

# INDUSTRIAL TRIBUNAL

DECISION NUMBER 2466

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

**Case Number 2614/LC**

**In the Employment Issue between**

**Benjamin Bugeja**

**vs**

**British High Commission (Malta)**

**regarding alleged unfair dismissal.**

Today 21<sup>st</sup> March 2017

This case has been referred to the Industrial Tribunal by means of a Declaration made by Benjamin Bugeja (holder of Maltese identity card number 088359M) in the Maltese language filed in the Court Registry on the 17<sup>th</sup> of September 2008, signed by Doctor George Abela.

It was agreed that this case be heard and decided in the English Language.

Evidence was produced and case went for decision, and was decided by this Tribunal on the 1<sup>st</sup> November 2011 in the sense that it has been proven that when Claimant was dismissed there were genuine reasons for redundancy, but the last-in-first-out rule was not considered at all, to the detriment of Claimant. Furthermore this Tribunal found that Claimant was discriminated against in his dismissal, in so far as other workers were granted redundancy compensation and he was not granted anything. For this reason, this Tribunal ordered that Respondent pay Claimant compensation in the global amount of forty three thousand Euros (€43,000).

Respondent lodged an appeal, and in its decision the Court of Appeal decided the case by upholding the grievance that this Tribunal could not decide on the issue of discrimination in the termination of employment; rejecting the grievance that the case was file late and that it was time-barred; and abstaining from deciding the other grievances, thus revoking this Tribunal's decision and remitting the acts of the case in front of this Tribunal to be decided accordingly.

Counsels to parties made their submissions afresh.

### CONSIDERATIONS

Apart from turning down the claim for compensation for discrimination committed, the Court of Appeal also noted that the Tribunal found that Benjamin Bugeja was redundant but also found the Last In First Out Rule was not adhered to; however it had to be either one or the other.

In this respect Claimant holds that although the claim of discrimination, raised at a late stage of the case, cannot be entertained any more, the last-in-first-out rule was not observed in his respect and needed to be addressed.

On the other hand, Respondent holds that the principle of last-in-first-out rule cannot be upheld in favour of Claimant as he was the only employee in the Commercial section, so he has no further claims to put forward.

At this point this Tribunal needs to clarify that it had resulted that the British Hig Commission was genuinely faced with a situation of redundancies, but then it had to terminate the employments according to law. Respondent has always held that Benjamin Bugeja was employed in the Commercial Section, which was abolished, so no alternative work could be offered to him. Respondent had raised this issue in its third plea.

This Tribunal has already dealt with this issue, holding that:

“While Claimant considers all LE IIIs as being workers in the same class, Respondent argues that Claimant was engaged in the Commercial Section and the last-in-first-out rule should be viewed within that perspective. It was shown to this Tribunal that although Respondent’s argument is correct, Claimant did other jobs within the Commission, particularly as an LEIII within the accounts section, and this for almost ten years. It appears that Claimant coped well in this section, even when he was manning it on his own, and he was then sent back to the Commercial Section only because the Commercial Section was not coping without him, and a complaint was lodged. A new employee took over the work in the Accounts Section, and this employee is still in employment today. In these particular circumstances, this Tribunal feels that the Commission should have applied the last-in-first-out rule by giving Claimant the option to go back to the Accounts section instead of terminating his employment.”

Actually, in its first decision, this Tribunal has considered this issue as the main issue, but then went ahead with deliberating on the way how other workers were compensated whilst Claimant was not. This second matter has now been determined by the Court of Appeal.

Therefore, whilst clarifying that this Tribunal has found that the British High Commission had a genuine situation where employees had to have their employment terminated on the basis of redundancy, particularly in the Commercial Section, it also needs to clarify that Benjamin Bugeja’s employment could not be considered redundant in view of the fact that he could still be assigned accounts work in his same grade of LE III, and this because the employee working in the accounts section was employed with the Commission after Benjamin Bugeja; thus applying the last-in-first-out rule.

## DECISION

Therefore, after having seen all the acts of this case, this Tribunal declares that in view of the principle of last-in-first-out rule, Claimant's employment could not be deemed redundant, and that the termination of his employment is hereby being deemed unjust. For this reason, this Tribunal orders that Respondent has to pay Claimant a compensation in the amount of thirty three thousand Euros (€33,000), 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