TRIBUNAL INDUSTRIJALI

DECIZJONI NRU. 683

KAZ NRU. 561

Fil-Kwistjoni tax-Xoghol

bejn

Leonard Agius

u

Farmers' Central Co-Operatives
Society Ltd

dwar tkeccija mill-impjieg
allegata li hi ngusta

Data : 12 ta' Frar, 1996

Chairman : Is-Sur Maurice J.V. Bonello M.B.E.

PRELIMINARI

Dan il-kaz gie riferit lit-Tribunal mill-Ministru tal-Politika Socjali permezz tal-ittra tas-27 ta' Gunju 1990, skond il-provvedimenti ta' sezzjoni 28(2) tal-Att tal-1976 dwar ir-Relazzjonijiet Industrijali.

Leonard Agius kien assistit l-ewwel minn Dr. Joseph R. Micallef LL.D., li wara xi zmien irrinunzja ghall-patrocinju ta' Agius, imbaghad minn Dr. Jose' Herrera li deher darba u fl-ahhar mill-Onorevoli Dr. Karmenu Mifsud Bonnici LL.D. M.P.

Is-Socjeta' kienet assistita minn Dr Ivan Gatt LL.D.

It-Tribunal zamm seba' u ghoxrin seduta.

Leonard Agius kien gie mpjegat bhala "full time" manager mas-Societa' appellata, b'kuntratt ta' mpjieg ghal zmien indefinit

b'sehh mill-ewwel ta' Jannar 1987. Skond paragrafu 6 ta' dan il-kuntratt kien hemm provvidement illi fil-kaz li kienu jinholqu xi diffikultajiet bejn is-Societa' u Agius b'mod illi dan tal-ahhar kien isibha difficli jew impossibbli li jaqdi d-dmirijiet tieghu, l-imsemmi Agius kellu javza bil-miktub b'dan lill-Kumitat tat-Tmexxija tas-Societa u sakemm kien jinstab Manager gdid f'perjodu li ma kellux jiccedi xahrejn mid-data ta' l-imsemmija ittra, Agius kellu jibqa' jircievi l-istess salarju u allowances fl-interita' taghhom, u wara li jinstab manager gdid, Agius kellu jibqa' jahdem mas-Societa' bhala skrivan jew f'kariga ohra,skond kif jiftehmu z-zewg partijiet, bil-paga/salarju ta' tlett kwarti ta' Lm4,500 jew tas-salarji korrenti fid-data illi Agius jispicca minn Manager - liema mit-tnejn kien l-ghola.

Fil-bidu ta' Awissu 1989, Agius gie ordnat mit-tabib tieghu biex jieqaf mix-xoghol ghal xi gimghat. Fl-assenza ta' Agius, il-kumitat amministrattiv tas-Societa' ddecieda illi zzomm lil Agius milli jerga' jidhol ghax-xoghol. F'Ottubru tal-1989, Agius gie mgharraf illi kien mnehhi mill-kariga ta' Manager u li kien gie mahtur skrivan mas-Societa' u xorta wahda pprojbit milli jersaq lejn il-post tax-xoghol. Wara protesti gudizzjarji, Agius gie mgharraf illi d-decizjoni msemmija fuq kienet giet revokata u li kien ghadu jitqies bhala Manager. Jumejn wara Agius kien gie nformat fit-28 ta' Marzu 1990 illi l-impjieg tieghu kien gie terminat b'effett mill-istess data.

RIZULTANZI

L-istorja bdiet fl-istagun tal-1989. Kien stagun fejn kien hemm abbundanza eccezzjonali ta' tadam fil-fabbrika tal-ipprocessar

fil-Marsa, appartinenti ghas-Societa' u mmexxija minn Leonard Agius ma setghetx tlahhaq ma' din il-kwantita' daqshekk kbira, ta' tadam. Per konsegwenza ammont kbir ta' tadam baqa' mhux processat u kellu jintrema. Sar rapport minn zewg membri tal-Bord tal-Ko-operattivi tal-Gvern, is-sur W. Garroni u s-sur A. Walker. Dan ir-rapport huwa ferm sinjifikattiv u rilevanti. Hawnhekk it-Tribunal qed jikkwota in extenso u verbatim estratti minn dan ir-rapport ufficjali:-

"Thousands of crates with crushed and rotten tomatoes, covered with flies and full of bacteria were in the yard whilst a truck was unloading more crates with crushed and rotten tomatoes. About two thousand crates with tomatoes in more or less identical condition were rotting in the store. We reckon there were about four to five thousand of such crates in the factory, without taking into account those crates in stock at Ta' Qali.

The processing of tomatoes was in the meantime going on and we saw rotten tomatoes in the production line, tomatoes which could by no stretch of the imagination be considered edible.

According to Leonard Agius with whom the President concurred, the reason for this disaster was due to several factors.

1. The production could not keep up with the volume of produce delivered from Ta' Qali.
2. At one time the factory was left without water.
3. There was an energy failure on another occasion.
4. Lack of fuel.
5. A slow down in the boiler due to a leakage.

We are of the view that with foresight, initiative and good managment this disaster could have been, if not all, at least partially avoided. Management was aware that this year the intake of tomatoes was going to be high. This is not an unpredicted situation as there have been other seasons when tomatoes reached record heights. It appears taht management did not take any steps to meet such a situation by recruiting in time temporary workers and to extend the working hours of the staff as was done on previous occassions.

It was alleged that power failure and lack of water slowed down production while tomatoes were still being delivered. Asked why no vigorous action was taken with higher authorities other than a simple telephone call, Mr Agius had no reply to give. It was pointed out that such a disastrous situation warranted even the interventions of ministers. The reply given by the bowser section of the Water Works Department and which apparently satisfied the Manager was "You are not the only people requiring water".

Ir-rapport ikompli hekk:-

"We had not been shown last year's boiler certificate and we understand that no inspection on the boiler was made this year and no certificate issued. It was confirmed that the fault indicated in last year's report was not repaired not withstanding that for 9 months the machines were idle. No explanation was given for this omission.

Asked why only 2 days supply of fuel was stored at the factory, Mr Agius replied that he was afraid to have more fuel stored at the

factory in view of fire hazards. In our view this is a banal excuse and indicates lack of foresight and bad management. Here again action to have the required fuel was weak. Mr. Agius seemed to be happy with the excuse furnished by minor staff instead of raising hell with higher authorities.

To our surprise, we were told that only two production runs were made in one day where normally between six and eight runs were made previously.

Asked why the technician was not taken into management confidence to see whether anything could be done to improve production, the manager had no reply. It transpires the technician and management were not on good terms and Salvu Xuereb was being ignored completely.

Asked whether he had any remedial measures to suggest Salvu Xuereb did not agree with management that a shift in time-table would improve matters. He suggested that rotten tomatoes be discarded immediately. In fact such tomatoes were blocking the filters and slowing down further production. He further suggested that production runs be increased from 2 to 6/8 per day with workers working up to 10p.m. These suggestions could have been carried out earlier had management taken Xuereb into its confidence.

Another very worrying factor is the condition of the tomatoes reaching the factory. First of all, no record is kept at the factory of the amount of tomatoes received. The manager promises to introduce control measures in this respect. Secondly, the tomatoes are stored in crates unsuitable for such purpose and to make matters worse no precautions were taken to protect the pro-

duce from pressure exerted by the crates stacked on top. As a result the tomatoes are reaching the factory in a crushed conditon with tomato juice oozing out of the crates on the way from Ta' Qali to Marsa. According to information submitted by Mr. Leonard Agius on the 7th of August 1989, it transpires that the total of tomatoes delivered from Ta' Qali to Marsa between 15th June 1989 to 26th July 1989, amounted to 272355 kilos. This should theoretically give (at a yield of 1:5) 54471 kilos of tomato paste. In fact, according to the production record kept by Mr Agius a total of 2045 cases were produced during this period which should amount to 89264 kilos of tomato paste. This leaves a shortfall of 15207 kilos (tomato paste) equivalent to 76035 kilos of tomatoes".

It-Tribunal qed jikkwota "in extenso" minn dan ir-rapport li jgib id-data tas-7 ta' Awissu 1989, il-ghaliex sar minn zewg persuni li huma ferm intizi f'dan is-suggett, is-sur Garroni infatti, huwa ex-Direttur tal-Agrikoltura.

Aparti minn dan ir-rapport saret inkjesta formali taht ic-chairmanship tas-sur Karmenu Libreri. Fix-xhieda tieghu, is-sur Libreri ma' ppezentax kopja tar-rapport rilevanti lit-Tribunal ghax dak kien kunfidenzjali. Pero', is-sur Libreri ghamilha cara illi r-rapport kien dwar is-sitwazzjoni finanzjarja tal-Ko-operattiva u mhux dwar il-kondotta tas-sur Agius. Is-sur Libreri ghamel rimarka rilevanti wahda "ir-responsabilita' ta' dan il-frakass fl-F.C.C.S. ta' min kienet, jiena ndikajtu (Leonard Agius) f'termini generali u ghedt li l-kolpa kienet, sa hawn meta nghid, ta' kulhadd, imqassma fuq kulhadd".

It-Tribunal kien talab kopja ta' dan ir-rapport minghand il-

Ministeru koncernat, pero' ir-risposta kienet illi dan ir-rapport kien kunfidenzjali u li ma kienx hemm konnessjoni bejn il-kontenut tar-rapport u l-kaz li Agius kien qed jaghmel quddiem it-Tribunal. Kif intqal fl-ewwel parti ta' din id-decizjoni, Agius kien down-graded minn Manager ghal skrivan. Huwa kien ghamel kawza kontra l-F.C.C.S. fejn ipprotesta kontra dan l-agir u l-Qorti sabet favur tieghu u taghtu Lm345 bhala kumpens. Fil-mori ta' din il-kawza, Agius gie ri-integrat fil-post ta' manager, ghalkemm l-impjieg tieghu mal-Ko-operattiva gie terminat ftit wara. Jigifieri, Agius tnehha mill-post ta' manager. Agius kien ukoll ghamel kawza kontra F.C.C.S. fejn allega illi kienu injoraw is-sentenza ta' l-ewwel Qorti, pero' l-Qorti ma sabitx lill-F.C.C.S. hatja kif kien qed jitlob Agius.

KONSIDERAZZJONIJIET

It-Tribunal ikkonsidra profondament u fit-tul ix-xhieda kollha li nstemghet flimkien mad-dokumenti esebiti. Huwa fatt innegabbli illi fl-istagun tal-1989 u cioe' fix-xhur ta' Gunju u Lulju, kien hemm disastru shih fil-fabbrika tal-F.C.C.S. il-Marsa, li kkawza telfiet kbar. Il-Kumitat tal-F.C.C.S. kien akkuza lil Leonard Agius b'diversi nuqqasijiet li kienu allegatament, il-kawza ta' din is-sitwazzjoni.
It-Tribunal jaghti hafna mportanza lir-rapport tas-sinjuri Garroni u Walker. Sinjifikanti wkoll kienet ir-rimarka tas-sur Karmenu Libreri meta xehed illi "l-kolpa kienet ta' kulhadd."
It-Tribunal hu tal-opinjoni illi dawk iz-zewg rapporti jindikaw illi "management as a whole" kienu responsabbli ghas-sitwazzjoni

li sabet ruhha fiha l-fabbrika, imma li Leonard Agius, bhala l-manager "in situ" kellu l-akbar sehem tat-tort peress illi ma weriex dik il-kapacita' u dik l-inizjattiva mitluba minn persuna li ghandu r-responsabbilita' f'idejh tat-tmexxija ta' fabbrika. Jidher car illi l-fabbrika kellha bzonn ta' tmexxija professjonali u li Leonard Agius, ex-impjegat tat-Tarzna ma kienx il-persuna idejali biex jokkupa dan il-post, ghax ghalkemm teknikament kien jifhem f'dak li hu makkinarju, ma kienx attrezzat fix-xoghol ta' amministrazzjoni u tmexxija jigifieri 'management'.

DECIZJONI

Ghalhekk it-Tribunal qieghed jikkonkludi illi t-terminazzjoni tal-impjieg bhala manager ta' Leonard Agius ma kientx ingusta.

Ghal finijiet tad-drittijiet li jithallsu skond A.L. 48 tal-1986, it-Tribunal qieghed jiffissa l-hlas ta' Erbghin Liri Maltin (Lm40 lil kull wiehed miz-zewg difensuri li assistew lill-partijiet.

B'hekk tintemm din il-Kwistjoni tax-Xoghol.

Maurice J.V. Bonello
CHAIRMAN

Edwin Spiteri
SEGRETARJU

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