

# INDUSTRIAL TRIBUNAL

## Decision Number 2698

Case Number 3713/JG

Employment Case

Between

Michael Keown  
ID card 57590A

and

Entertainment International Malta Ltd  
Services Operations Limited (C 43474)

*Subject matter: alleged unfair dismissal*

Today: 15<sup>th</sup> January, 2021

**Chairman: Is-Sur Joseph Gerada FCIPD, M.A.(Mediation), IUKB Suisse,  
Dip.Applied Soc.Stud.,MAAT**

### **1 Introduction**

This case was referred to the Tribunal by means of a petition by advocate Dr Andrew Borg Cardona on behalf of Mr Michael Keown, bearing the date of the 9th January, 2019. On the other hand, the company Entertainment

International Malta Ltd filed its reply in the court's registry bearing the date of the 22<sup>nd</sup> February, 2019 and signed by advocate Dr Matthew Brincat. In view that the parties represented in the case have a better understanding of the English language, the parties agreed to have the proceedings done in English.

With regard to article 78 of chapter 452 of the Laws of Malta the Tribunal could not decide this case within the stipulated period due to several deferments requested by both parties.

## **2 Facts of the case**

The Plaintiff was, employed by Entertainment International Malta Limited on the 16<sup>th</sup> November, 2011 in the role of "Senior Trader" who over time was promoted to "Head of Trading". In September 2018, Mr Michael Keown had his job terminated on, grounds of redundancy that the plaintiff considers not to be genuine. The reasons that he gives are that his subordinate Paul Lathey was, kept in the job even though he was, employed with the company after plaintiff's employment. He therefore claims that, the "last in first out" rule was not, followed. Moreover, Mr Keown adds that Mr Lathey was not strictly, assigned the role of customer profiling (factoring) as the plaintiff was led to believe. Instead, he was, assigned the tasks previously held by plaintiff. In this regard, Mr Michael Keown argues that the "new role" assigned to Mr Paul Lathey was one that should properly have been assigned to Appellant.

On the other hand, the defendant claims that in 2017 and 2018 the company faced challenging times and due to the situation, it undertook a major re-organisation exercise of its business starting in February, 2018 when the first wave of redundancies were effected. In 2018, the situation deteriorated further and in the circumstances, the company embarked on a restructuring exercise. This included the almost complete disbandment of the trading function led by Mr Keown and in view of this, on the 11<sup>th</sup>

September, 2018 a decision was taken to make the plaintiff redundant. The defendant points out that Mr Keown was the only person in the particular class of employment and therefore they argued that there was no reason to use the Last in First out rule. Moreover, the company claims that Mr Lathey carried out work, which was substantially different to the plaintiff's role both before Mr Keown was, made redundant and after.

### **3 Considerations**

The Tribunal had before it a case where the parties did not contest whether the company was justified in effecting redundancies. However, given the new business scenario that developed after the first wave of redundancies in February 2018, the parties were concerned, with which employee should have been, retained with the company and who made redundant.

Nevertheless, the Tribunal looked into the factors that constitute a genuine redundancy, it also looked into the "Last in first out "rule and its relevance to the case as well as the business rationale of the company to retain Mr Paul Lathey and not Mr Michael Keown.

Chapter 452 of the laws of Malta does not give a definition of redundancy. However, jurisprudence offers rich insights that informs this decision. In addition, the English legislation, which for obvious reasons offers valid insights, presents a rich resource for more informed decision-making.

In situations of redundancy, employers have an obligation at law to ensure that they respect the rights of the afflicted employee/s and follow procedures consistent with demonstrating the right intent.

Redundancy should be a measure of last resort in an organization's restructuring or re-engineering exercise as, the loss of employment for a person shall have far reaching, consequences. It therefore requires sensitive handling by the employer to ensure fair treatment of the employee at risk of redundancy.

In English law, redundancy is considered as a special form of dismissal which, happens when an employer needs to reduce the size of its workforce. In this regard, an employee is, deemed redundant when:

- 1 the employer has ceased, or intends to cease, continuing the business, or
- 2 the requirements for employees to perform work of a special type, or to conduct it at the location in which they are employed has ceased or diminished, or is expected to do so.

Therefore, the role must disappear for there to be a true redundancy. The common reasons for redundancy include:

- 1 new technology or systems reducing the need for employees,
- 2 the need to cut costs resulting in a reduction in staff numbers,
- 3 the business closing down altogether or moving.

A genuine redundancy only arises if the dismissal is attributable to the fact that the employer requires fewer employees to carry out work of a certain kind or expects that the requirements for employees has reduced.

Considering the above, the Tribunal asserts that to dismiss fairly for redundancy an employer must establish that the role is genuinely redundant, follow a fair consultation procedure with the employee at risk of redundancy and consider whether there is suitable alternative employment.

This case concerns the Gaming Industry that according to the [Malta.com/en/business-education/igaming-industry](https://www.malta.com/en/business-education/igaming-industry) website states that when talking about online Gaming one would be referring to online poker, online casinos, online sports betting, online bingo and lotteries and mobile gaming. So basically, this industry has more to do with gambling than with games and more with gamblers than players however, the industry chooses to use them interchangeably.

In this case the company Entertainment International Malta Ltd was set up to provide sportsbook trading services to the group, particularly by traders who

were able to trade in sportsbook for the company. The company also had traders in the Philippines, albeit less experienced than those in Malta, to cover other time zones than Malta.

Mr Geoff Reed, the Chief Executive Officer of Offline Gaming Group, the mother company of Entertainment International Malta Ltd said in the sitting of the 1<sup>st</sup> March 2019, that in 2017 the company, faced problems. To mitigate the situation, the company implemented a re-organisation exercise of its operations, which meant that, in February 2018 it effected the first round of redundancies. Notwithstanding, Mr Reed explains that at the time the company tried to maintain its Trading and its IT capabilities. However, problems persisted and Mr Reed explained how the option left for the company to return to viability was to change the business model and outsource the Trading function to third parties.

Mr Naughton, the Chief Operations Officer / Trading Director, in his affidavit reported that the change in strategy was largely based around, moving to a “managed sportsbook provider”. This allowed the company to make significant cuts to the overall trading budget.

The company produced copies of its management accounts which although are not the audited accounts show, in 2018, a return to profitability from the loss situation of the previous year.

Mr Michael Keown, to a question by the Tribunal, in the sitting of the 1<sup>st</sup> November, 2019 confirmed that in September 2018, when he was made redundant, the headcount of employees in Malta was down to two from circa 25 – 30 employees – reference sitting of the 7<sup>th</sup> February, 2020 page 4.

Mr David Ffeiff, the manager of the Manila Office, in the sitting of the 10<sup>th</sup> January, 2020 states that after Mr Keown’s termination of employment a great deal of change took place. This included a reduction in the head count at the Manila office from 30 to circa 8 employees who were constrained to work remotely as the office was closed down due to licencing problems.

The redundancies in February of 2018, together with the redundancies in September, 2018, were an indication that management had the intention of ceasing operations, at least in the current model. The drastic reduction in the headcount in 2018 in Malta and the Philippines directly correlated to the change in profitability from a loss in 2017 to a profit in 2018. The closure of the offices in Malta and Manila locations where most of the employees worked ceased. The company's need to cut cost also compelled it to close down the offices and request the few remaining workers to work remotely.

The Tribunal acknowledges that the business of the company was on the decline, it had problems with the Manila location while the need to cut cost was, reflected in the accounts.

**The Tribunal is convinced that in the circumstances, in order to return to financial viability the company was justified in resorting to redundancies.**

The second point that the Tribunal had to look at is whether the role of "Head of Trading" had actually disappeared.

Mr Naughton informed that Mr Keown's job title was "Head of Trading" which covered an overall responsibility for the management of the offices in Malta and Manila, the recruitment of personnel for the trading department and providing the sportsbook service. In addition, he assisted Mr Naughton with profit margin projections and the trading budget.

In the sitting of the 21<sup>st</sup> June, 2019 Mr Keown acknowledges that he led the trading department which covered tasks such as the management of the product for the sportsbook, offer products for gamblers to bet on, manage the players and ensure that they are safe clients to take bets from as well as manage the traders.

The above descriptions are corroborated by the one given by Mr Reed who in the sitting of the 1<sup>st</sup> March, 2019 explained that the current business model included creating a market and events that people can bet on, set the prices of the odds that players bet on, using mathematical models or own hunches while monitor players' behaviour.

Both parties agreed that this model needs traders to monitor and manage the prices in real time.

Mr Reed described on page 3 how the company made the decision to change the business model and go for a managed service by moving away from actually trading its own prices to, taking a feed from third party supplier. This effectively meant that trading was outsourced and therefore the company would stop trading and managing its sportsbook. The company now relied entirely on its feed suppliers to ensure that the market prices are correct. Mr Reed said that the company would not do any of the things it used to do in trading so the company had no need for traders any more.

Mr Keown in the sitting of the 21<sup>st</sup> June on page 5 and 6 describes what a managed service is and amply demonstrates that it is a different business model, where basically, the risk management, the bet acceptance and the access to the bets, are all undertaken by the third party provider rather than, in-house. Under this business model, quote “ you no longer need traders”.

Both parties agreed that a managed service is a different business model and one that did not need to have in house traders.

However, while Mr Keown acknowledges that the new approach is different to the previous business model, he rejects the notion that the business model had actually changed. He argues that he believes that up to March 2019 the system was still unchanged and the operation remained essentially the same. Yet in the sitting of the 1<sup>st</sup> November, 2019 page 9 Mr Keown states that the direction was that everyone in Malta was being made redundant with immediate effect apart from Rob Gerad and Mr Paul Lathey as effectively, happened.

The Tribunal finds it difficult to understand the rationale that the old business model, whose core task was to trade the book, was, retained when the company no longer had traders on its payroll and no book to trade. In fact, there were a succession of decisions, by the company, that showed its

intention to change the business model. The intention was, even followed by action when it effected the first wave of redundancies in February 2018.

In this regard, the Tribunal also finds it difficult to understand how Mr Keown who was involved in delivering the redundancies to some of his traders, would describe this period as quote - 'a little bit less stable than it would have been a year before that'. He adds that and quote - 'as long as you have a trading department you need a head of trading and provided that I am doing my job well enough I did not have any concern over that'.

The Tribunal asserts that Mr Keown delivered the redundancies not because the affected employees did not do their job well enough but because the business climate for the company was changing. The company lost important clients, incurred bad debts and had licencing problems in Manila. These are situations known to Mr Keown and was capable enough to deduct that doing more of the same was not going to get the company out of its predicament. If by his own admission a trading department needs a Head of Trading then a reduced trading department needs a reduced function of a Head of Trading. If the traders in your centre of excellence are reduced to zero as, was the case in Malta in September 2018, then it is logical to conclude that the role of a Head of Trading is redundant. From the evidence submitted, the job role of Mr Keown was certainly in jeopardy and denying it served him, no good.

The Tribunal dismisses the notion that Mr Paul Lathey could have taken over the old role of Head of Trading and run the operations single handily. The role of Head of Trading did not only cease to exist, but even if it did, it is unrealistic to expect a person to single handily perform the list of tasks that Mr Keown claims to have performed in his job. Moreover, the job role of Mr Paul Lathey was "almost entirely dealing with player profiling" which is substantially different from and not experienced in, the job role of Mr Keown.

Evidence shows that at least up to March 2019, the company had only two employees on its payroll, one of whom was, moved to the IT department



leaving only Mr Paul Lathey in operations doing what he is specialised to do that is clients factoring.

**The tribunal is convinced that the new way of working was, changing. The company may have been in the process of a transition and not completely done but the trading function as it was, designed up to 2018 was, for all intents and purposes no longer meaningful and the company was genuine when it declared the role of Head of Trading redundant. Moreover, there is no evidence to suggest that Mr Paul Lathley took up the role of Head of Trading in any meaningful manner.**

The third point that the Tribunal looked at was whether the company was justified in making Mr Michael Keown redundant as opposed to Mr Paul Lathey.

Mr Naughton, in his affidavit, said that Mr Paul Lathey was a 'trading manager' supporting Mr Keown while also responsible for 'player management' and in that capacity, he reported directly to Mr Naughton. Mr Keown acknowledges that one of Mr Lathey's main responsibilities was 'player profiling or management' and in fact states that, "Paul's was a side role specifically or almost entirely dealing with player profiling" reference sitting of the 21<sup>st</sup> June, 2019 page 4. This statement corroborates what Mr Naughton said that he had identified Mr Lathey who he could develop in this area very early into his career with the company.

Mr Naughton adds that since the redundancies took place, Mr Lathey's title changed to 'Head of Player Management'. He works remotely and concentrating almost entirely on the customer database and maximising the profit. He is now conducting trading analysis in order to deliver the margins the company requires from the database. In addition, Mr Lathey assists the CEO and the IT department in implementing sportsbook platform requirements that benefit the customer and in the process increase profits.

The new business model was based on two specialist functions, the first being 'player management function' and the second being Sportsbook

Integration function- reference company's declaration of case page 1. The first function is a specialist role that involves monitoring and player management while the second is, intended to manage the interface between the sportsbook feed providers and the IT teams. The latter role was going to Rob Jarred, a move that was not contest by plaintiff while the other was, assigned to Mr Paul Lathey who already had extensive experience in the function. These two functions were the bases upon which the new business model was going to be built.

On the other hand, the plaintiff argued that at the point of termination he had 'actually quite a full day' of work. The tribunal notes that the tasks referred to were tasks of the old model of doing business and therefore irrelevant or of diminishing relevance in the new business scenario that was emerging. The company had to look forward to apply the skills that best sustained its business.

**The Tribunal understands the rational of the CEO that he kept on his payroll the person who had the expertise and skills set in player factoring, which was fast becoming the core activity of its business.**

**In terms of the rule of 'First in last Out' Mr Michael Keown was the Head of Trading while Mr Lathey was his junior and therefore clearly in different classes of employment. The evidence shows that the job content was also very different and therefore the Tribunal does not find any legal reason to justify substituting the termination of the employment of Mr Keown with that of My Lathley.**

#### **4 Decision**

Having examined and evaluated the statements of case, testimonies, documents and submissions presented and made by both parties, and having made the aforementioned considerations, the Tribunal, taking all the aforementioned elements in their totality and complexity, deems the Defendant's decision to terminate the employment of Mr Michael Keown on grounds of redundancy as genuine according to law.

## **5 Legal expenses**

In accordance with Legal Notice 48 of 1986 of the Laws of Malta the representation fees for each party shall be € 93.17. Each party in the case shall pay the respective fees to their legal counsel.

Tribunal Decision deems this Case closed.

**(signed)**

Joseph Gerada  
Chairperson

**TRUE COPY**

Graziella Spiteri  
F/A Secretary