

INDUSTRIAL TRIBUNAL

PRELIMINARY DECISION NR: 2495

Case Number : 3507/DP

Fiorentina Darmania-Jochimsen (285563M)

vs

**the Institution of Tourism Studies formed
by S.L. 327.423 represented by its Executive
Director Mr Pierre Fenech**

Regarding withholding of part of salary in excess to a garnishee order

Chairperson : Doreen Parnis M.A., M.A. Qual. B.A., P.G.C.E.

Tuesday 10th October, 2017

Introduction

This case was referred to the Industrial Tribunal by a Declaration on behalf of Fiorentina Darmania-Jochimsen in the Registry of the Superior Court by Advocate Kai Jochimsen, on the 11th November, 2016, whereby the Respondent was asked to pay back any extra money withheld that were so being deducted from the Applicant's salary since the garnishee order was still underway.

The Respondent meanwhile asked the Industrial Tribunal to preliminarily declare the statement of case as null and void as it was tabled solely in the English language, also because there was a mistake in the name of the respondent and thirdly because this Tribunal has no jurisdiction to decide this case.

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Representation

Fiorentina Darmania-Jochimsen the applicant, was assisted by Dr Kai Jochimsen

Institute of Tourism Studies the Respondent was presented by Dr Clint Tabone

Case Summary

The Applicant was employed on full time basis with the Institute of Tourism Studies and a part of her salary was being withheld by order of the Superior Court due to a garnishee order presented by third parties. The applicant claimed that this had to come to an end as it surpassed the sum ordered to be withheld by the court to cover the garnishee order. On

the otherhand the respondent, besides putting forward exceptions stating the nullity of the records referred to the Respondent by a wrong name, was tabled in the English language before asking the Tribunal's permission to do so according to Article 189 of the Laws of Malta. It also stated that the Respondent itself took the case to the higher Court so that they will be exempt from continuing with the managing of the garnishee order, in which case by the Court's Decision (Nr 30/16VG), on the 13th April 2016, refused this plea and ordered the Respondent to continue doing so until otherwise decided.

During the first sitting the parties disagreed on the fact that the declaration was presented in the English Language which goes against Article 189 of the Laws of Malta, where it states that such declaration has to be presented in the Maltese Language, permission will be granted after a formal request to the Tribunal. Permission was in fact granted during the first sitting and both parties agreed that it was going to continue to be heard in English. During the second sitting the applicant, by means of her lawyer had already informed the Tribunal that she refused to submit the application in Maltese as agreed during the first sitting, and threatened to send the case in front of the Attorney General, because the lawyer representing her, received the minutes of the first sitting in Maltese. The Tribunal asked whether this was the case, that is whether it was already in front of the Attorney General, the answer was in the process of.

Thus the Tribunal decided to stop hearing the case until a decision is issued by the AG.

On the 1st of March 2017 the Attorney General informed the Applicant that he does not decide such cases and this process is at the Tribunal's discretion.

The Tribunal continued to hear the case on the 11th July 2017, by moving to the third exception, that is, whether the Tribunal had jurisdiction and whether it was competent to hear this case as it was revolving around a garnishee order.

Lawyers' summation

Dr. Clint Tabone on behalf of the defendant, regarding the third preliminary exception said that on the 12th of February 2016 ITS presented an application in court whereby it requested the same Court to allow the same ITS to release all the wage which is owed by ITS to Ms Fiorentina Darmenia Jochimsen and stated the reason why they were asking to the Court that is that basically the amount which has been subject to the said garnishee orders has been deposited in Court. The Court by means of a sentence delivered on the 13th of April 2016 the Court did not accede to their request and the reason said Dr Tabone, was because that in view of the fact that there is an Executive title and in view of the fact that counter warrant can be made in order that such garnishee order is thus terminated therefore the only way how ITS can release the whole monthly salary is once ITS is served with a counter garnishee order in that regards.

Dr. Kai Jochimsen on behalf of the plaintiff said that the Magistrate's Court rejected the application because the same court did not, according to Article 281 of Chapter 12 apply for the revocation or partly revocation of the garnishee order. That was not the application. Dr Jochimsen said that the application was a matter of releasing funds. He also said that we are not discussing any matter of a garnishee order, they shall exist and continue to be effective. All money is delivered to the Court. He said that anything not attached to the garnishee order is what the applicant requires to receive and this is approximately twenty one thousand euros.

Decision

In order for this Tribunal be able to see whether it is in fact a competent body to hear this case regarding part of the salary being withheld due to two garnishee orders attached to it and the plaintiff's allegations of extra monies that go beyond the said amounts being withheld, and in view of six facts that emerged during the process, that is:

That the plaintiff was still in full-time employment;

That the plaintiff has two garnishee orders attached to her salary;

That the defendant, her employers, did take the case to Court and asked to be released from managing the garnishee order;

That there is a higher Court's decision by means of a sentence delivered on the 13th of April 2016 whereby the Court did not accede to the defendant's request;

That the same higher Court's decision mentions a counter warrant that can be made in order to terminate the garnishee orders;

That this case revolves around and is in direct result of the said garnishee orders

The Tribunal took into consideration the declarations of case as presented by the parties, heard and evaluated proof presented and all exhibited documents as well as the arguments and the Submissions presented by both lawyers.

This Tribunal reached the decision that it will in effect accept the third preliminary exception and declares that it is not competent to hear and decide on the Original Application, as the case revolves around and is initiated by two garnishee orders and is also the direct result of the said garnishee orders.

Therefore the case ends here.

Due to Legal Notice 48 of 1986, this Tribunal establishes the sum of €93.17 as dues towards whoever assisted the parties.

(signed)
Doreen Parnis
Chairperson

True Copy

Graziella Spiteri
Obo the Secretary