

TRIBUNAL INDUSTRIJALI

DECIZJONI NRU. 2618

Kaz Nru. 3515/HW

Fil-Kwistjoni tax-Xoghol

bejn

Maria Fenech Attard (K.I. Nru 3681 (M))

vs

AIM Professional Academy Ltd (C 30777)

**(dwar tkeccija mill-impjeg allegata li
hi ngusta).**

Chairman : Is-Sur Harold Walls M.Sc., D.P.M., IPD(UK).

Dan il-Kaz gie referut lit-Tribunal Industrijali permezz ta' Dikjarazzjoni tar-rikorrenti Maria Fenech Attard, li gie prezentat fir-Registru tal-Qorti fl' 24 ta' Novembru, 2016. Matul is-smigh tal-Kaz ir-rikorrenti kienet assistita minn Dr Kieth A. Borg u ghall-AIM Professional Academy Ltd deher is-Sur Etienne Borg Cardona li kien assistit mill-Avv. Ian Spiteri Bailey.

Fid-dikjarazzjoni tal-Kaz ir-rikorrenti tghid, li giet impjegata mas-socjeta ntimata fuq bazi full-time bhala Director of Studies li kien kuntratt indefenit datat 8 ta' Marzu, 2016 u li kellu perjodu ta'

probation ta' sitt xhur. Hija tghid ukoll, li meta l-impjieg taghha gie konfermat kien hemm ukoll diskussjoni biex tinghata kariga aktar gholja fl'organizazzjoni.

Fl'istqarrija taghha hija tghid ukoll, li nhar il-21 ta' Settembru, 2016 hija kitbet lid-Diretturi tas-Socjeta biex taghmel l-osservazzjonijiet taghha dwar il-funzjoni ta' l-istess socjeta u hemmhekk talbet illi ssir laqgħa biex dawn l-osservazzjonijiet jigu diskussi.

Hija tghid ukoll li l-laqgħa saret fit-28 ta' Settembru, 2016 u bl'aktar surpriza għalija f'din il-laqgħa nfirmawha, li huma kienu qegħdin jaccettaw ir-rizenja taghha liema rizenja hija qatt ma kienet tghat hekk kif tikkonferma l-korrispondenza skambjata dakinhar stess bejn il-kontendenti.

Hija tghid ukoll, li kif se jirrizulta mis-smigh is-socjeta ghawget il-fatti u approfittat mis-sitwazzjoni bil-ghan illi tipprova iggibha tidher illi kienet hi li qed tirrezenja u mhux is-socjeta li kienet qed titterminalha l-impjieg. Hija tghid ukoll, li dan minkejja l-fatt illi hija qatt u bl-ebda mod ma pprezentat xi forma ta' rizenja mill-impjieg taghha u huwa evidenti li l-agir tas-socjeta kien intiz li tittanta tabdika ruhha mill-obbligi mposti fuqa mill-Kapitolu 452 tal-Ligijiet ta' Malta.

Ir-rikorrenti tghid ukoll, li minkejja hija nterpellat lis-socjeta sabiex tirratifika l-pozizzjoni taghha skond il-ligi, is-socjeta baqghet tippersisti bl-agir abbuazziv taghha u ghalhekk ma kellha ebda ghazla ghajr li tipprocedi billi tressaq il-kaz taghha quddiem dan it-Tribunal Industrijali.

Ghas-Socjeta ntimata da parti taghha qalet, li t-talbiet tar-rikorrenti huma nfondati fil-fatt u fid-dritt u mhux biss qed issir cahda kategorika li s-socjeta esponenti ghawget il-fatti kif gie allegat, talli qed tivversa l-istess akkuza lir-rikorrenti in kwantu li hija r-rikorrenti stess illum qeghda konvenjentament tghawweg il-fatti.

Is-socjeta tghid li hija tirrijafferma, kif dejjem ghamlet li meta d-diretturi taghha recevew l-email tal-21 ta' Settembru, 2016 huma fehmu li hi kellha diversi lmenti dwar l-impjieg taghha u kienet qeghda tikkontempla r-rizenja taghha mill-impjieg. Is-socjeta tghid, li fil-kuntest tal-fatti li ser jirrizultaw izda wkoll fil-kuntest tal-kitba kontendenti l-istess email huma sejjhu laqgha maghha ghat-28 ta' Settembru, 2016 u d-diretturi tas-socjeta stqarrew maghha li jekk hi kienet qed tikkunsidra r-rizenja, huma kienu qed jaccettawha. Is-socjeta tghid, li r-risposta tar-rikorrenti f'dik il-laqgha ghal darba darbtejn kienet illi qed taccetta d-decizjoni tal-kumpanija, ossija dik illi taccetta r-rizenja taghha.

Is-socjeta tghid ukoll, li dan kollu sar fl'isfond ta' relazzjoni lavorattiva bejn il-kumpanija u l-impjegata li xejn ma kienu pjacevoli. It-ton u anke d-dicitura fl-email taghha stess jikkonferma dan. Saru akkuzi fil-konfront tal-kumpanija bhal unprofessional work practice standards, unprofessional way of doing things, political hidden agenda, disheartening, lowering the image, reached a saturation point, u before moving on. Dawn l-akkuzi u l-frazijiet kollha leggittimament wasslu lid-diretturi tal-kumpanija jifmhu li hija setghet kienet qed tirrezenja jew thejji r-rizenja taghha, ghalhekk illi fil-laqgħa fuq msemmija, huma affrontawha b'dan u hi minn n-naha taghha, mhux talli cahdet izda talli accettat il-fehma tal-kumpanija, ossija r-rizenja.

Is-socjeta tghid ukoll, li f'dan l-isfond mhux bl'email per se, imma verbalment waqt il-laqgħa tat-28 ta' Settembru 2016, id-diretturi affaccjaw lill impjegata bil-kliem "we are understanding this last line in your email as your resignation, in which case we are accepting it immediately". Huma jghidu, li liberalment ir-rikorrenti setghet qalet le izda r-risposta kategorika u cara taghha kienet "if that is the board's decision, I accept your decision".

Is-socjeta tghalaq l-istqarrija taghha billi tghid, li dan kollu qed isir biex ifisser li r-rikorrenti rrezenjat hi mill-impjieg taghha b'mod verbali

fil-laqgħa tat-28 ta' Settembru, 2016 kosegwenza ta' liema rizenja twaqqfet mill-impjeg.

Mill-provi jirrizulta, li r-rikorrenti kient impjegata bhala Director of Studies b'seħh mit-8 ta' Marzu,2016. Mill-provi jirrizulta wkoll li fil-21 ta' Settembru, 2016 ir-rikorrenti kkomunikat permezz ta' email mas-sur William Spiteri Bailey u mas-Sur Etienne Borg Cardona u f'din l-email hija tirrakonta l-esperjenza tax-xogħol tagħha f'dawn l-aħħar sitt xhur li kienet ilha fl'impjeg fejn tgħid “ My past 6 months working in this organisation have been characterised by a serious of U-turns, reverted decisions and unprofessional work practice standards. While I know perfectly that sometimes these are inevitable, I honestly feel that the dose of them has been excessive one, this to an extent, that the focus is more on these things rather than on areas of consolidation and business growth.

In my opinion the reasons behind these unprofessional ways of doing things, are either the lack of information on how this organisation is really functioning or “political” hidden agendas, or possibly even a combination of both. What is for sure is that this air is disheartening our employees and is factually lowering the image of this organisation in the world beyond our walls.

As I am sure you might have realised, I hold principles, ethics and also my personal career very much at heart, and I have unfortunately reached a saturation point on such matters.

During the past weeks I made various attempts to draw your attention to meet up and discuss the latest development. This whilst also trying my utmost not to disturb your holidays and busy schedules, but unfortunately I did not succeed.

However, it would be unprofessional from my end, if before moving on I do not try one more time to meet up and discuss matters”.

Mill-provi jirrizulta wkoll, li wara din l-komunikazzjoni saret laqgħa fit-28 a' Settembru, 2016 bejn ir-rikorrenti u d-dirigenti tas-socjeta li kienu is-Sur William Spiteri Bailey u s-sur Etienne Borg Cardona. Fix-xhieda tas-Sur Etienne Borg Cardona tas-19 ta' April, 2018 l-Avv. Keith A Borg jistqasi “ Mela, Sur Borg Cardona ha nerga nirreferik ghax-xhieda li inti tajt quddiem it-Tribunal fis-seduta ta' nhar il-Hamis 16 ta' Marzu u ha nkun qed naghmillek referenza għall-pagna 7. Ha naqrlek xi brani mit-testimonjanza tiegħek u naghmillek il-mistoqsijiet bħall-ahhar darba. Mela, inti hawnhekk tghid emm tghid hekk rigward il-meeting li kellkom inti u s-Sur Spiteri Bailey ma Maria Fenech Attard fejn ghidt. Jien ftaht il-meeting. Mill-ewwel mort għall-punt. Jiena rreferejt għal din l-email li kienet bghatitilna u mmedjatement ghdtilha li jien kont li ghedtilha illi we are interpreting this email as a resignation from your side. Mela, inti tista tikkonfermali illi l-meeting ftahtu inti billi lil Maria

Fenech Attard ghidtilha li kontu qeghdin taccettaw ir-rizenja taghha li ftahtu b'dak il-mod ? Fir-risposta tieghu Etienne Borg Cardona jghid li jikkonferma u ghal mistoqsija jekk jikkonfermax wkoll illi Maria Fenech Attard mal-ewwel qaltilhom li hi ma kienitx issottomettiet ebda forma ta' rizejna Etienne Borg Cardona jghid li ma jikkonfermax.

Minn naha tar-rikorrenti hija tichad li qatt issottomettiet ir-rizejna taghha.

Mill-provi jirrizulta wkoll li wara l-laqgħa tat-28 ta' Settembru, 2016 William Spiteri Bailey u Etienne Borg Cardona bghatu email lir-rikorrenti li tghid " Further to the meeting of this afternoon, we again reiterate that we do not agree with the contents of your email of the 21st of September and accept your resignation.

This can take place with immediate effect and there is no necessity to report back to work.

You will receive all dues to you in accordance of the law including the payment for the notice period.

Kindly arrange to return any AIM property including keys and equipment that you might have relating to the company including laptops and mobile phone"

B'risposta ghal din l-email dak inhar stess ir-rikorrenti tikteb lura fejn tghid "Thank you very much for your email, however in my email dated 21st September, 2016 I did not in any way tender my resignation.

So much so that I came prepared for today's meeting ready to present a Business Plan and my vision for AIM's growth, since in my most honest opinion AIM's business growth in the last months was evident.

As I understood in the meeting it seems that you are no longer happy with my services, a decision which as I communicated during the same meeting comes as a surprise but now which I fully respect.

However the least courtesy calls for, is honesty and to refer to matters as they really and truly occurred, that is a termination of my employment from your end.

Rest assured that any AIM property will be returned."

Mill-provi jirrizulta li s-socjeta ma irrisponditx din l-email u lanqas regghet ikkomunikat mar-rikorrenti.

It-Tribunal Industrijali fil-kunsiderazzjonijiet tieghu jibda biex jikkunsidra l-aspett principali ta' dan il-kaz inkwestjoni dak li s-socjeta qed tghid, li kienet ir-rikorrenti li rrezenjat mill-impjeg. Invista ta' dan it-Tribunal jibda biex jikkunsidra email tal-21 ta' Settembru, 2016 li nstigmat din is-sitwazzjoni tal-Kwestjoni tax-xoghol. Meta dan it-Tribunal

Industrijali jeżamina din l-email isib, li din ma kienitx ittra ta' rizenja izda r-rikorrenti kienet qed tikkontempla li tirrezenja jekk l-ilmenti li stqarret fl'email taghha ma jigux indirizzati u solvuti ghas-sodisfazzjoni taghha.

It-Tribunal Industrijali jghamel din l-osservazzjoni f'dawn il-kunsiderazzjonijiet ghar-raguni, li taghmel differenza bejn li tkun qed tirrezenja ghal dak li tkun qed tikkontempla li tirrezenja jekk ma jigux indirizzati l-problemi li gew imressqa mir-rikorrenti ghal attenzjoni tal-management. Ghaldaqstant, f'dan l-aspett dan it-Tribunal Industrijali jasal ghal konkluzjoni li l-email tal-21 ta' Settembru ma kienitx ittra ta' rizenja.

F'dawn il-kunsiderazzjonijiet it-Tribunal Industrijali jikkunsidra wkoll, li fil-laqgħa tat-28 ta' Settembru meta l'ghan taghha kien li jigu diskussi l-problemi mressqa mir-rikorrenti ma saret l-ebda diskussjoni u l-punt li hareg minn din il-laqgħa hu li s-socjeta kienet diga ddecidiet li jekk ir-rikorrenti riedet tirrezenja huma kienu qed jaccettaw ir-rezenja taghha. Dan l-aspett juri li s-socjeta ma kienitx interessata li tiddiskuti l-problemi mressqa mir-rikorrenti u jidher wkoll u dan anke mill-istqarrija tal-kaz ta' l-istess socjeta, li s-socjeta kienet urtata u ffastidjata għal akkuzi li kien hemm fl'email li ntbghatet mir-rikorrenti.

It-Tribunal Industrijali qed jirreferi ghal dan il-punt ghax jidher li s-socjeta hadet l-attitudni li ma accettatx il-kritika li saret mir-rikorrenti u hadet l-iqsar triq li minflok iddiskutiet l-ilmenti tar-rikorrenti marret ghal interpretazzjoni li l-email tal-21 ta' Settembru kienet dikjarazzjoni ta' rizenja.

F'dawn il-kunsiderazzjonijiet dan it-Tribunal Industrijali jikkunsidra wkoll aspekt importanti ta' dak li gara wara l-laqgħa tal-21 ta' Settembru, 2016 fejn il-management bghat email lir-rikorrenti l kien qed jaccetta r-rizenja tagħha u b'risposta ta' dan ir-rikorrenti wiegbet billi cahdet li hija kienet qed tirrezenja.

Dwar dan l-aspett it-Tribunal Industrijali huwa tal-fehma, li l-management jekk verament ried izzomm lir-rikorrenti fl'impjieg kien jerga jikkuntattja lir-rikorrenti u jiccara din is-sitwazzjoni ghax ir-rikorrenti kienet qed tghamilha cara li ma kienitx qed tirrezenja mill-impjieg. It-Tribunal Industrijali huwa tal-fehma, li l-management kien obligat li jerga jikkuntattja lir-rikorrenti biex jekk kien hemm xi forma ta' misinterpretazzjoni din kienet tigi ccarata.

Wara li t-Tribunal Industrijali ra u kkunsidra li statements of case tal-partijiet, semgħa u evalwa l-evidenza tax-xhieda prodotti, ra u kkunsidra d-dokumenti esebiti u pprezentati, ra u kkunsidra s-

sottomissjonijiet finali u dawk addizzjonali tal-partijiet isib u jasl ghal konkluzjoni, li l-provi juri li r-rikorrenti ma rrezenjatx mill-impjieg u invista ta' dan it-Tribunal Industrijali jiddeciedi li kienet is-socjeta li tterminat l-impjieg tar-rikorrenti u din it-terminazzjoni ta' l-impjieg saret bi ksur tal-ligi. Ghaldaqstant, dan it-Tribunal Industrijali jiddeciedi li irrikorrenti ghandha tinghata kumpens minghand AIM Professional Academy Ltd (C 30777) li jammonta ghal €11,700 (hdax il-elf u sebgha mitt euro) u liema kumpens ghandu jithallas fi zmien hmistax il-gurnata mid-data ta' din id-Decizjoni.

Ghall-finijiet ta' Avviz Legali 48 ta' 1986, jistabilixxi d-drittijiet ta' min assista l-partijiet fl'ammont ta' €94 (erbgħa u disghajn ewro).

B'hekk tintemm din il-Kwistjoni tax-Xoghol.

**Iffirmat : Harold Walls
Chairman**

Vera kopja

Mary Rose Galea

A/Segretarja

Illum : 3 ta' Ottubru, 2019