INDUSTRIAL TRIBUNAL

DECISION NO. 1256

CASE NO. 1353

In the Employment Dispute
between
Dr. Annette Butterweck
and
IBA (M) Ltd.
concerning alleged unfair dismissal
from employment.

Date : 21st January 2002

CHAIRMAN : Mr. George Borg-Cardona

This case was referred to the Industrial Tribunal by the Honourable Minister for Social Policy by a letter dated 24th June 1999 bearing reference MSP/TI/54/99 in terms of the provisions of Article 28 (2) of Chapter 266 of the Laws of Malta.

The Tribunal held 20 sittings.

Dr. Annette Butterweck, hereinafter referred to as the "appellant", was assisted by advocates Karmenu Mifsud Bonnici and Stefan Zrinzo Azzopardi, and IBA (M) Ltd., hereinafter referred to as the Company, was represented by Charles Saliba assisted by advocates Nicolai Vella Falzon and Paul Borg Olivier.

Appellant had been employed by the Company by contract dated 12th October 1998 (but with a commencement date of 2nd November 1998) as a scientist to carry out medical research involving cell culture. She was dismissed on 15th March 1999.

In her Statement of Case appellant claimed that she had been unfairly dismissed from employment. The Company maintained that it had terminated the employment of appellant on the grounds that :

1. she did not possess the administrative capabilities and did not show the initiative required for the post ;
2. in spite of special training sessions organized by the Company in Malta and in France, officials of the said Company reported that she did not possess the capabilities and experience necessary to direct the project successfully and that she was inefficient and careless in her work. As a result they recommended she be relieved of her post ;
3. she had a negative attitude and was arrogant and aggressive with directors of the Company when urged to perform her work better ;

4. several times she refused to carry out tasks she was requested to perform and particularly when on various occasions she was asked to sterilize the "cell biology area" ;
5. after a dispute with directors of the Company she left her place of work and, shortly after, a friend of appellant phoned a director of the Company and, in a violent and excessive manner, offended, threatened and insulted him.

During the hearing of the case and in its Final Submissions the Company brought up appellant's refusal to sign a confidentiality agreement as an important consideration in the decision to dismiss her.

The Tribunal examined in detail the reasons given by the Company to justify termination of the employment of appellant. From the evidence and from documents presented it resulted that with regard to the claims listed above :

a) re 1. the Company failed to prove that appellant did not possess the administrative capabilities and initiative required for the post. Prior to the signing of the contract she had been told that the laboratory would be ready in September. Although the contract was signed on the 12th of October 1998 the commencement date was indicated as 2nd November 1998 when the Company expected the laboratory to be ready. However up to the time of her dismissal in March 1999 she was still working in production as the laboratory was not yet fully equipped. Therefore she did not have the opportunity to prove her competence for the post and the Company was not in a position to assess her merits in this respect.
b) re 2. the appellant claimed that the alleged training sessions in Malta were two occasions on which she did some work with Dr. Serrar. These were limited in duration and scope and the element of training was negligible. Furthermore the visit to France was programmed even before she was employed and, at the end of the visit, Gilles Gutierres proposed she took up employment with ICP. This indicated that he was satisfied with her work.
The Tribunal noted that Dr. Serrar and Dr. Gutierres gave evidence by affidavit and they were not subjected to cross examination with regard to their testimony as were appellant and other witnesses. Appellant presented notes, confirmed on oath, indicating inaccuracies and inconsistencies in the affidavits which were not contested by the Company. No proof was produced by the Company to substantiate that she was inefficient and careless. The Company was not in a position to state that she did not possess the capabilities and experience to direct the project successfully as it did not yet have the facilities required to implement it. In fact her qualifications and previous experience indicated otherwise.
Despite the alleged recommendations by foreign directors that she should be relieved of her post no action was taken and no written warning was given with regard to the alleged failings. Appellant claims she was never given any verbal warnings in respect of the shortcomings alleged by the Company. Also, on the very eve of her dismissal she was entrusted to handle cells which had been brought over by Dr. Serrar. She did the necessary work in his presence and claims that he told her "---- obviously you did this in France and you did this at the

University many times and you can do the rest -----". It is unlikely that the Company would entrust a task, described by it as very important, to an employee considered inefficient and careless and in respect of whom it had already been decided that she was to be relieved of her post.

c) re 3. the Company did not provide any conclusive evidence to substantiate its claim that appellant had a negative attitude and was arrogant and aggressive with directors when urged to perform her work better. The few instances mentioned by the Managing Director were emphatically denied by appellant. During the period of her employment with the Company she was engaged mainly on production work and not on research work for which she had been employed. With regard to her attitude it results that she agreed to work in production. The officer in charge of production and maintenance stated in evidence that she was cooperative and every time she stood in for him her performance was satisfactory. He added that they both had reason to complain that more equipment was needed and that the equipment available was not adequate to carry out the work expected of them. It results that there were some arguments between appellant and the Managing Director as to the type of equipment which should be provided for the laboratory but it was not shown that appellant was arrogant or aggressive and these must be construed as disagreements between professionals with the Managing Director having the final say. The Company claimed that initially there was a good relationship between appellant and the Managing Director but this progressively deteriorated putting all the blame on the appellant. Allowance has to be made for the frustration suffered by appellant because of the undue delay in providing the laboratory facilities required for her to be able to carry out the research work for which she had been engaged and which she had been told would be available when she commenced work.

d) re 4. no specific instance was mentioned with regard to the alleged several times she refused to carry out tasks she was requested to perform. As to the various occasions on which she refused to sterilize the "cell biology area" only one specific instance was raised by the Company. This particular case occurred while an international conference was being held in Malta. Appellant had been requested to present a paper on behalf of the Company and she was reluctant to do so on the grounds that this paper had already been presented at a conference in Nottingham and the participants would be largely the same. The Managing Director insisted that this was very important for the Company and appellant accepted to present the paper and was duly registered as a participant in the conference. On the eve of the conference, while on her way to attend same, she phoned the Company and was told by Joseph Caruana that the Managing Director had left her instructions to disinfect the floor of the laboratory area. Although she was dressed for attendance at the conference and felt that the task could have been done by someone else she carried out the instructions and then proceeded to the conference. It results that she showed some resentment but still obeyed the instructions as communicated to her by Joseph Caruana.

e) re 5. it does not result that appellant left her place of work after a dispute with the directors. She stated that she left the conference with Dr. Serrar and went to the Company premises to place the cells, brought over by him, in the incubator. When

this was done she informed the Managing Director that she was leaving and he wished her good luck for the presentation of her paper at the conference on the morrow. He confirmed this in his evidence.

It was established that appellant's fiancé phoned the Managing Director after she told him that she went late to the conference because she had been instructed to wash the floor. He admitted he was angry and phoned the Managing Director although appellant asked him not to do so. He stated that he asked whether appellant had been employed as a maid to wash floors but got no reply except that it was not his business. When he insisted the Managing Director told him to inform appellant "not to come tomorrow" which he interpreted as a dismissal from work. He denied that he threatened the Managing Director, that he insulted him and that he used abusive language.

The final plea of the Company to justify dismissal was appellant's refusal to sign a confidentiality agreement. The Company claimed that because of a leak of confidential information all employees were requested to sign a confidentiality agreement. It claimed that none of the employees objected and only appellant refused to sign such agreement. However Joseph Caruana stated that he was reluctant to sign as it was too technically worded and its import was so serious that he would have had to seek legal advice. In fact he was not pressed to sign it and never did so. None of the other employees was pressed to sign and the agreement was not signed by any employee. The Managing Director attributed this to the fact that "As things turned out, these were very aggressive contracts, our belief was that the leak or the potential leak had been eliminated from the company when Annette left ------" and therefore signing was not enforced. No proof was produced by the Company that appellant was responsible for any leak or any particular reason given why she should be considered as the only potential source of the leakage of confidential information. In any case appellant was bound by Clause 9. of her contract not to divulge any information whatsoever during her employment with the Company, or thereafter in perpetuity. Furthermore by Clause10. she was liable to dismissal and to be sued by the Company for any breach of the obligations imposed by the contract.

CONCLUSIONS

The Tribunal concluded that appellant had been employed by the Company to carry out medical research at laboratory facilities which had to be made available. These were not adequately equipped up to the date of appellant's dismissal. She cooperated by agreeing to perform production work and it is understandable that she was frustrated by the undue delay in furbishing the laboratory. Appellant had the qualifications and experience required for the post but was not given an appropriate opportunity to prove her competence. The Company failed to substantiate its claims that appellant was inefficient, careless, arrogant and aggressive, that she had a negative attitude and refused tasks she was requested to perform. Also she had no obligation to sign a confidentiality agreement after her engagement particularly as this aspect was adequately covered in the employment contract.

The Tribunal is of the view that the dismissal was brought about by the reaction of her fiancé when she told him she had been requested to wash the floor. Because of conflicting evidence it is impossible to determine what was actually said during the telephone conversation. Both appellant and her fiancé testified that she did not want him to phone the Managing Director and therefore she cannot be held responsible for the call or for what was said.

Appellant must accept some blame for telling her fiancé that she had been asked **to wash the floor** and not that she had been requested **to disinfect the floor** when she knew there was quite a difference between these descriptions. In the circumstances appellant, with some reason, and particularly at a time when she was on her way to the conference, felt she should not have been set such a task. It was however a legitimate instruction by the Company and was carried out by appellant. The resulting phone call and the unpleasantness caused may have merited a warning but did not warrant dismissal and should not have led to such drastic action.

This Tribunal has emphasized often that dismissal is an extreme punishment and should only be inflicted when there are very serious or repeated shortcomings that justify such action and, except for the worst offences, after an employee has been warned that failure to correct these may lead to termination of employment.

DECISION

The Tribunal decides that there was not good and sufficient cause for termination of employment and orders the Company to pay appellant the sum of LM 2000 (two thousand Maltese liri) by not later than the 28th of February 2002.

For the purposes of Legal Notice Number 48 of 1986 the Tribunal assesses the dues payable to the persons who assisted the parties at Lm 40 (forty Maltese liri).

This Employment Dispute is thus finally determined.

George Borg-Cardona
Chairman

Emma Muscat
A/Secretary