

INDUSTRIAL TRIBUNAL

DECISION NUMBER 2416

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

Case Number 3308/LC

In the Employment Issue between

Mina Rylander

vs

**White November Corporate Services
(Malta) Limited**

regarding alleged unfair dismissal.

Today the 10th November 2015

This case has been referred to the Industrial Tribunal by means of an application made by Mina Rylander in the Maltese language filed in the Court Registry on the 22nd October 2014, signed by Doctor David Zahra.

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 the relative evidence could only be tendered on a number of sittings.

DECLARATIONS

In her application, Claimant declared that she was employed as brand ambassador/promoter for the brand Lycon Nordic with defendant company White November Corporate Services (Malta) Limited, a company that was previously named Verdun Corporate Services (Malta) Limited. She was employed on the 23rd November 2011 for an indefinite period of time. On the 11th July 2014 the defendant company terminated her employment because of redundancy (as shown on the relative ETC Employment Termination Form), as

the company alleged that it was changing its commercial activity and this didn't justify her continued employment. Claimant alleges that however, a new employee with qualifications similar to hers was engaged to take up her roles and assignments, which meant that the claim of redundancy was not truthful, and therefore such termination of employment was not justified. Claimant requested this Tribunal to declare the termination of her employment as being legally unjust, and to order defendant company to compensate her accordingly.

Claimant filed a Statement of Case whereby she added that originally she was employed with REN Distribution Limited for a definite period of time that expired on the 30th June 2012; however prior to its termination, on the 21st May 2012 REN Distribution Limited gave her a new contract of employment for an indefinite period of time starting from the 22nd May 2012. Claimant has always been paid her salary by defendant company. Claimant further adds that the company employed a person, Lotta Halvarsson, to replace her within less than a year from the termination of her employment, which was allegedly based on redundancy. Upon noticing this, claimant contacted the company to enquire about the brand Lycon Nordic, which she used to promote, and found out that the newly employed Lotta Halvarsson was doing all that she used to do when still in employment.

Respondent Company filed a Reply (in the Maltese language) whereby it denied that the termination of employment of Claimant was unjust, and in its Statement of Case explained how this termination was justified. It said that White November Corporate Services (Malta) Limited agreed with Lycon Nordic to employ Mina Rylander to act as Brand Ambassador for the brand Lycon Nordic, and according to this agreement, defendant company had to employ Claimant for an indefinite period of time for this purpose. But in July 2014 the Lycon Nordic's managing director took up the tasks that were normally executed by Mina Rylander, and so there was no further need for Rylander's services in employment; as a result on the 11th July 2014 Claimant was informed that her employment was being terminated. Defendant company

denies that the newly engaged employee replaced Claimant, but she was engaged to replace the general manager in her duties. Defendant company was sure that Mina Rylander was not competent to take up this managerial post.

PRELIMINARY STAGE

On the first sitting parties agreed that the case shall continue to be heard and decided in the English language. No preliminary pleas were raised.

EVIDENCE

Respondent Company produced Mr Lars Beitnes, who acts as founder owner, director and Chief Executive Officer of White November Corporate Services (Malta) Ltd which was set up to enhance international cooperation. It is a Maltese company since 2008, that attracts business to Malta. He says that in Norway there is a commercial company named Lycon Nordic, that wanted to employ Mina Railander specifically, because it got to know her directly. On the 11th of June Lycon Nordic made a contract with Verdun Corporate Services (MALTA) Ltd (Document LB-1 flio 26 et sequitur) so that Verdun employs someone to act as "Brand Ambassador". The terms and conditions of this contract included an obligation on Verdun not to violate "*any laws, regulations, acts, decrees, ... requirements, permits, approvals, licences certificates and other directives made by any authority... and that it will take all the reasonable and necessary measures to ensure that it ... does not violate any of the above during the performance of the Assignment, in particular laws related to employment, residency, criminal nature or taxation.*"

Beitnes explains that this contract was signed by his wife for Lycon Nordic, and by him for Verdun Corporate Services Limited, which then changed name to White November Corporate Services (Malta) Limited. Actually this agreement was terminated by the two parties (supplier company now named White November - document LB2) on the 30th June 2014 as with effect from 31st July 2014. However these same two parties signed a similar agreement on the 14th July 2014 (document LB3) for the service of an Office, Sales & Marketing Administrator. He explains that Lycon now needed a person that would have a wider knowledge of marketing, including international taxation and corporate law, which Claimant didn't have. He says that White November had no job for her, but only Lycon did. Lycon now needed a wider spectrum of services, but still such services could be performed by one person. That is why it was not a question of adding another employee, but of engaging a more qualified employee.

Asked in cross-examination whether he, on behalf of White November, ever asked Claimant whether she was interested in taking up the new job available, witness explained that he believed that Claimant didn't have the qualifications to do the additional tasks, however he didn't go into this as it was up to Lycon to decide who to employ. He insisted on this even when reminded that Claimant was employed by White November, not by Lycon. Rather he insists that "If my client (Lycon Nordic) doesn't want that person on site anymore to work I can't go around and say yes . . ."

The defendant's group accountant Karlston Xuereb testified that when he came to give Mina her last pay, he asked her whether she would keep on working in Malta, for tax purposes, and she told him she won't be working in Malta any more. She looked quite happy about the fact that she won't be working there anymore, and gave the impression that this was her resignation, after all. This witness explained that he insists that all employees be given a work contract, but couldn't find Mina's; Mina was employed before he joined the Company.

Mr Beitnes personal assistant Kristina Williams, responsible from Human Resources says that Mina's body language was telling her that Mina was not happy in the employment any more and wished to go working elsewhere. Asked whether the company could offer Mina the new job (that was given to Lotta Halvarsson), she says that 'no' "because she doesn't have a background in accounting or corporate services or anything finance related..." However, since Mina showed the wish to leave the company, she never asked her whether she was interested in taking up the new job. Witness explains that when she was told about the termination of her employment, she didn't go to ask whether there was anything else that she could be given; yet the new employee had wider capabilities that fitted the new job, whilst Mina could not do that. The termination of employment was dealt with by Janet Beitnes, of Lycon Nordic.

Janet Beitnes, director of Lycon Nordic, testified that Mina had the task to call new prospective clients to sell to them beauty products in Sweden. At first this was working out well, but by time people were looking for products over the internet, and so marketing by telephone was not so successful anymore. She explained that in 2013 and 2014 they started marketing on Facebook and sending out letters. So what Mina was doing had to be replaced by someone who is up-to-date with marketing over the internet. Mina could not do that. The new Lotta Harlvarsson had a Bachelor of Arts in Media and Communications, and worked in a bank, so she could deal with internet marketing more easily. She does stock-taking, she registers the bought stock, she records the sales, and invoices the clients; she has even designed a new catalogue with price list, flyers and knows how to use a technical tool whereby surveys are sent out to get feedback from clients; she is advertising on Facebook and has set up a Web shop. Witness says that in the beginning of 2014 she asked Mina whether she was interested in learning web-design and marketing on the web, and Mina told her 'No'. Nowadays the company is not making any more phone calls for advertising. Witness denies in cross-examination that Mina was so interested in the job that she would make suggestions to make it better, and even ask to take-up some learning courses to

perform better. She affirms that she asked her to, but Mina refused to take up courses. Lotta knew so many things about internet programs, and so the company was trusting her with her new ideas in that area.

Joseph Saliba from E.T.C. exhibited documentation that show that Claimant was employed by White November and her employment was terminated because of redundancy.

Mina Rylander testified that she was contacted by Janet Beitnes, who somehow found her CV, and asked her whether she wanted to join her company. She accepted and got employed as brand ambassador where she would do anything that would promote the brand Lycon Nordic: she was the only employee for this purpose and was handling all related office work. Contrary to what has been said about her, Claimant insists that she had learned media communication and marketing at school, but she still needed to learn some particular computer programs like Mammouth. There were occasions where she asked Janet whether she could learn such programs, but she was never given such opportunity. She updated the brand's website and there was never any complaint about her work. Claimant complains that she worked from nine till five-thirty in the afternoon, without any break, and this caused permanent problems to her eyes, since she spent most of the time in front of the computer screen. She was put in a very small office without air-conditioning, and when she once aksed Janet to bring her a fan, Janet jokingly told her she should wear a bikini instead; and no fan was given to her.

Claimant explains that few months before the termination of her employment, another girl was employed, Ana Vikstrum, but this left soon after, supposedly because she could not take Janet's attitude. Then in July 2014, Claimant was called for a meeting, and when she went for this meeting she was told that the company could not afford to have an employee, and so her employment was going to be terminated. There was no mention that a more qualified person would be engaged to take up the marketing of the brand. Claimant explains

that she did her best to keep calm at the news of her dismissal, thinking that it was being done in all good faith, but firmly denies what other witnesses said that she was happy with news of her termination of employment. She worked for another two weeks and then left. The following week her office colleague Emily Bayer informed her that Janet was teaching a new employee the tasks that used to be done by Claimant. After some time this new employee, Lotta Halvarsson even met Claimant and when they discussed her job, Claimant found that Lotta was doing the same things as her, except that she could use the Mammoth program and that Janet gave her the Photoshop software to use as well. Claimant could learn these two applications quickly, and so she decided to take legal action.

CONSIDERATIONS

First and foremost this Tribunal has to deal with the position taken by defendant company, that is whether it had any say in the employment of Claimant, given that the Swedish Company Lycon Nordic was in full control as to who is employed or dismissed. Without needing to go into much detail, Claimant was employed by defendant company, and it's for the defendant company to make sure that such employment is according to law. This was even made clear in the contract between Lycon Nordic and defendant company, where Clauses 3.3 and 7.2 of the contract put the burden of abiding by all laws upon defendant company. Having said that, defendant company, in declaring Claimant redundant, had to ensure that Claimant is not dismissed for an unjust cause, and in case of redundancy that there is no alternative work for Claimant.

The explanation for termination given by Janet Beitness looks very plausible, in that the newly employed Lotta Halvarsson is described as a web expert that could promote the company much better than Claimant over the internet. But this Tribunal does not believe it was just that. The fact that emails show that

Claimant was already promoting the company on Facebook, that Claimant was already updating the brand's webpage, and that Lotta told Claimant that she was doing almost the same things, throw doubt on Mrs Beitness assertion that Mina never wanted to learn new methods of promotion over the internet. Actually Claimant did ask to be taught new methods, and she was never given this opportunity.

Even Mr Beitness claim that in the end Lycon Nordic didn't want Mina in the office anymore; this is indicative that Mina had to leave at all costs. Another indication is that Lotta was employed immediately after that Mina was dismissed. Surely, Lotta was interviewed as Mina was. So everything was being prepared, and when everything was set, Mina was dismissed and Lotta brought in. On its own this is not illegal, but the fact that Mina was not informed at all that a new employee would be taking over is indicative that defendant company was hiding Lotta's employment. Actually, had defendant company been in good faith, it would have been wiser to leave Mina in employment for a while after the employment of Lotta so that there would be some hand-over. These circumstances show that defendant company was not in good faith, and the termination of Mina's employment was not justified.

As explained before, this Tribunal appreciates that Claimant is not as qualified as Lotta, and this is going to be taken into consideration for the purpose of establishing a compensation to be awarded to her. On the other hand, the Tribunal notices that Claimant's remuneration was less than that of Lotta, but then Claimant had also a commission over and above, while Lotta had no such commission; thus giving the impression that Lotta's remuneration wasn't that higher after all.

DECISION

After considering all the above this Tribunal decides that the termination of Claimant's employment was not a genuine redundancy case, and so Claimant

deserves to be compensated accordingly. The Tribunal notices that Claimant didn't find an alternative full employment. Therefore defendant company is hereby being ordered to compensate Mina Rylander for unfair dismissal, which compensation is being set at €5,000. Such sum is to be paid within thirty 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