

INDUSTRIAL TRIBUNAL
Decision No. 2854
Today, 06th October 2022

Case No: 3703/JD

Employment Issue between

Cheneen Cherie Coustas (holder of South African Passport number
A01826522)

and

M Spa Limited (C 63747), and Myoka Limited (C 23120)

The Application, and the plaintiff's Statement of Case, in brief

The Application was registered at the Superior Court on the 23rd November 2018.

The plaintiff, Ms Cheneen Cherie Coustas, was employed with M Spa Limited as from the 1st April, 2017 as Director of Education for a definite period that was planned to close on 30th December 2020.

She never received any disciplinary warning.

On the 30th July 2018 Mr Vella on behalf of M Spa Ltd presented her with a letter of resignation effective the 24th July 2018, and he explained that such a letter would enable her to obtain a work permit and that she would receive all wages due to her.

She signed the letter because she suddenly found herself in a foreign country, jobless and in a financially precarious situation.

In August 2018 Mr Vella requested the plaintiff to hold additional classes for the students' resits but without her being remunerated for them. Eventually he accepted that she would be paid.

He declared that it was her fault that the students failed their exams. The results show that for the Diploma in Holistic Massage, three out of five students passed, with two of them getting a merit grade, for the Diploma for Beauty Specialists, two out of twelve passed, and for the Diploma in Anatomy and Physiology, thirteen out of seventeen passed, with one of them getting a merit.

But most of those who failed the exams were just not interested.

Since she lost faith in her employer, she demanded payment in advance of the classes that she would hold for the resits. Mr Vella refused such a request because the contract of employment stipulated that the payment for resits would be made after the resits were held. Ms Coustas kept insisting on her being paid immediately. Her employer considered her attempt at imposing such a condition as breach of contract and decided to replace the plaintiff's resignation from her employment into a dismissal for disciplinary reasons effective 31st July 2018.

The plaintiff claimed that the dismissal was unfair and for no valid reason because M Spa Limited:

left Ms Coustas no choice but to resign;

failed to pay the plaintiff monies due to her; and

gave "disciplinary measures" as the reason of termination registered by her employer on the Jobsplus termination form, which reason was not truthful.

Hence Ms Coustas requested the Tribunal to award her financial compensation.

The Reply and the defendants' Statement of Case in brief

The termination of employment was agreed to as per the agreement reached on 30th July 2018, whereby the plaintiff resigned from her employment, her last day being the 24th July 2018, after she admitted that she lacked the experience and competencies required to fulfill her duties.

Outstanding monies regarding the resits were not paid by the defendants because Ms Coustas did not honour the agreement that she had reached with her employer to provide the necessary classes for the resits.

The reason of termination indicated to Jobsplus was truthful. Although the resignation was agreed to by the plaintiff the true reason for termination was Ms Coustas' lack of competencies to fulfill her role. The situation resulted in her giving up on

- a) the school that she was recruited to run as a director, and
- b) the students for whom she was responsible.

Such a situation harmed the school, the students and the defendants. Hence the dismissal of the plaintiff was fair and therefore Ms Coustas' request should be rejected.

Tribunal's Considerations

Both parties agree that on the 30th July 2018 Ms Coustas signed a declaration saying that she resigned from her employment, the 24th July 2018 being her last day of employment with M Spa Ltd. That declaration was endorsed by Mr Vella on behalf of M Spa Ltd.

Thus the contract of employment of the plaintiff was terminated by means of the employee's resignation on the 24th July 2018.

Due to its not making money, M Spa Ltd stopped paying wages to Ms Coustas, covering this with the plaintiff's resignation, while retaining Ms Coustas on its books so that the plaintiff may remain available to assist the company's students for their resits on the basis that Ms Coustas' contract of employment obliged her to do so.

Upon resigning, Ms Coustas was allowed to seek alternative employment, even with employers who were in the same nature of business as M Spa Ltd, upon giving her resignation.

On the 7th September 2018, one and a half months after Ms Coustas resigned, Mr Vella informed Ms Coustas via a WhatsApp chat that, "We will terminate our employment contract at once. I'm sorry it had to end this way."

By means of a notice dated 18th September 2018 Jobsplus informed the plaintiff that the reason of termination on the Termination of Employment Form was given as, "Dismissed: disciplinary reasons".

The submissions to the Tribunal show that since Ms Coustas would not give additional classes for resits preparation unless she was paid her commission in advance¹, M Spa Ltd considered her to be in breach of contract and maintained that it terminated her employment on disciplinary grounds since the contract of employment stipulated that commission would be paid after the resits completion².

The Tribunal holds that the employment issue instituted by the plaintiff revolves around the agreement signed by both parties on the 30th July 2018.

Resignation from employment terminates the contract of employment in its entirety and not partially. Resigning from employment and retaining the ex-employee on a company's books is a contradiction.

¹Or at least a letter from Mr Vella confirming that she would be paid

² The resits were due to be held late in the year.

The Tribunal is convinced that the resignation was instigated by M Spa Ltd. But Ms Coustas could have refused to give her consent. She could have sought legal advice prior to accepting to resign. She is not a novice in the world of work, has international work exposure, a sound level of education and occupied a senior management post with the defendant company.

Just as M Spa Ltd had no right to expect the plaintiff to abide by a part of her contract of employment once the plaintiff resigned, so Ms Coustas cannot claim unfair dismissal.

Also, M Spa Ltd acted irregularly when it requested the adherence to a resignee's contract of employment when the contract no longer existed.

Decision

Having examined the documentation, evidence and testimonies presented to it the Tribunal has concluded that the plaintiff could not have been dismissed because at the time of the alleged dismissal Ms Coustas had already resigned from her employment with M Spa Ltd.

Therefore, the Tribunal does not accept the plaintiff's requests.

M Spa Ltd's declaration that the plaintiff was dismissed is null and void.

Therefore, the Tribunal orders M Spa Ltd to correct the reason for Ms Coustas' employment termination on the Jobsplus Termination of Employment Form by replacing such reason with the term "resignation" and to show the date of termination as that of the resignation, viz. the 24th July 2018. M Spa Ltd shall effect such corrections within two calendar weeks from the issuing of this decision.

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

administrative issues and the Tribunal's observance of the Chief Justice's appeal to defer non-urgent cases as a precautionary measure related to Covid-19.

In accordance with Legal Notice 48 of 1986 of the laws of Malta the representation fees for each party shall be Euro 93.17.

This Decision closes this employment issue.

(signed)

Joseph Delia
Chairman