

# INDUSTRIAL TRIBUNAL

DECISION NUMBER 1864

Chairman: Dr Leslie Cuschieri Cert.Dip.Stud., LL.D.

Case Number 2546/LC

In the Employment Issue between

Borislav Ilicic (I.D. 33174 A)

vs

Messrs. ABB Utilities A B Malta  
Branch Ltd. (Registration Number  
OC 211) as represented by its Board  
of Directors, this Board being  
represented in Malta by Nils Göran  
Hermansson (Swedish Passport  
number 34185142)

Regarding alleged unfair dismissal.

Today the 24<sup>th</sup> June 2008

This case has been referred to the Industrial Tribunal following a declaration of complaint filed and signed by Complainant himself at the Registry of Superior Court on the 29<sup>th</sup> day of October 2007. Subsequently Dr Beppe Fenech Adami was appointed as legal – aid lawyer to assist Complainant, whose defence was then taken over by Dr Nadia Vella.

## DECLARATIONS.

Complainant declares that respondent stopped paying him the salary due to him without justification after sustaining injuries at his place of work; declares that respondent stopped paying the appropriate amount of National Insurance in petitioner's favour to the rightful authorities without justification; and declares that respondent was not considering complainant as an employee after the 30<sup>th</sup>

April 2007. Complainant went on to pray that the Industrial Tribunal to (1) order the respondent to pay the petitioner his contractually determined salary for the past and present until the end of his employment; (2) order the respondent to contribute to the National Insurance in favour of the petitioner according to law; (3) determine that the petitioner's contract with the respondent remains in force and valid; (4) determine that the petitioner's contract with the respondent is considered being indefinite; (5) that the Industrial Tribunal grants him legal aid; and (6) that the Industrial Tribunal assigns to him professional aid in a person referred to in article 918 of Chapter 12 of the Laws of Malta, as petitioner qualifies for admission to complain with the benefit of legal aid.

In its Declaration of Case, ABB Utilities A B Malta Branch Ltd raised the preliminary plea that the Industrial Tribunal does not have the requisite jurisdiction to hear and decide the claims made by the petitioner in relation to alleged outstanding salaries due and alleged non-payment of National Insurance contributions; and raised a second preliminary plea that claimant's claims in relation to the alleged unjustified dismissal from employment is time-barred in terms of Article 75(3) of the Employment and Industrial Relations Act (Chapter 452 of the Laws of Malta). Furthermore, respondent deems claimant's allegations as unjustified and unfounded in that the petitioner has been paid all wages due to him interms of his contract of employment; that all National Insurance contributions due by the Respondent company have been paid in terms of law; and that Mr Ilicic was employed on a definite contract of employment and the termination of employment wa by the expiry of the agreed term of employment and therefore can not be considered unjust or illegal as alleged by the petitioner. Respondent explains that Claimant was employed as an electrician on the 1<sup>st</sup> day of August 2006 by means of a written and signed contract for just one month, but then this was extended till the 1<sup>st</sup> day of May 2007, and then the contract was not renewed any more. Respondent company was providing services to Skanska Company which was entrusted with the finishing of Mater Dei Hospital; and since works on this new hospital were

practically finished in the period April and May 2007, many of the Respondents employees were not required to provide their services any more.

Claimant then filed his Statement of Case wherein he declared that he got employed with Respondent on the 10<sup>th</sup> of October 2006. On the 30<sup>th</sup> January 2007 claimant suffered a severe knee injury when he tripped over a board that was partially covered in dust whilst some tiles were being laid on the floor. Claimant holds Respondent responsible for such an injury since it was experienced whilst he was performing his duties with Respondent, and Respondent failed to provide a safe working environment as he is statutorily obliged to do. Claimant had to be operated on his knee, and he has to undergo other further medical intervention in the future. Claimant considers the 1<sup>st</sup> of May 2007 as his last day of work but no notice of dismissal was served on him. Respondent did not pay him anything since July 2007 and claims that payments effected between January and June 2007 were less than what was lawfully due. Claimant claims that Respondent should have given him one whole year injury leave in full pay.

### PRELIMINARY PLEAS

During the sitting held on the 1<sup>st</sup> April 2008, Respondent Company asked for a correction regarding the last day of work of Claimant, in the sense that the last day of work was deemed to be the 1<sup>st</sup> of May 2007, something that had already been declared by Claimant in his statement of case. In view of the fact that the first two claims of Claimant should have been brought before other competent authorities and disputes in that regard fall within the jurisdiction of the ordinary Courts, Claimant withdrew his first two claims during the same sitting. Furthermore he withdrew claims number (5) and (6) because he was already being assisted by a legal aid lawyer. In view of this Respondent withdrew its first preliminary plea of lack of jurisdiction. However the second preliminary plea still stands and parties were invited to produce evidence and make

submissions in respect of the plea holding the action forwarded by Claimant as time-barred.

### EVIDENCE and CONSIDERATIONS

Evidence on this matter is very clear. Respondent produced a copy of the original contract and extensions to it, the last one referring to the period between 1<sup>st</sup> April till 1<sup>st</sup> May 2007. In view of the plea under examination, it is not relevant whether there are valid reasons behind Claimant's allegation contained in his 4<sup>th</sup> Request, that is that his employment had to be considered as one for an indefinite period of time. More relevant is the determination of his last day of work. It is accepted by both parties that Claimant physically worked with Respondent till the 30<sup>th</sup> of January 2007, when he got injured. After this, claimant's contract was extended at least twice, and he signed for these extensions, and Respondent kept on paying Claimant putting him on injury leave, an action that this Tribunal considers laudible. It is true that an employee has the right for up to a year injury leave, but if the contract of employment expires before, it does not make sense to extend the contract simply to have the employee avail of the injury leave. At this point one can conclude that this is not a case of unfair dismissal, but non-renewal of a fixed term contract; however the plea under examination is the time-barring of the Complainant's action.

This Tribunal further notes that Claimant believes that Respondent is responsible for his injury because it did not provide a safe place of work, but the Industrial Tribunal is not the right Forum to decide such a matter. This Tribunal has to stick to the question whether Complainant's action was time barred on the 29<sup>th</sup> October 2007 when he filed his claims in the Court Registry. Although at a time there was some doubt whether the 1<sup>st</sup> of May 2007 or the 30<sup>th</sup> of May 2007 was the last day of Mr Ilicic's employment, both parties finally agreed that it was the 1<sup>st</sup> of May 2007. Claimant could have argued that

according to his employment contract, he had a right for 4 weeks notice and that he was only formally notified of the termination on the 10<sup>th</sup> of May 2007. Four weeks following the 10<sup>th</sup> of May 2007 would have brought us to the 7<sup>th</sup> of June as his last day of employment. However even if one takes the 7<sup>th</sup> of June as the last day of employment, Claimant should have filed his case before this Tribunal by not later than the 7<sup>th</sup> of October 2007. It is therefore evidently clear that whichever way one looks at the facts of this case, on the 29<sup>th</sup> of October 2007 Claimant's action was time barred as per Section 75 subsection (3) of Chapter 452 of the Laws of Malta, and this case has to be dismissed.

### DECISION

Therefore, after seeing all the acts of this case, this Tribunal declares that the case put forward by Borislav Ilicic was time-barred, and that it is not taking any further cognizance of this case. For the purposes of Chapter 452 of the Laws of Malta relative to professional fees due to counsel to parties the amount of seventy five Euro (75) is due by each party.

**Dr Leslie Cuschieri**

Chairman

Secretary