

**INDUSTRIAL TRIBUNAL**  
**DECISION NUMBER: 2765**

Case No.: 3776/JD

In the employment issue  
between  
Tania Di Giancamillo  
(ID186471A)  
and  
Arti Brands Limited C-80815

*Subject matter: alleged unfair dismissal*

**Chairman: Mr Joseph Delia BA(Hons)(Econ), FIPD**

**Today Thursday 7<sup>th</sup> October, 2021**

**The Petition<sup>1</sup>**

The plaintiff, Ms Tania Di Giancamillo, made a petition that reached the Tribunal on the 13<sup>th</sup> August 2019.

The petition stated that:

on the 17<sup>th</sup> September 2018<sup>2</sup> the plaintiff had joined Arti Brands Limited as an employee on a full-time and indefinite basis, as administrative assistant;

on the 19<sup>th</sup> April 2019 the defendant informed Ms Di Giancamillo that her employment was terminated;

the plaintiff was neither allowed to work the notice period nor given payment in *lieu*;

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<sup>1</sup> During the sitting of the 31<sup>st</sup> October 2019 the defendant agreed to the plaintiff's request to hold the proceedings in the English language, and the Tribunal upheld the request.

<sup>2</sup> The contract of employment says that Ms Di Giancamillo commenced her employment with the defendant on the 16<sup>th</sup> September 2018. So does page 1 of the jobsplus employment form that the plaintiff submitted to the Tribunal together with the FS4. The 17<sup>th</sup> September 2018 was the date when the contract of employment was signed.

nor was Ms Di Giancamillo paid for the month of April 2019, nor for the leave and bonuses that were due to her;

the plaintiff's monthly salary was € 1,200.

Therefore Ms Di Giancamillo requested the Tribunal to declare the termination of her employment illegal, to order the defendant to pay an appropriate compensation, and for the defendant to pay the plaintiff what was legally due to her.

### **Defendant's reply**

The defendant did not present the Tribunal with a reply to the plaintiff's petition, nor did the defendant submit a statement of case.

### **The plaintiff's "Statement of Facts"**

The plaintiff's "statement of facts" was received by the Tribunal on 25<sup>th</sup> October 2019. It declared that:

- a. Whereas the employment contract showed that the plaintiff's tasks included restaurant duties the actual duties of the plaintiff were, "in human resources and accounting ..., regularly involved in translation and interpreting services (for her superiors) and in acting as executive assistant to (her superiors)";
- b. In her human resources/accounting position the plaintiff was the target of employees' complaints on regular delays in the payment of salaries; the control of the timing of the availability of funds to effect salary payments was with her superiors; occasionally she paid employees from her "own pocket";
- c. Ms Di Giancamillo accompanied her superiors to Italy on business at their request and was not reimbursed with her expenses;
- d. in her accounts role she was "constantly urging" her superiors to "fulfil their obligations with the tax authorities" – which "was not well received by" her superiors, who "at times ... instructed" her not to pay for overtime worked nor for leave;
- e. in April 2019, during an administration meeting with her superiors she was told that she used all her 2018 and 2019 leave; Ms Di Giancamillo maintained that she hadn't exhausted her 2018 leave nor had she taken leave in 2019; after the meeting one of her superiors told her that she could "go home ... and ... not to return to work";
- f. the plaintiff was asked to resign; she refused and she was dismissed;
- g. she was not paid for 16 days vacation leave, statutory bonuses, the 15-day notice period indicated in the letter of dismissal, and Euro 150 expenses

incurred on the business trip of 2018; the relative receipts were presented to her superiors;

- h. she took out a mortgage on the basis that she was employed on an indefinite basis.

An affidavit taken by Ms Di Giancamillo and received by the Tribunal on 14<sup>th</sup> June 2021 stated that her dismissal lost her the entitlement for Malta' free health services. In her final submissions the plaintiff maintained that this had a severe negative financial impact on her because she suffered from a chronic illness.

### **Note**

The parties informed the Tribunal, during the first sitting, held on the 31<sup>st</sup> October, 2019, that they would be exploring the possibility of an amicable settlement. The Tribunal granted all the time that was requested, always in agreement with both parties.

### **The Tribunal's Considerations**

1. The plaintiff was employed as Assistente Amministrativo<sup>3</sup>. The plaintiff's statement of facts asserts that whereas the employment contract showed that the plaintiff's tasks included those "associated with restaurant duties"<sup>4</sup> the actual job that she carried out was in human resource management and accounting. The employment contract presented to the Tribunal however made no reference whatsoever to the plaintiff's role in a restaurant; indeed it contained no job description whatsoever except for the aforementioned job title. Be that as it may, at no time in the proceedings did Ms Di Giancamillo claim that she had objected with her superiors regarding the alleged omission on the part of Arti Brands Ltd to involve her in restaurant duties. Nor did the plaintiff explain why she pointed out the purported discrepancy between her version of the contract of employment and actuality. So Ms Di Giancamillo had implicitly accepted her actual role in human resource matters and in accounting. Therefore the Tribunal shall not give any further consideration to this matter.

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<sup>3</sup> Doc. B (attached to the petition).

<sup>4</sup> The list of duties mentioned in the statement of facts are in line with the role of a head waitress.

2. The reason for terminating the employment of the plaintiff was, “in seguito alle divergenze emerse nell’ultima riunione tecnica aziendale”<sup>5</sup>. No specific reason/s was/were given by the defendant for the summary dismissal. The plaintiff has a right to know why she was dismissed.
3. Nor was any proof submitted that the plaintiff was given the opportunity through Arti Brands Ltd’s internal structure to seek justification from the defendant by her defending her position. This is not acceptable because it goes against natural justice.
4. No allegations of misconduct, let alone any disciplinary measures, were brought to the Tribunal’s attention by the defendant.
5. Since Arti Brands Ltd did not make any submissions to the Tribunal, the Tribunal is constrained to go by the submissions of Ms Di Giancamillo.
6. According to her statement of facts the plaintiff claimed that her “constantly urging” her superiors to fulfil their obligations with the tax authorities “was not well received by my employers”. Not paying employees for overtime worked, nor for leave, and delaying the payment of overdue debt<sup>6</sup> were among the grievances that the plaintiff claimed to have had against the defendant company. In the absence of the defendant’s challenging these allegations the Tribunal relies on the plaintiff’s submissions. The decision to dismiss the plaintiff from her employment because of her acting as the conscience of the defendant in matters of ethics and observance of the law not only renders the gravity of such decision even more serious but constitutes extreme abuse of an employee’s loyalty toward the employer.
7. The plaintiff’s allegations regarding her outstanding leave entitlement that was not recognized as such by the defendant was confirmed by an affidavit of Mr Vincenzo Guasto<sup>7</sup>, a fellow employee. Mr Guasto was present at the April meeting during which the plaintiff’s superior insisted that Ms Di Giancamillo had exhausted her leave entitlement when she holidayed in Italy and the plaintiff rebutted the assertion by claiming that her visit to Italy was not a holiday but was undertaken for medical

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<sup>5</sup> Doc. A. Two documents A were submitted. The doc. A referred to here refers to the letter of termination, that is attached to the petition.

<sup>6</sup> Ms Di Giancamillo’s *affidavit* received by the Tribunal on the 14<sup>th</sup> June 2021.

<sup>7</sup> Doc. VG 1

reasons. The matter was argued and the defendant's superior dismissed the plaintiff on the spot.

8. Documents B show that the plaintiff actually underwent medical tests in Italy during her employment with the defendant company.
9. Mr Guasto declared in his affidavit that he had left the defendant company and was not paid for his leave entitlement nor for his statutory bonus. This confirmed the plaintiff's allegation that employees were bereft of part of their dues.
10. The plaintiff carried out not only her duties but also those of her superiors' Personal Assistant, Ms Mafalda Tinirello, during Ms Tinirello's two-month absence from work. This was confirmed also by Mr Guasto's affidavit. Such flexibility and acceptance of additional duties and responsibilities are a credit to Ms Di Giancamillo's sense of responsibility, which in the absence of any questioning of this by Arti Brands Ltd., leads the Tribunal to accept as a fact.
11. With regard to the plaintiff's allegation that (a) wages used to be paid late, (b) she is owed outstanding wages, that include the statutory bonus, and vacation leave, and that (c) she was not reimbursed for expenses incurred during her stay in Bologna, Italy, during what the defendant claimed to be a business trip requested by her superiors, deliberation on these matters are outside the remit of the Tribunal and therefore may not be considered by the Tribunal.
12. The employment history in the Jobsplus records show the date of termination as that of the 3<sup>rd</sup> May 2019. The letter of termination was dated the 19<sup>th</sup> April 2019, which confirms the content of the letter giving her a fifteen-day notice of termination. Ms Di Giancamillo claimed that she never received payment for those fifteen days. If the plaintiff was dismissed, as indeed she was, she was not due any notice money. Had she resigned and the defendant opted for paying her money in lieu of notice, then the fifteen days would have to be paid by the defendant accordingly. But once Arti Brands Ltd dismissed Ms Di Giancamillo and, this notwithstanding, promised her to make her a payment equivalent to fifteen days of her salary they entered into an obligation to make such payment. As far as the Tribunal is concerned, this is yet another instance of the defendant's failing in their obligations toward the plaintiff.

13. Documents F prove the plaintiff's attempts for a particular period after the termination of her employment with the defendant company, at seeking alternative employment, without successful outcomes.
14. The Tribunal finds it rather odd for the defendant to issue a letter of termination of employment and yet declare in the jobsplus termination form that the termination was due to the plaintiff's resignation. The defendant did not revoke the letter.
15. With regard to the plaintiff's claim for compensation for medical treatment that she required, the Tribunal dismisses such a claim because no proof was submitted to show that the medical condition/s was/were caused by the plaintiff's employment with the defendant.
16. Unless expressly so stated in the contract of employment the employer cannot be held liable for any financial commitments entered into by the employee and therefore the Tribunal dismisses the plaintiff's claim for compensation for the plaintiff's financial commitments that she had to honour after her dismissal irrespective whether such commitments had been entered into on the basis of her having a contract of employment on an indefinite period basis.
17. The remedy of the reimbursement of Ms Di Giancamillo's expenses for and during the business visit to Bologna lies with a different Court.
18. The length of service of the plaintiff with the defendant was seven months. The moral responsibility of the employer towards the employee is conditioned also by the employee's length of service with the employer. The legislator recognizes this for example in establishing the different durations of the notice of terminations of employment.
19. Ms Di Giancamillo was 24 years of age when she was dismissed – young enough to intensify her education and to find suitable alternative employment, albeit with some difficulty due to the covid-19 pandemic.

**Remark**

The Tribunal remarks that the plaintiff's interpretation of Decision No. 2454<sup>8</sup> regarding Case No. 2595/JD, in the plaintiff's final submissions, is not what the Tribunal intended. The Tribunal's point was that the determination of the amount of compensation does not consist of the real damages and losses incurred by the plaintiff. If it were, the legislator would have required that in determining the amount of compensation the Tribunal should take *as* consideration (ie the compensation should consist of) the real damages and losses. The legislator chose the term "*into*" consideration. Real damages and losses are one of a number of factors that ought to be taken into consideration in establishing the amount of monetary compensation. So the compensation could be less than the real damages and losses. This allows for the attenuation of the employer's obligation in terms of monetary compensation; such attenuation would be justified by, for example, the dismissed employee's behavioural and attitudinal contribution that led to the dismissal.

This remark is being made for clarity's sake and may not be interpreted that Ms Di Giancamillo contributed to her dismissal, also because Arti Brands Ltd at no stage whatsoever in the proceedings did they question any of Ms Di Giancamillo's allegations and claims.

## **Decision**

Having examined and evaluated the petition, statement of facts, affidavits, documentation, testimonies, and submissions, and having made its considerations<sup>9</sup>, the Tribunal finds that the grounds of the plaintiff's Application are well-founded and that Ms Di Giancamillo's dismissal was unfair.

Therefore the Tribunal awards Ms Di Giancamillo a compensation of five thousand Euros (€ 5,000) to be paid to her by Arti Brands Ltd within thirty calendar days from the date when this judgement is issued. Additionally, the defendant company is hereby ordered to pay or reimburse, as the case may be, the plaintiff with the plaintiff's Court, and legal fees.

The compensation is exclusive of any vacation leave for which the defendant may have been entitled, any outstanding statutory bonuses, the salary for the fifteen-day notice period indicated in the letter of dismissal, and the expenses that the plaintiff incurred to accompany her superiors on their business trip to Italy.<sup>10</sup>

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<sup>8</sup> This Decision was superseded by the Court of Appeal's judgement.

<sup>9</sup> 1 to 19.

<sup>10</sup> See the Tribunal's Considerations nos. 18, and 19.

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 (a) the requests from both parties for repeatedly extended time in an attempt to settle the dispute amicably, out-of-court, (b) the failure of the defendant to attend sittings<sup>11</sup>, (c) the Tribunal's observance of the Chief Justice's appeal to defer non-urgent cases as a precautionary measure related to Covid-19, and (d) to administrative issues.

The Tribunal hereby declares this Employment Issue closed.

**(signed)**

Joseph Delia

Chairman

**TRUE COPY**

Graziella Spiteri

F/Secretary

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<sup>11</sup> On 1<sup>st</sup> March 2021 the Tribunal decreed that in light of the fact that the defendant failed to submit its reply to the sworn application made by the plaintiff, and that it failed to appear at Tribunal sittings without informing the Tribunal and without providing a reason acceptable to the Tribunal, the Tribunal accepted the defendant's request for the continuation of the proceedings by the submission of the plaintiff's evidence. Even after the decree, the defendant never turned up for the subsequent sittings, nor did a representative of the defendant or any person assisting the defendant.