara l-kwinti, imma mhix parti fit-tilwima, hemm il-General Workers' Union.
- (3) Il-lum bhal dak inhar il-Union li thoss ruhha aggravata tgaid li l-Management iddecieda kontra taghha minghajr ma semghahha (ikkonsultaha).
- (4) Il-Management fl-1964 kellu l-istess interess bhal-lum fil-kooperazzjoni u fil-produttivita'.
- (5) Bl-istess mod, dik inhar bhal-lum, il-union industrijali ma ppruvatx li kellha maggoranza ta' non-industrial employees membri taghha.

14. X'deherlu l-Management fl-1964.

Fl-award Nru. 25 fuq imsemmi, t-Tribunal ta' l-Arbitragg fost hwejjeg ohra qal li rrizultalu li :

"Management recognises that the more common practice, indeed one which is recommended by many experts, is that non-industrials should organise themselves into bodies distinct and separate from those representing industrials. The need for this has been more strongly stressed in the case of the "supervisory" grades because of what has been termed their dual function in industry, that is to say that while they represent management in dealing with labour they still remain employees."



15. Differenzi. Bejn iz-zewg kazi, ta' l-1964 u ta' l-1964, hemm ukoll dawn id-differenzi:

- (1) Fl-1964, ma tqajjimx l-issue ta' freedom of association. Illum tqajjem.
- (2) Fl-1964 ma kienx hemm caħda ta' recognition. Illum hemm.

16. Freedom of association. Tajjeb li wiehed ifakkar li dan il-jedd tal-bniedem huwa protett fid-dritt malti u taht normi internazzjonali. Fil-Kostituzzjoni tar-Repubblika ta' Malta, dan id-dritt insibuh taht "Drittijiet u Jeddijiet Fundamentali ta' l-Individwu", u qiegħed ezattament fl-artikolu 43. Mill-artikolu 47 (3) tal-Kostituzzjoni johrog car li l-Prim Awla tal-Qorti Civili u l-Qorti Kostituzzjonali biss jistghu jittrattaw kwistjoni bħal din, li għandha tigi riferita fil-Prim Awla jekk tinqala' f'xi qorti oħra. Wisq aktar mela dan it-Tribunal, li huwa tribunal amministrattiv, ma jistax jittratta dan l-aspett kostituzzjonali tal-kwistjoni prezenti; li jhalli għal parti nteressata jekk tridx tieħdu quddiem qorti kompetenti, fejn setgħet marret anke qabel.

17. I.L.O. L'ILO tipprovdi charters li jiddefendu x-xogħol u l-haddiem fil-pajjizi membri. Il-Convention No. 87 ta' l-International Labour Office, li giet adottata fid-9 ta' Lulju, 1948, aktr: tard giet ratifikata minn Malta. Din hija magħrufa bħala the Freedom of Association and Protection of the Right to Organise Convention, 1948. F' din il-Convention, ta' min jinnota speċjalment dawn il-provvedimenti :

- (a) article 3.2. The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.

- (b) Article 4. Workers' and employers' organisations shall not be liable to be dissolved or suspended by administrative authority.
- (c) Article 8.2. The law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention.

Dan juri, li, fil-hsieb "internazzjonali" ta' l-I.L.O., anqas l-aqwa awtoritajiet tal-pajjiz (public authorities, administrative authority, the law of the land) ma ghandhom ifixklu dan id-dritt b'ebda mod. Mela wisq anqas dan id-dritt ma ghandu jigi mfixkel minn xi awtorita' li hija anqas mill-aqwa awtoritajiet tal-pajjiz, bhal ma hu per ezempju l-Management tal-Malta Drydocks.

18. Testi awtorevoli : Il-ktieb "International Labour Standards", mahrug mill-ILO (Geneva 1978), ipoggi bhala l-ewwel fost il-Basic human rights dik li hija "Freedom of association", u jghid illi "The ILO has always attached particular importance to certain basic human rights which constitute an essential element in all action designed to improve the conditions of workers. These are dealt with in the Conventions and Recommendations on freedom of association, freedom from forced labour, and freedom from discrimination." L-istess ILO harget ktieb iehor dedikat interament ghal dan id-dritt uman. Dan jismu "Freedom of Association" (Geneva 1972, 1976), u fih jissommarizza decizjonijiet tal-Kumitat fuq Freedom of Association tal-Governing Body ta' l-ILO. Dan il-ktieb juri kif jahsbuha esperti speċjalizzati fuq dan is-suggett. Fost hafna hsibijiet ohrajn, ta' min jinnota partikolarment dawn:

- (1) "The Committee has stressed that, while both workers and employers generally have an interest in preventing

the multiplicity of the number of competing organisations, consideration does not in itself seem sufficient to justify direct or indirect intervention by the State, and that, while it fully understands a government's desire to promote a strong trade union movement, trade union unity imposed by the government runs counter to the principles of Convention No. 87."

(2) "Generally the fact that a government is able to grant the occupation of premises to a particular organisation or to evict a given organisation from premises which it has been occupying in order to grant them to another organisation may, even if this is not intended, lead to the favourable or unfavourable treatment of a particular trade union as compared with others, and in this way constitute an act of discrimination. More particularly, by according favourable or unfavourable treatment to a given organisation as compared with others, a government may be able to influence the choice of workers as to the organisation which they are going to join. Further, a government which deliberately acted in the above manner would also violate the principle laid down in Convention No. 87, that the public authorities shall refrain from any interference which would restrict the rights provided for in the Convention or impede their lawful exercise; more indirectly it would also violate the principle that the law of the land shall not be such as to impair, nor be so applied as to impair, the guarantees provided for in the Convention. The Committee has expressed the view that it would seem desirable that, if a government wishes to make available certain facilities to trade union organisations, these organisations enjoy equal treatment in this respect. "

(3) "Freedom of association implies not only the right for workers and employers to form freely associations of their own choosing but also the right, for the industrial associations themselves, to pursue lawful activities in defence of their occupational interests."

Kif naraw, l-ILO dejjem tahseb biex turi li ndhil minn gvernijiet ma ghandux isir. Mela kemm aktar ma ghandux isir tfixkil ta' dan id-dritt minn min hu anqas minn gvern. Minn ktieb iehor, "International Labour Law" (pubblikat fl-Olanda fl-1979), miktub mill-Prof. Nicolas Valticos, Assistent Direttur-Generali ta' l-ILO, insibu dan il-kumment fuq il-Convention No, 87 dwar "freedom of association" :

"Finally, when it refers to 'organizations of their own choosing' the Convention requires that there should be freedom of choice as to the organizations which workers, in particular, may wish to establish or which they may wish to join. Any legal provision which would limit or refuse such freedom of choice at the plant or at the occupational or national level would be at variance with the basic principle of the Convention. Serious difficulties are met, in this connection, especially with the system of trade union monopoly imposed by law which exists in many countries, where the legislation allows for the existence of only one organization for a particular category of workers. Although it is not the purpose of the Convention to make trade union diversity an obligation, the Convention requires this diversity to remain possible.

The system of trade union monopoly is often linked with the economic, social or political conditions or systems of the countries concerned and has been explained by various reasons such as the desire to avoid a multiplicity of unions, especially in the case of newly independent States which refer in particular to a concern to avoid a dispersion of efforts in national development."

Ikompli jghid Prof. Valticos, fil-paragrafu 177 ta' l-istess ktieb:

"As regards the dangers deriving from a multiplicity of unions, it would not be incompatible with Convention No. 87 that the most representative trade unions be recognized as having certain special rights, principally with regard to collective bargaining, provided that the determination of the most representative trade union organizations is made in an objective and independent manner, that it can be reconsidered periodically and that it does not affect the right of other trade unions to function in a normal way."

Insibu l-quddiem, fil-paragrafi 184 u 187 tal-ktieb ta' Prof. Valticos :

"The Convention provides for an additional guarantee (Art. 4) by declaring that workers' and employers' organizations shall not be liable to be dissolved or suspended by administrative authority. The purpose of this provision is to ensure that dissolution or suspension are surrounded by the requisite guarantees which are normally ensured by judicial procedure."

"Moreover, in a general provision (Art. 11), the Convention specifies that States which ratify this instrument undertake 'to take all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organize.'"

Fl-ahharnett, ghal dik li hija s-sahha ta' l-opinjoni mondjali fuq hwejjeg ta' xoghol u trade unions, ta' min jinnota xi jghid l-istess Prof. Valticos (li hu nnifsu huwa awtorita' mondjali fuq dan is-suggett):

"In conclusion, it (an ILO Study Group) also pointed out that there are unequivocal world standards in labour and trade union matters and in respect of the civil liberties which are relevant to trade union rights, and that 'no State is bound contractually by any of these standards unless it has ratified the appropriate instrument, but no State can escape comparison with them'." (Op. cit. 641, and International Labour Standards, A Workers' Education Manual, ILO, Geneva, 1978).

19. Isibijiet tat-Tribunal. It-Tribunal mix-xhieda u d-dokumentazzjoni kollha ma jsibx li d-Drydocks urew b'ebda mod li kien hemm, jew li nholqot, xi raguni li setghet tiggustifika c-cahda ta' rikonoxximent lill-Union fit-30 ta' Settembru, 1978. Fost dawn ir-ragunijiet li ma kienx hemm, anqas ma intwera li kien hemm xi raguni ohra li ghall-inqas b'konswetudni trade-unjonistika hija maghrufa bhala li tiggustifika r-rikonoxximent ta' union wahda flok ohra (per ezempju, min jirrapprezenta l-maggoranza f'certa kategorija ta' mpjegati). Ghalhekk, fuq il-pjan oggettiv, it-Tribunal ma jidhirlux li d-Drydocks kellhom ghaliex jichdu r-rikonoxximent lil din il-Union. It-Tribunal jifhem ix-xewqa tad-Drydocks, issa li huma taht it-tregija ta' l-istess haddiema, li kulhadd ikun fl-istess union fejn hemm il-maggoranza tal-haddiema. Izda quddiem it-Tribunal ma giex ippruvat illi verament ghandhom jonqsu l-kooperazzjoni, il-progress, u l-produttivita' jekk certi grades, li waqt li huma mpjegati huma wkoll managers, ikunu rrapprerentati minn Union diversa minn dik tal-haddiema l-ohrajn. Infatti, sa fejn gie muri, l-istess GWU talbet "full recognition", u mhux "sole recognition" fl-ittri taghha, ghad li wara, waqt ix-xhieda tieghu quddiem dan it-Tribunal (6/5/80), is-Sur George Agius sostna li ghalihom "full" tfisser "exclusive" u c-Chairman

qallu li wahdu hu dik il-kelma ma kienx jifhimha hekk. Fil-fehma tat-Tribunal, "full" ma tfissirx "exclusive".

20. Dwar id-dritt fundamentali li wiehed jissieheb. Dwar dan, hemm tlett aspetti li jagghu fil-kompetenza ta' dan it-Tribunal:

- (1) Li dan id-dritt huwa protett mill-Convention No. 87 ta' l-I.L.O.
- (2) Li fil-fatt il-Union ma bbazatx il-kaz taghha principalment fuq dan id-dritt.
- (3) Jekk cahda ta' rikonoxximent hijiex cahda ta' dan id-dritt.

Niehdu allura dawn l-aspetti wiehed wiehed:

- (a) Intqal diga', taht para. 18 hawn fuq, li t-Tribunal jifhem (u allura jissimpatizza ma') ix-xewqa tad-Drydocks li jkollhom union wahda, avolja dawn ma ppruvawx li bis-senior staff b' union ghalihom il-hidma tad-Drydocks ma ghandiex timxi sewwa. Huwa maghruf ukoll li hija l-policy tal-Gvern li d-Drydocks jipproducu, jirnexxu, u jagghilu kemm jista' jkun. U taht l-artikolu 32 ta' l-att ta' l-1976 dwar Relazzjonijiet Industrijali dan it-Tribunal huwa marbut li jqis kull politika bhal din tal-Gvern, u "ghandu jara li jigi zgurat li s-sentenza, id-decizjoni jew il-parir tieghu jghinu ghat-twettiq ta' kull politika u pjani bhal dawk." Izda, kif intqal, ma giex ippruvat li, jekk titkompla r-recognition lil Union DSESU, il-vijabilita' tad-Drydocks ser titfixkel.

- (b) Li l-Union ma bbezatz il-kaz taghha principalment fuq dan il-jedd fundamentali jidher mill-istatement of case taghha, fejn dan id-dritt u t-Taqsima 43 tal-Kostituzzjoni jissemmew biss fil-para. 3.4 fil-pagina 3, taht "Sfond Storiku" . Izda t-Tribunal ghandu jfittex li jaghmel haqq, u mhuwiex marbut li joqghod fuq dak biss li jghidu l-partijiet, ghad li huma marbutin li dak li jghidu jippruvawh. Ghalhekk, it-Tribunal iqis li, fil-kaz prezenti, dan il-punt ta' dritt ta' shubija huwa ta' importanza kbira.
- (c) Fuq jekk cahda ta' rikonoxximent hijiex cahda ta' dan id-dritt l-opinjoni tad-Drydocks tohrog cara mill-para. 9 ta' l-istqarrija finali taghhom, maghmula fit-Tribunal fis -17 ta' Gunju, 1980, li tghid hekk:

"Ghalhekk wiehed ma jistax jifhem kif l-interest ta' dawn is-60 persuna jista' b'xi mod jigi nfixkel jekk dawn ikunu jappartjenu lill-Union rikonoxxuta, jew inkella jekk iridu jibqghu fl-istess Assocjazzjoni minghajr dritt ta' rapprezentanza tal-Assocjazzjoni. Huwa fatt li diversi haddiema ta' intraprizi ohra jkunu membri ta' Union li ma tkunx rikonoxxuta."

It-Tribunal jaqbel u ma jaqbilx ma din il-veduta. Huwa minnha li haddiema ta' intraprizi ohra jistghu jkunu membri ta' Union li ma tkunx rikonoxxuta. Izda hawn ghandna quddiema kaz ta' mpjegati li huma membri ta' union li kienet rikonoxxuta u ma baqghetx ghall-ebda raguni valida. F'din is-sitwazzjoni, it-Tribunal ihoss li, li wiehed jichad rikonoxximent lil union li qabel tkun rikonoxxuta u dan minghajr raguni valida, huwa fil-fatt tfixkil tad-dritt ta' tishib. Ilhux bizzejjed li l-employer jghid li l-impjegati jekk iridu jistghu jibqghu fl-istess union minghajr dritt



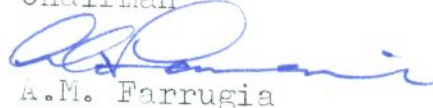
ta' rapprezentanza. Ir-raison d'etre kollu ta' din il-Union f'dawn ic-cirkostanzi kien, u ghadu, li hi tirrapprezenta l-interessi tal-membri taghha (li ghal dan il-ghan iridu lilha biss) mal-Management tad-Drydocks. Jekk teqred dan, in effett qed teqred il-Union, u t-Tribunal jidhirli li dan ikun kaz car ta' ksur tal-Convention No. 87 ta' l-ILO.

21. Konkluzjonijiet. Mela quddiem dan it-Tribunal ma giex muri li kien hemm ebda raguni valida biex jiccahhad ir-rikonoxximent tal-Union (Ghaqda Ufficjali Anzjani tat-Tarnza) mid-Drydocks, u ghalhekk fic-cirkostanzi kollha din ic-cahda tilledi d-dritt li wiehed jissieheb f'liema ghaqda jrid.

22. AWARD. It-Tribunal ghalhekk jaghlaq din il-kwistjoni tax-Aoghol billi jordna lid-Drydocks ta' Malta li jergghu jirrikonoxxu lill-Union (Ghaqda Ufficjali Anzjani tat-Tarnza) retroattivament ghad-data 30 ta' Settembru, 1978, u jergghu jiffurnaw relazzjonijiet normali f'kull rispett ma' dik il-Union. Dan minghajr pregudizzju ghal Prattika generali ezistenti ta' rikonoxximent, negozjati u/jew konsultazzjoni na ghaqdiet ohra b'interessi fl-istess azjenda.



C.J. Mallia  
Chairman



A.M. Farrugia



A.J. Baldacchino  
Members.

A. Bartolo Parnis  
Segretarju

31 ta' Lulju 1980.