

INDUSTRIAL TRIBUNAL

DECISION NUMBER 1905

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

Case Number 2545/LC

In the Employment issue between

Nadia Aquilina

vs

Alitalia- Linee Aeree Italiane S.P.A.
(OC 192)

in relation to the alleged
infringement under Article 27 of
Chapter 452 of the Laws of Malta
regarding rights of work of equal
value

Today the 3rd February 2009

This case has been referred to the Industrial Tribunal following a declaration by complainant in the Maltese language filed and signed by Dr Errol Cutajar and Dr Astrid May Falzon at the Registry of Superior Court on the 25th day of October 2007.

DECLARATIONS.

Complainant declares that she was appointed Courier / Representative with Respondent Company on the 1st of October 1999 and has always fulfilled her duties duly. Then on the 1st of July 2007 a certain Jacqueline Cachia Bayliss was also employed by Respondent company with a post equivalent to Complainant's; however her wage was more advantageous in that it was higher. In view of Section 27 of Chapter 452 of the Laws of Malta Complainant asked Respondent for redress, and since Respondent failed to remedy this grievance,

Complainant asked this Tribunal to declare that Respondent company is breaching the provisions of Chapter 452 of the Laws of Malta, including Section 27, and requested this Tribunal, first to order Respondent Company to revise Complainant's salary by raising it to such extent to be equivalent to another employee in the same class of employment with the same Respondent Company, and this with effect from the first of July 2007; and secondly to establish a sum to be paid to complainant by way of compensation in respect of the illegality committed to the detriment of the same complainant.

In its Declaration of Case, Alitalia-Linee Aeree Italiane S.P.A. submitted in the English Language that Respondent Company is not discriminating against petitioner, nor is it in breach of Article 27 of Chapter 452 of the Laws of Malta. Respondent confirms that petitioner was employed through a contract dated 1st October 1999 as sales clerk, and adds that in August 2005 her job description was amended with petitioner's consent in order to include other duties similar to those carried out by a station officer. It further submitted that Jacqueline Cachia Bayliss has effectively been working as station officer for the respondent company for over seven years; however the direct employment with Respondent company commenced in July 2007. Respondent claims that whilst Miss Cachia Bayliss has been acting as a station officer for seven years Miss Aquilina has been acting as a station officer for only two years, and therefore the difference in wage is justified. Respondent also claims that Miss Cachia Bayliss has additional responsibilities which justify a higher wage. On a third count, Respondent further claims that Miss Cachia Bayliss is also more qualified than petitioner and can therefore give higher value of work. Respondent also claims that when Miss Cachia Bayliss was only employed through Worldwide Airlines she had the same wage as today, and that such remuneration had to remain unaltered. Finally Respondent Company points out that the company is in financial difficulties and the administration had suspended or postponed any pending or prospective adjustments or modifications to remuneration to employees for the time being.

PRELIMINARY

On the first sitting it was agreed that this case would be heard and decided in the English language due to the fact that the representatives of Respondent Company do not understand the Maltese language. Furthermore, Complainant declared that she had no objection to the fact that Respondent company had already submitted its declaration of the case in the English language.

At a later stage, applicant requested this Tribunal to investigate her alleged unequal treatment even when compared to Alitalia employee Joanne Piccinino, and minuted this request during the 28th October 2008 sitting. By a decree dated 9th December 2008, this Tribunal rejected applicant's request.

EVIDENCE

Complainant explained on oath how she was employed in 1999, had her duties changed in 2002, and Jacqueline Cachia Bayliss was employed on the 1st July 2007 doing the same duties as complainant, and they actually replace each other. She claims that before being employed directly, Cachia Bayliss was asked what salary she was expecting and she asked for a salary higher than Aquilina's. Alitalia accepted, but was not accepting to raise Aquilina's salary to equal that of Cachia Bayliss. Complainant confirms that her basic wage for the year 2007 was Lm448.33 monthly, which is equivalent to €1,044.33 per month. The exhibited payslips (documents NA2 to NA7) further show that Respondent company used to deduct a sum of money every time the salary is paid as "Monthly Deferral for 13th Pay" which is taken to mean that this adjustment had to be effected so that there will be an extra (13th) payment at the end of the year. In any case the yearly basic salary was Lm5,379.96 or €12,531.93. Complainant alleges that the Rome central office wanted to speak to her and upon going there she was told that her complaint was justified but the financial situation of Alitalia did not permit an increase in her wage. It was Simone

Polano who spoke to her in the presence of Emma Rossini. Complainant declared on cross-examination that although officially she took up station officer duties in 2005, she had been fulfilling these duties various years before. Actually complainant was employed in 1999 and started acting unofficially as station officer in 2001, when Cachia Bayliss was employed with World Wide Aviation also acting as station officer.

Jacqueline Cachia Bayliss testified and exhibited her contract of employment dated 1st July 2007 that showed that her yearly basic salary was Lm6,600 or €15,373.86 divided on 13 payments. She confirms that she and Miss Aquilina perform the same duties: they work same hours and they work overtime together. She explains that when she was employed with World Wide company, Aquilina was sent to a ticketing office upstairs whilst she was assigned to the operations office downstairs. Witness explains that when she last worked for World Wide her basic salary was Lm480 per month whilst upon being engaged with Alitalia her salary went up to Lm550 per month. Witness Joseph Zammit testified that he had been acting as Chief Accountant for Alitalia in the previous years. He explained that he was still preparing salaries for Alitalia employees, and confirmed that Cachia Bayliss received a basic salary of some Lm550 per month whilst Aquilina received around Lm448 per month, though there was then the legal increment for cost of living with effect from January 2008. He also confirmed that the over-time rate was calculated at 150% per hour, and so the higher the basic salary, the higher the over-time rate.

Bruno Gasperini then testified and confirmed that Cachia Bayliss was being paid more, and that Aquilina asked for an increase of her salary. He says that the Company wished to increase Aquilina's salary but financially this was not possible. Gasperini was posted in Malta in 2006, but from the records it results to him Cachia Bayliss was employed as station officer in 2001 whilst Aquilina was appointed station officer in 2005. Cachia Bayliss now perform all the duties performed by Aquilina, plus she handles petty cash. He says that as far as he remembers, Cachia Bayliss was being paid a gross salary of Lm480 per

month by WordWide Airlines. He then explains that although document NA-8 (folio 115) indicates that petty cash was on that particular occasion under the responsibility of Nadia Aquilina, in practice it was being handled by Cachia Bayliss, but she could not take over that responsibility because she was not an Alitalia employee. Then he goes on to confirm that Aquilina is authorised to handle petty cash, and she can do so whenever Cachia Bayliss is absent.

At a later stage the new station manager Michele Pagnelli testified that he replaced Mr Gasperini, and that Jacky Cachia Bayliss's fixed-term contract was not renewed upon its expiry on the 30th of June 2008. According to this witness, her contract was not renewed because the company did not need so many employees, and a part-timer was brought from a third company. He informed the Tribunal that Alitalia was put in liquidation on the 29th of August 2008. He explains that there is now Joanne Piccinino working with Aquilina as station officer. Her work contract was exhibited and shows that in December 1999 she was employed with a gross salary of Lm6,500 per annum. The attached job-description indicates the job-title as being "Ticketing Reservation and Passenger Handling Agent". ETC documentation shows that Piccinino remained with Alitalia ever since. Witness Pagnelli explains that Piccinino was posted to Sarajevo in 2006 but was called back to Malta in June 2008. Then Joanne Piccinino confirmed that after her posting in Sarajevo as Station Manager, she resumed her duties as station officer. She says that in June 2008 she was a station officer in Malta with Cachia Bayliss and Aquilina, all doing the same job interchangeably. Witness declares that her gross basic salary is Lm602.50 per month.

CONSIDERATIONS

In its note of submissions, Alitalia brings three arguments to show that Aquilina's claims are unfounded. The first argument is that with effect from 1st July 2008, Jacqueline Cachia Bayliss is no longer an Alitalia employee and so one can no longer compare Aquilina's salary with that of Cachia Bayliss. This

argument does not hold at all because this Tribunal is investigating discrimination committed as from 1st July 2007, and if Complainant has been aggrieved in July 2007, she has to have a redressed irrespective of what happened later. If in July 2007 Respondent company wrongly discriminated between Cachia Bayliss and Aquilina, the remedy has to refer to the discrimination committed in July 2007, and any subsequent month during which the discrimination subsisted. If we are to say that as from June 2007 Aquilina's salary had to be equal to that of Cachia Bayliss, it means that Aquilina's salary had to go up. Once it goes up, it cannot go down again, unless the employee is demoted for some grave reason and this irrespective of the duration of Cachia Bayliss's employment. Had Aquilina's salary been raised in July 2007 to equal that of Cachia Bayliss, it would have been illegal to lower it down again without any justified reason.

Respondent's second argument is that although Cachia Bayliss's contract with Alitalia is dated 1st July 2007, she had been performing the job since 2001 as seconded by Worldwide Airlines Representatives Limited. First and foremost this Tribunal notes that Worldwide Airlines used to pay her a monthly salary which was only Lm32 higher than that of Aquilina. So, if we are to deem Cachia Bayliss as being employed as station officer since 2001, still she got a pay-rise on the 1st of July 2007, a pay-rise which was not afforded to Complainant. Therefore even if we were to see facts from this point of view, still discrimination has been committed in July 2007; and so Aquilina's action was not time barred. If, on the other hand, Cachia Bayliss's employment with Alitalia is rightly seen as commencing on the 1st of July 2007, Aquilina was in time upon filing her case.

Respondent's third argument is that Cachia Bayliss merited a higher wage because of seniority. Respondent argues that whilst Cachia Bayliss's contract with Alitalia dated 1st July 2007 should be deemed a formality as she had actually worked as Alitalia station officer since 2001, Nadia Aquilina's employment as station officer should be deemed to have commenced in 2005

as stipulated in the formal documentation. This Tribunal cannot apply double standards when investigating discrimination: just as much as Cachia Bayliss has in practice been working as Alitalia's station officer since 2001, even Aquilina has in practice been working as Alitalia's station officer since 2001. This is what Complainant testified on oath, and this has not been denied by any Respondent's witness who had every opportunity to rebut such allegation. From the evidence tendered, this Tribunal is deeming Cachia Bayliss and Aquilina as having the same seniority. Moreover, this Tribunal deems Respondent's argument fallacious even from the point of view of the fact that the exhibited contracts do not speak of increments according to seniority.

It must also be noted that originally Respondent Company had alleged in its statement of case that Cachia Bayliss had a higher salary because of three ulterior reasons. The first is that Cachia Bayliss has additional responsibilities. It resulted that the two employees did everything the same, except that Cachia Bayliss also handled petty cash. It also resulted that it is the station manager who is responsible for the petty cash, but in practice it was Cachia Bayliss who handled it upon the approval of the station manager. This was only a question of practice, and it also resulted that at a time in 2006 when there was no station manager, Nadia Aquilina became provisionally responsible for the petty cash till the appointment of a new one. The fact that Cachia Bayliss kept on handling it is beyond the point. A second reason brought forward was that Cachia Bayliss was more qualified: this has never been proved and it seems Respondent has renounced to such allegation. The third reason brought forward was that Cachia Bayliss was only retaining the conditions of work she enjoyed with WorldWide Airlines. Again, Respondent did not insist on this point as it resulted that on the 1st July 2007 Cachia had her wage increased well above what she earned from WorldWide Airlines.

As Complainant rightly pointed out in her note of submissions, not only she was not receiving the salary paid out to Cachia Bayliss, but this discrimination

was also having an effect on the rate of overtime which was paid at the rate of 150% of the normal rate.

Finally this Tribunal has to point out that although Alitalia was in financial difficulties, it was still operating, and it was still in a position to pay a higher wage to Jacqueline Cachia Bayliss. Although from a practical point of view Alitalia's financial situation was very relevant, from a legal point of view this is not a justified reason for discrimination.

DECISION

Therefore, after seeing all the acts of this case, this Tribunal declares that the Respondent company has been in breach of Section 27 of Chapter 452 of the Laws of Malta, and Complainant's claims are being deemed justified in terms of Section 30 of Chapter 452 of the Laws of Malta. The Tribunal therefore orders that the clause in Complainant's contract that establishes her salary has to be amended in the sense that with effect from 1st January 2009 complainant's salary should be equal to what ex-employee Jacqueline Cachia Bayliss would have received had she remained in employment with Alitalia till today. Moreover the Tribunal orders Respondent company to pay Complainant, by way of underpaid wage and overtime as well as by way of compensation for the discrimination committed, the global sum of eight thousand Euro (€8,000.00), which have to be paid within twenty four (24) days from today.

Lawyers' fees following this decision are being fixed in the amount of ninety Euro (€90). This case is hereby being definitely determined.

Dr Leslie Cuschieri

Chairman