

INDUSTRIAL TRIBUNAL

Decision Number 2742

Case Number 3801/JG

In the employment issue

between

Nebojsa Vujakovic (I.D. 129708 (A))

and

Bilom Construction Limited (C 48672)

Subject matter: alleged unfair dismissal

Today: 25th June, 2021

Chairman: Mr Joseph Gerada FCIPD, M.A.(Mediation), IUKB Suisse, Dip.Applied Soc.Stud.,MAAT

1 Introduction

This case was referred to the Industrial Tribunal by means of a petition dated 12th November, 2019 by advocate Dr Joseph Calleja on behalf of Mr Nebojsa Vujakovic I.D. card ID 129708 (A). On the other hand, Bilom Construction Limited (C48672) filed its reply in the court's registry bearing the date of the 30th December, 2019 and signed by advocate Dr Marie Elise Agius.

In view that the process was also meant to serve foreign nationals and in view that both parties to the case were able to understand the English language, albeit to varying degrees, the deliberations were conducted in the English language while sometimes interpretation to the Serbian language was required. This decision is therefore being served in the English language to facilitate communication.

With regards 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, Mr Nebojsa Vujakavic was employed by Bilom Construction Limited on the 23rd February 2015 in the role of “shutterer / steel fixer / builder worker” on a full-time indefinite contract marked Dok NV1.

On the 18th, December, 2018 the plaintiff had an accident at the place of work when he slipped while standing on a concrete brick. He was taken to the clinic by his supervisor Mr Frank Bonello while plaintiff was directed by the physician to rest for three or four days. An injury report was filed with the competent authorities. Nonetheless, Mr Vujakavic returned to work on the 9th January, 2019 only to report unfit for work again on the 20th March, 2019.

The plaintiff was called to appear before the medical board of the Social Security department in April, in May and in June and each time he was declared unfit for work – Ref ST3. In his last appearance before the Board, he was given a period of thirteen weeks of injury leave at the end of which his condition was to be reviewed again by the Board.

Nonetheless, Mr Vujakovic returned to work on the 15th July, 2019 while the Company informed the Social Security Department accordingly. Consequently, the Social Security Department stopped his injury benefits which Mr Vujakovic had been receiving since January 2019. In fact, he had been already paid benefits for a period beyond the 15th July and up to August, 2019 and therefore the Social Security department clawed back the overpayment from the date that plaintiff returned to work – Ref ST4.

On the 2nd August, 2019 the company terminated the employment of Mr Vujakovic citing health reasons for termination. On the 9th August, 2019 plaintiff called at the company’s office and collected his salary and other dues to him up to the date of termination.

3 Considerations

The Tribunal had before it a situation where the plaintiff was claiming that the defendant namely Bilom Construction Limited had failed to observe the necessary health and safety rules at the place of work and as a consequent, in December 2018 plaintiff suffered a serious injury at work. No OHSa report was presented but the site of the accident was covered by both a risk assessment and a health and safety plan. Frank Bonello, the works supervisor said that he regularly draws the attention of the workers to safety issues and even takes disciplinary action against the employees when rules are not followed. The company has a safety officer who visits the sites at least twice a week to check on standards and when shortcomings are pointed out, Mr Bonello takes action to address them - Ref sitting of the 21st February, 2020. Documentation was also produced Ref GB2 sitting of the 24th

January, 2020, showing that safety equipment was supplied to the workers including Mr Vujakovic. The necessary ladders were also supplied onsite which the plaintiff should have used instead of stepping on a brick to do his job.

The Tribunal concluded that the plaintiff did not produce evidence to suggest that the company was negligent in terms of its health and safety standards at the site where the accident of the 18th December 2018 took place.

Despite his health predicament, plaintiff claims that he was ordered to return to work in January 2019 yet evidence shows that the plaintiff chased after his employer to return to work even if he was requesting lighter duties. On the other hand, Mr Bugeja claims that he used to tell Mr Vujakovic that unless the latter was fully recovered, he would not want him back at work. Nonetheless, Mr Bugeja claims that he had assigned lighter work than that of a regular shutterer, namely shuttering stairs instead of room ceilings as well as operating the tower crane which only entailed the use of a joystick. Yet Mr Bugeja says that Mr Vujakovic found these activities hard to carry out.

Meanwhile, the Social Security Medical Board was certifying the plaintiff unfit for work and granting him injury benefits. The Board assessed the plaintiff three times and each time confirming that he is unfit for work. Notwithstanding, the plaintiff was concurrently working for ABB Ltd (BITMAC). In fact, the company records suggest that Mr Vujakovic was working at their offices on the 2nd, April 2019 at 06.28am when an inspection by Job Plus was carried out.

The Tribunal finds it unacceptable that while an employee is receiving a salary from his employer inclusive of the injury benefits, engages in productive activity with a competitor of his employer. In fact, Jobs Plus records suggest that the plaintiff's working status was regularized by ABB Ltd on the 17th September, 2019, soon after being dismissed by Bilom Construction Ltd.

The plaintiff claims that he had a good relationship with Mr Bugeja who had also loaned him money to send remittances to his family abroad, Ref NV1. The plaintiff's messages refer to Mr Bugeja as a friend, who also allowed him to use company tools to carry out private work. When plaintiff was unhappy working with fellow workers in Zurrieq, Mr Bugeja accommodated and transferred him to Qawra, even though the Tribunal felt that the request for the transfer which smacks of racism was not justified - Ref sitting of 21st February, 2021 pg 18. In March 2019 Bilom Construction also filed an application with ID Malta to renew plaintiff's work permit which shows that the employer had all the intentions of retaining him in employment. The employer also kept back from taking disciplinary action when plaintiff was not found at home by the doctor when he reported sick.

It seems that while Bilom Construction was active in processing the work permit application for the plaintiff, covering his salary for the duration of the injury period and making reasonable adjustment to accommodate the health condition of the employee, Mr Vujakovic ignored the opportunity to rest and regain his strengths, failed to make an effort to capitalize on the less strenuous options presented by his employer and instead lent his loyalty to a new employer who is in competition with his existing employer.

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 Nebojsa Vujakovic just and in accordance with the law.

5 Compensation

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

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Graziella Spiteri
F/Secretary