INDUSTRIAL TRIBUNAL

DECISION NO. 874

Case No. 926

Trade Dispute

between

Joseph Fleri Soler

and

British High Commission

regarding dismissal alleged to be unfair

Date : 3rd October, 1997

Chairman : Dr. Joseph P. Bonnici LL.D.

Introduction

By a letter dated 3rd April, 19965, the Hon. Minister for Education and Human Resources referred the above mentioned case to this Tribunal to be decided according to Chapter 266 of the Laws of Malta.

In his letter to the Hon. Minister dated 3rd April, 1995 appellant alleged that he was unfairly dismissed from his job, and that redundancy was unfounded, and the relative provisions of the law were not observed in the circumstances.

In his statement of case, appellant states he was informed in writing that his employment was going to be terminated

on the 7th April, 1996, on certain conditions. He accepted such termination. However, two (2) days later, due to a _____ the year was 1995 not 1996. His employment was terminated on on the _____of redundancy which reason was not acceptable. For his work was being done by others. If the case was of _____ personnel, then he should not have been dismissed but another.

In its reply, the British High Commission replied that the redundacy of appellant was part of a global ____effect new employment structures and improved computer facilities. Ad_____there was another employee who was employed after him. But due to lack of computer know how and merging of posts, he was chosen for redundancy.

Evidence

Appellant gave his evidence in the sitting of the 31st July, 1995, and 29th September, 1995 and cross-examined in the same sitting and 12th January, 1996, and 1st March, 1996. He stated that he had accepted and signed a letter of _____dated 27th March, 1995 stating that his employment was going to be termianted on the 17th April, 1996, On being corrected to 1995 he refused to accept it. His employment was terminated forthwith. Moreover, if his case was one of genuine redundancy, it was not his

turn - there were others who were junior to him.

Mr. Leslie R. Dalyrimple gave his evidence by affidavit dated 12th July, 1997 wherein he gave the sequesnce of events which _____to the present dispute under examination.

Vincenze Agius, produced by appellant gave his evidence on the 6th December, 1996. She spoke on the _____of redundancies, and how these were treated.

Vincent Bonnici and John Abela gave their evidence on the 27th February, 1997. Vincent Bonnici stated that they knew about the pending redundancies. He recollected that appellant and Anthony Tonna had approved the order that their redundancy was to be effective one year in _____,namely _____to what they had agreed to, and since it was not their turn to be made redundant. The impression that was given to them was that the introduction of compensation was meant for efficiency, not substitution of workers.

John Abela stated that he joined the British _____ Office from the British High Commission. He was informed of ___pending redundancies. Any vacancies at the British High Commission were not ifilled by British _____office personnel.

Considerations

1) First and foremost, and since parties agree to it, the British High Commission is considered as being the employer of appellant. Moreover, the British _____office is considered as forming part and panel of the British High Commission, and not plea was given in this sense *liniae litis.*

2) Secondly, it is not enough for a principal to _____ the plea of redundancy _____ et cimpliciter. One redundancy has to be proved, and two according to CERA - Conditions of employement Regulation Act - its provisions are strictly adhered to, including the dimissal of the employee who was last engaged.

Appellant seems to have adopted a parodical attitude vis-a-vis his employer. He was _____enough to accept his employer's offer of terminating his employment with effect from the 7th April, but of the year 1996. He had signified his _____by signing the appropriate letter under the Items and conditions therein contained. No opposition was made on the _____of redundancy, no opposition was made on the basis of following the _____procedure to be adopted and stipulated by CERA.

Was it a typographical error that these were indi_____the year 1995 instead of 1996? Parte _____especially in labour relations. One is here dealing with the employment, a most delicate subject. It is the opinion of this Tribunal that appellant accepted a deferred termination of one year, even in view of his more than mature age. He was approacing the age of retirement. He had another year of employment, together with a fair offer and acceptance of termination bonus/gratuity. But being made redundant two years before his pensionable age, and _____in the part that others should have taken his place he resisted it.

In fact, such was the case. As per Dok GEM 1 exhibited on the 9th May, 1997 by British High Commission, appellant ___senior to several other employees including those working at the British High Commission proper. Bearing in mind that appellant was employed on the 1st June, 1982, Marie Anne Barthet Brown was engaged on 17th October, 1985, Joseph Debono 8th July, 1986, Sarah Jenkins - 13th February 1995, Robert Lanfranco - ;1st December, 1985, _____Micallef - 16th October, 1995, Joyce Sant - 21st July, 1986.

As this seem not to be enough there were other engagements after appellant's dismikssal Caroline Agius - 8th May,

1996, Isaac _____ - 12th June 1995. As regards Elaine L'formen who was employed on 3rd April, 1995, the job was only available on _____in view of availability of clarified information. Same were LE II and same were LE III, but as Mr. Leslie Dalrymple had stated in his affidavit, the differecne was negligible and were not important of all, interchangeable?

In view of his non-acceptance, appellant was dismissed, seniority not being taken in account, and no offer was made when his job was made non-redundant. This way of action surely goes against the provisions of CERA, which provisions have been in_____ both this Tribunal and by the ordinary _____ of the _____that they are of strict compliance, and, they provide the _____rights which are to be accorded for an employee. Redundancy is a most serious matter since it is not dependent on the employee himself, but it is an occurance which is beyond his control and totally available and excessible by his employer. This is why the law is strict in this matter. The employer should have followed strictly the law; after all, appellant had agreed to a deferred termiantion of one year.

In view consequently, that appelant had agreed to termination, and did not object to it, on the contrary he was totally aware of the consequences and fully

complied with it, the Tribunal cannot orfer reinstatement even this is treacherous ground to to roam about because no employee can, be made to accept amd/or infact accepts less than the _____rights which are attributed both by CERA and IRA. This is a matter of public policy from which no deversions. can be made, or are allowed to be made.

In view of the above, and considering the more than mature age of appellant the lack of probability of another job and taken into account the conditions of work appallant, including salary, the Tribunal awards appellant as compensation the amount of four thousand malta liri (Lm4,000).

The Tribunal decides this case by declaring that the employer unjustly dismissed appellant from his work, the agreement reached on the 27th March, 1995 was not adhered to and the rules applicable as to redundancy were not abided by in his regard and condemns the

This trade dispute is finally decided.

As regards fees due to legal counsel the Tribunal sets them at their maximum namely forty maltese liri (Lm40).