

Fit-Tribunal Industrijali

Kaz Nru 2199/JB

Fuq il-kwistjoni tax-xoghol bejn:

Ritianne Bajada

U

Underwear Limited

Dwar allegazzjoni ta' trattament
diskriminatorju

Decizjoni Nru. _____

Illum, _____ ta' Ottubru 2006.

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

Introduzzjoni

Illi r-rikorrenti talbet lil dan it-Tribunal sabiex jinvestiga l-kaz taghha ta' allegat trattament diskriminatorju mill-principal taghha Underwear Limited u dana bi ksur tat-termini indikati fl-Artikolu 26 (2) tal-Kap 452 tal-Ligijiet ta' Malta.

Da parti taghha s-socjeta` intimata rribadiet l-istess allegazzjonijiet u allegat fil-konfront ta' l-istess rikorrenti illi minhabba n-nuqqas ta' "performance" taghha stess u esigenzi tas-servizz kienet kostretta illi tibdel ix-xoghol taghha stess.

Fatti

Bhala fatti dawn ma gewx kontestati bejn il-partijiet. Giet impjegata bhala salesclerk, bdiet taħdem fuq il-kompjuter bhala cashier umbagħad wara certu zmien ingħatat xogħol ta' hasil ta' l-art u sussegwentement anke bhala storekeeper.

Is-società intimata kellha tiegħi dawn il-passi drastici flok titttermina l-impjieg tar-rikorrenti u dana minhabba sja esigenzi tas-servizz u sja minhabba illi l-isforz u l-output ma kienx wiehed desiderabbli.

Konsiderazzjonijiet

Illi r-rikorrenti qed tikkontribwizzu t-talba tagħha skond kif hemm stipulat fl-artikolu 26 (2) tal-Kap 452. Dana jgħid illi “for the purposes of this article discriminatory treatment shall include:

- a) the engaging or selection of a person who is less qualified than a person of the opposite sex unless the employer can prove that the selection was made on acceptable grounds related to the nature of the work or on grounds of previous work and performance and experience.
- b) actions which apply to an employee terms of payment or employment conditions that are less favourable than those who apply to an employee for the same work or work of equal value on the basis of discriminatory treatment.
- c) actions whereby the employer knowingly manages the work and distributes tasks or otherwise arranges the working conditions so that an employee is assigned a clearly less favourable status than others on the basis of discriminatory treatment.

Il-frazi “discriminatory treatment” hija definita fl-Att 2 (1) tal-istess Att u dana jghid “any distinction, exclusion or restriction which is not justifiable in a democratic society including discrimination made on the basis marital status, pregnancy or potential pregnancy, sex, colour, disability or religious conviction, political opinion or membership in a trade union or an employers’ association.”.

Purament u strettament legali din l-azzjoni ghandha l-bazi taghha fuq l-Artiklu 26 (1b) li jghid “in regard to employees already in employment of the employer, to subject any such employees or any class of employees to discriminatory treatment in regards to conditions of employment.”

Ghalix l-Artiklu 26 (2) jaghti u jinkludi fid-definizzjoni tad-“discriminatory treatment” certu definizzjonijiet.

Illi jinghad li l-lament li kellha r-rikorrenti f’dawn il-proceduri kien illi nbidlilha x-xoghol fi tlett darbiet u allura tikkontendi illi l-principal kien diskriminatorju fil-konfront taghha.

Il-frazi trattament diskriminatorju jinvolti distinzjoni, esklużjoni jew restrizzjoni a bazi ta’ certu kondizzjonijiet indikati fil-ligi.

Illi ma jidher imkien illi r-rikorrenti allegat dawn it-tlett elementi kontra taghha fil-konfront tal-principal taghha. Aktar u aktar meta jridu jkunu abbinati mal-bazi ndikata fl-istess ligi. Bhal per ezempju status marital, sess, kulur, opinjoni politika jew religion. Oltre dan ma ngabet l-ebda prova illi l-istess rikorrenti giet trattata differentement f’cirkostanzi identici ghal taghha minn xi haddiema ohra fuq l-istess post tax-xoghol. U dana anchor che fuq l-istess parametri indikati fil-ligi.

L-element ta' diskriminazzjoni m'ghandux jittiehed in vacuum. Ma jistax jigi trattat b'mod filosofiku jew prassi biss izda jrid jigi ampjat u cirkostritt minn cirkostanzi ohra fl-istess ambjent tax-xoghol dejjem in konfront ma' haddiema ohra. Dina hija l-bazi elementari ta' diskriminazzjoni. Ghaliex diskriminazzjoni minghajr paragun ma' mpjegati ohra ma tistax tregi.

F'dan il-kaz ir-rikorrenti naqset illi tipprova fil-konfront ta' l-ex principal taghha li huwa mexa b'mod diskriminatorju anzi tratta maghha b'mod diskriminatorju meta tqis l-imjieg taghha ma' dak ta' shaba fuq l-istess xoghol. Anchor che kien veru kif ammess mill-istess principal li x-xoghol taghha nbidel, it-tibdil tax-xoghol ma jistax jigi definit li kien xi trattament ta' diskriminazzjoni minghajr ma' tigi ndikata a bazi ta' xiex din id-diskriminazzjoni giet kommissa.

Konkluzjoni

Jiddeciedi t-tribunal illi l-allegazzjoni ta' trattament diskriminatorju ma giex ippruvat mir-rikorrenti u ghaldaqstant it-talba taghha qed tigi michuda.

Tassazzjoni ta' drittijiet iffissat l-ammont ta' ghoxrin lira (Lm20).

Dr. Joseph P. Bonnici, LL.D.

Chairman