

TRIBUNAL INDUSTRIJALI

DECIZJONI NUMRU 2109

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

Case Number 2613/LC

In the Employment Issue between

Glynis Valerie Pace

vs

British High Commission (Malta)

regarding alleged unfair dismissal.

Today 1st November 2011

This case has been referred to the Industrial Tribunal by means of a Declaration made by Glynis Pace (holder of Maltese identity card number 0480901L) in the Maltese language filed in the Court Registry on the 15th of September 2008, signed by Doctor George Abela.

For the purposes of Section 78 of Chapter 452 of the Laws of Malta it has to be stated that this case could not be concluded within the time stipulated by law due to lengthy production of evidence spread over a number of sittings.

DECLARATIONS

In her Declaration, Claimant declares that she was engaged as a Personal Assistant to the Senior Commercial Officer in the British High Commission by means of a letter of appointment dated 18th June 1999. On the 22nd day of February 2008 Claimant was informed that her employment was being terminated with effect from the 16th May 2008 for redundancy reasons. The reasons given by the British High Commission for the termination of her employment were not justified at law since she was not truly redundant at law,

and further details would be provided during the hearing of the case. Claimant requested the Industrial Tribunal to declare that her alleged redundancy was not a genuine one and that her employment was not terminated according to law. She also requested that the Tribunal declares that Respondent was in breach of her contract of employment and that same Respondent had to pay her compensation and damages according to law, together with any other remedy that the Tribunal deems fit to apply, including her reinstatement at her place of work.

Respondent Commission filed a reply on the 29th of October 2008 whereby it was stated that first and foremost Claimant's pleas are null in as much as she was never dismissed from her employment. Furthermore, it was declared that the British High Commission was undergoing a restructuring process since July 2006 in all its departments, including London's UK Trade and Investment. It was decided that the commercial section within the British High Commission (Malta) be closed down. Claimant's salary was issued by the UK Trade and Investment of London. As explained in the letter dated 22nd February 2008, in view of the closing down of this section, Claimant's role as Commercial Assistant in the UKTI Section was not required any further and therefore at that point her position was being made redundant. Claimant was granted 12 weeks notice period according to law, and her last day of employment was the 16th of May 2008. Claimant was not dismissed from work, but her employment was terminated owing to the restructuring process conducted within the British High Commission that led to various redundancies. The post occupied by Claimant within the commercial section did not exist any more, and not even the section itself still exists.

PRELIMINARY STAGE

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

Commission do not understand the Maltese language. Parties further agreed that this case be heard together with Industrial Tribunal Case number 2614/LC and evidence tendered in that case shall be deemed to be valid evidence for this present case, unless otherwise specifically indicated. Parties informed the Tribunal that they had exhausted all their efforts to reach an amicable settlement, but were not successful.

EVIDENCE

Upon inversion of evidence, through Yvonne Ratcliffe, the British High Commission (Malta) explained how the British High Commission in Malta is a branch of the Foreign Office in London; part of it was even funded by such Office abroad. The Commission was divided into four departments covering the consular work, the political work, the managerial work and the commercial work. The Commercial Section was not funded by the British Foreign Office but by the United Kingdom Trade Investment Department, in short UKTI. Witness Yvonne Ratcliffe explains how she was posted with the British High Commission in Malta with effect from June 2008 when it had already been decided by the British Foreign Office and the Trading Investment Ministry that there should be a restructuring exercise within the commercial offices worldwide, which led to the closure of various offices and the abolition of various posts. Witness claims that Claimant and others had their salary paid by the United Kingdom Trading Investment within the Trade Investment Ministry, and so they were directly employed by such Ministry. Witness exhibited documents from UKTI in London explaining how six regional operations, including that in Malta, should close down with immediate effect owing to low commercial activity. Document refers to UK-based members of staff and Locally Engaged staff. Witness explained that Claimant was engaged locally, and she was graded as LE III (Locally Engaged grade 3). From documentation at her disposal, witness confirmed that other LE IIIs working for the British High Commission (Malta) were Mr John Mifsud, Ms Maria Attard, Ms

Christine Cachia, Ms Joyce Sant and Mrs Diana Terpougoff, but unlike Claimant and Mr Benjamin Bugeja, these were not with UKTI and had different job-descriptions.

In October 2009, Claimant produced Maria Attard as witness, who was employed by the British High Commission in 2002. She explained that as an LE III she covered tasks within three departments within the Commission: the Visa Section, the Consular Section and the IT Section; originally she applied for the job related to the Visa Section only. She explained how several employees stopped working either at retirement age or even before, when in 2008 the Commission was short-staffed: in January 2009 a new LE III, Penny Leck, was employed as a Consular Assistant and Anti Clearance Assistant.

Mr Benjamin Bugeja testified about his own employment, after being engaged as a Commercial Assistant in 1981 at scale LE III. However he was given duties as Information Officer (within the Political Section), and was asked to do translations for the Entry-Clearance Section. Later he was asked to work as a back-up accountant within the Management Section. For some months he managed the Accounts Section on his own. He was also assigned duties related to the Queen's visit in Malta. All documentation showed that he was employed by the British High Commission, not by UKTI, and expected to remain in employment at least till 2013 to alert British entrepreneurs to take up European Union Structural and Cohesion Funds allocated to Malta. His 2008 termination of employment was totally unexpected. Other LEIIIs remained in employment, whilst others were financially compensated for early termination. The employee who remained in employment to run the accounts section was employed after him. Mr Bugeja was aware that the British High Commission in Malta was paying his salary from funds that came from England. After the termination of his employment he found an alternative employment in May 2008, but only on part-time basis.

Claimant was employed in 1999 as Personal Assistant to the Senior Commercial Officer in the LEIII grade. However she was assigned duties within the Press and Public Affairs Section, the Chancery; she also assisted the High Commissioner, the Acting High Commissioner and the Deputy High Commissioner, and helped out in various ways during the Royal visit in 2005. She reiterates that other LEIIIs that remained in employment were engaged after her and so the last-in-first-out rule was not respected. Claimant was aware that the Commission received funds in general from England, but then it was the Commission that paid her salary, and all correspondence went to show that UKTI could in no way be deemed to be her employer. Claimant found an alternative employment in June 2008 for a 1-year term; then she testified that she had another 1-year term till June 2010; document X indicates that Claimant's employment was further extended till 31st December 2010.

Mr Martin Bianco testified in the Maltese language and stated that he used to head the Commercial Section within the British High Commission. He states that he chose Benjamin Bugeja and Glynis Pace to work within his Section, but then everyone did tasks within other sections. He particularly mentions the fact that Mr Bugeja worked for 10 years within the Accounts Section. Then the High Commissioner would frequently ask him to have Ms Pace to assist him or to assist in some other section. Witness recalls two occasions where Locally engaged employees were transferred to other sections housed within the Commission. He also recalls that for a long period of time Mr Bugeja was asked to do translations on a daily basis whilst Mrs Pace was asked to reply to information enquiries (as opposed to commercial enquiries) on a daily basis as well.

Jackie Jordan testified that she was employed with Respondent Commission in 1992 as Personal Assistant to the Deputy High Commissioner in the LE III grade. In January 2007 her post was declared redundant, and after taking her case before the Industrial Tribunal, she was awarded compensation. Witness

testifies that LE IIIs would cover each other wherever required, even if their original employment was in different sections.

CONSIDERATIONS

This Tribunal needs to deal with the pleas raised by Respondent; the first being the claim that Claimant was not dismissed. This plea touches the merits of the case and shall be dealt with at a later stage. The second plea is that Claimant was not employed by the British High Commission but by the United Kingdom Trade and Investment Department. It must be noted that all documentation exhibited, including the engagement letters, termination of employment letters and FS3 indicate the British High Commission as the employer. It is very likely that the British High Commission receives funds from the Foreign Office and from the UKTI so that its operations in Malta would be viable, but that does not mean that the British High Commission is an agent of these departments. The juridical link remains between the Commission and Claimant.

The third plea is that Claimant's employment depended on the Commercial operations assigned by the English counterparts, and in so far as the British Department decided to close down some regional operations around the world, Claimant's services were not required any more. Respondent produced sufficient evidence that Claimant was employed in the Commercial Section within the Commission, and the commercial operation was withdrawn from England in 2008. In this respect Respondent was entitled to dismiss workers on the basis of redundancy. At this point this Tribunal has to investigate whether the last-in-first-out rule was respected. Although Claimant considers all LE IIIs as being workers in the same class, this Tribunal can conclude that they are all in the same grade, but not necessarily in the same class. However other Personal Assistants do fall within the same class. At this point this Tribunal finds that there is no sufficient evidence that Respondent retained in employment personal assistants who were engaged after Claimant.

Finally, Respondent raised a new plea within its Note of Submissions claiming that this case was not brought in front of the Industrial Tribunal within the 4 month period set out in Section 75 of the Employment and Industrial Relations Act. From the outset it must be stated that the 4 month period is not a period of prescription and so the relative plea can only be raised in *limine litis*. Respondent brought no justification for raising it at a later stage. In any case, the Tribunal further observes that Claimant's last day of employment was the 16th May 2008 whilst this case was submitted on the 15th September 2008, that is within the prescribed time. Having said all that, this Tribunal points out that this plea was not regularly raised by means of an application and so this Tribunal is abstaining from deciding upon it.

This Tribunal moves on to investigate whether Claimant was dismissed, since Respondent is denying this, and whether the termination of her employment was conducted in the same manner as in the case of other ex-employees. Claimant was not dismissed by disciplinary action but she was dismissed for redundancy reasons; still she was dismissed. It was proven that several other workers were dismissed by Respondent for redundancy reasons, and in each case these were paid compensation which was by and large equivalent to two years' pay. It seems that this compensation was granted to some but not to others, and this amounts to discrimination in the way termination of employment was handled. This compensation did not depend on whether the ex-employees would find an immediate alternative employment, but simply compensation for the mere fact that they were rendered redundant. In this respect, this Tribunal feels that Claimant should not be treated differently from other ex-employees who were dismissed from employment on redundancy reasons. Therefore compensation should be afforded to her as well. Still, this Tribunal feels that one should give some weight to the wage of Claimant, the fact that she found a temporary alternative job and the fact that she worked for respondent for around nine years.

DECISION

Therefore, after seeing all the acts of this case, this Tribunal declares that there is no proof that Claimant was not genuinely dismissed for reasons of redundancy, however it has been proven that she has been discriminated against in her dismissal, in so far as other workers were granted redundancy compensation and she was not granted anything. For this reason, this Tribunal orders that Respondent pays Claimant compensation in the amount of thirty five thousand Euros (€35,000), which has to be paid within forty days from today.

Lawyers' fees following this decision are being fixed in the amount of ninety three Euros (€93). This case is hereby being definitely determined.

Dr Leslie Cuschieri

Chairman