

# TRIBUNAL INDUSTRIJALI

DECIZJONI NUMRU 2115

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

**Case Number 2875/LC**

**In the Employment Issue between**

**Vito Domenico Benvenga**

**vs**

**The Director General of the  
Department for Agriculture and  
Fisheries Regulation,**

**regarding alleged unfair dismissal.**

Today 22<sup>nd</sup> November 2011

This case has been referred to the Industrial Tribunal by means of a Declaration made by Vito Domenico Benvenga in the Maltese language filed in the Court Registry on the 3<sup>rd</sup> February 2011, signed by Doctor Matthew Brincat.

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 the fact that evidence was tendered on a number of sittings.

## DECLARATIONS

In his Declaration, Claimant declares that on the 9<sup>th</sup> of March 2006 he was employed within the Ministry for Resources and Rural Affairs, previously named Ministry for Rural Affairs and Environment, as an Official Veterinarian, Scale 5, by means of a fixed term contract for one year. Then his employment was extended for four other one-year terms starting on the 6<sup>th</sup> March 2007, 6<sup>th</sup> March 2008, 6<sup>th</sup> March 2009 and 6<sup>th</sup> March 2010 respectively. Complainant was still in employment with Respondent, and this continuously for more than

four years, and therefore his contract of employment has automatically been converted from a fixed-term one into an indefinite one, as provided by the Contracts of Service for a Fixed Term Regulations of 2007 (Legal Notice 51 of 2007) as applicable for employees with the Government by means of the 2007 Regulations for the Extension of Applicability to Service with Government (Legal Notice 157 of 2007). Claimant states that he enquired about his employment and he received an electronic mail from a representative of his employer stating that “there is no chance for your definite contract to become indefinite”. Claimant felt that his employment rights were being breached, and after writing a judicial letter, Respondents did not answer him. Claimant asked this Tribunal (a) to declare that his employment was for an indefinite duration under the same conditions applicable at the time, and (b) to be paid compensation by Respondent for breaching the applicable law.

Subsequently, on the 10<sup>th</sup> March 2011, Claimant filed an application by which he stated that following the filing of this case, on the 4<sup>th</sup> March 2011 his employer sent him a letter informing him that his fixed-term employment was not going to be renewed. Claimant deemed this non-renewal as in breach of Legal Notice 51 of 2007 as made applicable to him by Legal Notice 157 of 2007, since by such Regulations his employment was converted into an indefinite term engagement. For these reasons Claimant further requested that the non-renewal of his engagement was in breach of Legal Notice 51 of 2007 and that he be reinstated to his former post under an indefinite term employment under the same conditions he had before his employment was terminated, and / or be adequately compensated.

Respondents Director General for Agriculture and Fisheries Regulation and the Attorney General filed a reply for the first Declaration on the 8<sup>th</sup> of March 2011 whereby it was stated that Claimant’s requests are factually and legally unfounded because the applicable contract of employment is the one starting on the 6<sup>th</sup> of March 2007; the contract starting on the 6<sup>th</sup> March 2006 has no further legal validity because the one starting on the 6<sup>th</sup> March 2007 totally

superseded the previous one; that by the applicability of Section 1179 of the Civil Code the first contract was superseded and there was a totally new legal relationship under the second contract; actually the subsequent three yearly extensions always referred only to the contract dated 6<sup>th</sup> March 2007; that the four years employment only expired on the 6<sup>th</sup> March 2011; that Claimant knew his employment was not for an indefinite duration since he sent his employer a letter dated 6<sup>th</sup> September 2010 showing his willingness to have his contract of employment renewed; that only the Director General has the right to decide in his discretion whether Claimant's contract of employment should be renewed or not; that although Legal Notice 51 of 2007 came in force subsequent to the contracts dated 6<sup>th</sup> March 2006 and 6<sup>th</sup> March 2007 the said Legal Notice was applicable just the same for employees already in employment. Respondent further pleaded that there are objective reasons for which Claimant's contract of employment shall remain for a fixed term, but these reasons were not stated in the contracts of employment dated 6<sup>th</sup> March 2006 and 6<sup>th</sup> March 2007 because Legal Notice 51 of 2007 came into force on the 13<sup>th</sup> March 2007; however by email dated 12<sup>th</sup> December 2007 Complainant was informed of the objective reason for which his employment should remain for a fixed term. Finally the Respondent Attorney General pleaded that he has no legal relation with Complainant.

With respect Claimant's application dated 10<sup>th</sup> March 2011, Respondents pleaded the nullity of both the original declaration as well as the subsequent application in so far they were neither signed by a legal procurator nor filed in court by the Claimant himself, as required by law which is made applicable to this case by Section 73(9) of Chapter 452 of the Laws of Malta. Furthermore, Respondents replied that the letter dated 4<sup>th</sup> March 2011 informing Claimant that his employment contract is not being renewed was in reply to Claimant's letter dated 6<sup>th</sup> September 2010 whereby Claimant stated his availability to have his employment extended. Respondents further claimed that Section 6(i) of Claimant's contract of employment stipulates that the Government may

terminate this employment at any time given that a month's notice is given or a two-week salary is paid to Claimant.

### PRELIMINARY STAGE

On the first sitting it was agreed that although all acts filed so far were in the Maltese language, this case would be heard and decided in the English language due to the fact that the Claimant does not understand the Maltese language well. Furthermore, Respondents declared that the Director General of the Department for Agriculture and Fisheries Regulation was the employer of Claimant. In view of this, Claimant withdrew all his claims against the Attorney General. Therefore the Attorney General does not form part of this case any more.

Respondent withdrew his nullity plea raised in his Reply dated 14<sup>th</sup> March 2011. It was agreed and decided that Claimant's application dated 10<sup>th</sup> March 2011 adding a claim of unfair dismissal be treated as forming an integral part of his complaint against Respondent and that both issues be decided together by one decision.

### EVIDENCE

On a prima facie stage, Claimant stated that he was employed as the Official Veterinarian, Scale 5, with Respondent for a fixed term commencing the 9<sup>th</sup> March 2006. His employment was extended four times, each extension commencing on the 6<sup>th</sup> of March of the years 2007, 2008, 2009, and 2010, and during all this time he was always assigned the same job. Claimant had informed the Permanent Secretary by letter dated 6<sup>th</sup> September 2010 that he was prepared to remain in employment at the end of the term, and this in compliance with Section 9 of his contract of employment. He says that in

September 2010, he and Dr Sergio Fiore further went to speak to the authorities to enquire about their employment and they were informed that their employment could not be converted into an indefinite one because that would set a precedent: they were encouraged to apply for the post of Veterinary Officer which falls in Scale 8. This information was then confirmed by Manwel Cortis (People Management Director) who sent him an email dated 4<sup>th</sup> November 2010 stating that Claimant's contract can in no way be converted into an indefinite employment and that he should consider applying for the post of Veterinary Officer. When he was still in employment, Claimant commenced this case to have this Tribunal investigate any possible breach of his rights under the law, but then on the 11<sup>th</sup> March 2011 (this date cannot be correct since Claimant filed his relative application on the 10<sup>th</sup> of March 2011) he received a letter dated 4<sup>th</sup> March 2011 from his employer informing him that his engagement was not being renewed. Claimant states that neither of his two contracts of employment declared that there were objective reasons for which his employment can never be converted into an indefinite engagement. Claimant does not recall receiving the email dated 12<sup>th</sup> December 1007 whereby he was informed that there is an objective reason for his employment to remain for a fixed term, which is that he was only employed for a specific task; however he does not deny receiving it.

Respondent then started by producing Director for People Management John Borg who confirmed that basically the contract signed in 2006 was the same as the one signed in 2007. He confirms that Claimant was informed by email dated 12<sup>th</sup> December 2007 that his employment shall remain for a definite term because of the objective reason that it was for the completion of a specific task, which task was what the Director General assigns to him. He was not aware what the specific task was. He says that there was a call for applications for Veterinary Officers, but this employment is different and the employee would be in the public service. Claimant's post was at scale 5 while the call for applications was for a post at scale 8: there were negotiations with the Public Service Commission so that the post be raised to scale 6, and this was accepted.

Two other Italian veterinarians applied to this post and actually got it. Remuneration was lower, but there was security of tenure. In cross-examination witness explained that the objective reason for keeping Claimant's employment for a fixed term was that he was employed for a specific task, but then this was the standard letter that would be issued in similar circumstances.

Dr Anthony Gruppetta, Director General at Respondent Department testified and explained that Claimant was employed to perform official veterinarian duties at the poultry slaughter houses, and food establishments' approvals. At the time of the 2006 contract there was someone else occupying the post of Director General; when he took over in 2007 the second contract was signed because he was directed to do so by the Office of the Prime Minister. As far as he was involved, he knows that Claimant's duties always remained the same. Witness explained that in 2006 five veterinarians were employed on a fixed-term contract to resolve a problem that cropped up at the time, and their employment kept on being extended because the problem was not resolved. When witness took over, the five veterinarians were already in employment, and as a matter of fact he did not communicate the shortage problem to them. Witness states that no definite-term contract was converted into an indefinite one, but the veterinarians were offered a definite-term employment at a lower wage. Originally they had a post at maximum scale 5, whilst the indefinite employment was at scale 8 with a market correctivity to scale 6. Witness explained that though the situation had slightly improved at the time he was testifying (31<sup>st</sup> May 2011), "*we continue to issue calls for permanent posts. In fact we have one that is currently published that will close this Friday, just following one which closed in December. So we are always on the lookout for more veterinarians. And the reason why we kept them on employment was because we still needed veterinarians at that time.*" He further testified that even on the day he was testifying, there was still a shortage of veterinarians. Veterinarians are nowadays being employed by an indefinite term contract and the duties that were carried out by Claimant are being executed by other veterinarians.

Claimant testified again and explained that when he was informed about the call for veterinarians for an indefinite term, there was no guarantee that he would get such a contract. During his 5 years of employment he was never told that he was performing some particular task that upon its completion there will be no further duties for him to perform. Claimant also points out that in his letter dated 6<sup>th</sup> September 2010, which he wrote simply to abide by the clauses of his employment contract, he asked for the renewal of his employment “for a further indefinite period.” He confirms that nobody ever explained to him what was the objective reason for which his employment had to remain for a fixed term.

### CONSIDERATIONS

Basically, this Tribunal has to decide whether Claimant’s employment was converted from a fixed-term contract to an indefinite contract of employment, whether there was any breach of law by Respondent, and in the case of an affirmative outcome on the first issue, whether Claimant’s employment was terminated in breach of the law.

Claimant’s legal counsel ably argues that by Legal Notice 51 of 2007 (as made applicable to employees engaged with the Government by Legal Notice 157 of 2007), for Regulation 7 to be applicable for a case, the continuous employment need not be governed by one contract, and subregulation 7(1)(b) really used to say so. Today it is Subsidiary Legislation’s Regulation 7(1)(a) that stipulates that conversion takes place in cases of continuous employment under one or more contracts of work. Whilst the law speaks of employment “in excess of four years”, Claimant was in employment from 9<sup>th</sup> March 2006 till 5<sup>th</sup> March 2011: almost five years. Therefore Respondent’s plea that the 4-year term was not exceeded because the 2006 contract was totally superseded simply does not hold water. About Respondent’s plea that by the Civil Code and the principle

of *pacta sunt servanda* employment contracts overrule the conditions of employment set out in Chapter 452 of the Laws of Malta and the Regulations emanating from it, this Tribunal finds that even this is not legally founded, as laws of employment are specific and override general principles of law and general provisions of law in the Civil Code.

This Tribunal notices that the applicable law in this issue is Subsidiary Legislation 452.81 which is not just Legal Notice 51 of 2007, but also subsequent amendments in the years 2007, 2008 and 2009. According to this Subsidiary Legislation, Regulation 7(1) a fixed-term employment is converted into an indefinite employment if there is continuous employment in excess of four years and the employer is not able to provide objective reasons why this employment should be only renewed on a fixed term basis. Respondent is arguing that there was an objective reason, and Claimant was informed about it by means of an email dated 12<sup>th</sup> December 2007. Now Respondent claims in his original Reply to this case that the objective reason was not listed in Claimant's contract of employment because Legal Notice 51 of 2007 came in force on the 13<sup>th</sup> March 2007 whilst the two claimant's contracts were signed before, on the 6<sup>th</sup> March 2006 and 6<sup>th</sup> March 2007. This Tribunal notices that whilst the first contract was signed on the 9<sup>th</sup> March 2006, the second was signed on the 13<sup>th</sup> November 2007 with retroactive effect. This means that the second contract was signed AFTER that Legal Notice 51 came into force, and therefore in breach of sub-Regulation 7(6)(i)(a) of that Legal Notice and today's sub-Regulation 7(6)(i)(a) of Subsidiary Legislation 452.81. By sub-Regulation 7(6)(ii)(a) of both that Legal Notice and by today's Subsidiary Legislation, when the employer is not compliant with this requirement, the employee's contract of employment shall automatically become an indefinite contract of employment upon the expiry of 4 years. For all intents and purposes it must be clarified that although sub-Regulation 7(6)(iii) permits the employer to inform current fixed-term employees of the objective reason(s) for not converting the contract into an indefinite one, in this present case this was not done within the 6-month period prescribed by the same sub-regulation; nor was the so called

“objective reason” really explained to the employee. As a matter of fact, neither was this “objective reason” proven to the satisfaction of this Tribunal as required by subregulation 8(3) of the quoted Subsidiary Legislation.

Respondent brings forward two other pleas. The first is that the letter dated 6<sup>th</sup> September 2010 shows that Claimant was accepting that his employment had to be renewed because it was for a fixed term. This Tribunal notices that through the operation of the law above stated, Claimant’s employment was converted automatically into an indefinite employment after that four years lapsed, that is on the 9<sup>th</sup> of March 2010, and therefore a letter which was sent almost 6 months later could not revert his employment into a fixed term one. The other plea is that by Clause 6 of Claimant’s contract of work, the Government could terminate this employment by just giving one month notice or paying two weeks salary. This Tribunal declares that the rules stipulated by Chapter 452 of the Laws of Malta and the Regulations emanating from it override this clause which is less favourable to the employee, and the rules regulating termination of employment of a fixed term contract or an indefinite term contract shall be those stipulated in that law.

## DECISION

Therefore, after seeing all the acts of this case, this Tribunal declares that Respondent was not compliant with the applicable Maltese law, and as a legal consequence Claimant’s employment has been automatically converted into an employment for an indefinite term, with effect from the 9<sup>th</sup> of March 2010. Furthermore, the termination of Claimant’s employment was consequently not for a justifiable reason at law. Therefore, this Tribunal orders that Claimant shall be reinstated into his employment prior to its termination within twenty (20) days from today. Furthermore, whilst Claimant is not entitled to any remuneration for the period he has been out of employment, he is entitled to be compensated by Respondent, which compensation is hereby being fixed in the

amount of eight thousand Euros (€8,000.00), which has to be paid to Claimant 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