

# TRIBUNAL INDUSTRIJALI

Decizjonji Numru:2905

Kaz Nru. 3967/JB

Fil-Kwistjoni tax-Xoghol

bejn

Milica Zivkovic (KI Nru. 196768A))

u

Meeting Point Hotel Management Malta Ltd (C-54097)

Illum: 05.05.2023

*dwar tkeccija mill-impjeg allegata li hi ngusta*

**Chairman : Is-Sur John Bencini B.A.(Hons)Lic.Phil., M.O.M.**

## **FATTI TAL-KAZ.**

Dan il-kaz gie riferut lit-Tribunal Industrijali permezz ta' Rikors ta' Milica Zivkovic tramite l-Avv. Mary Rose Micallef fit-12 ta' Mejju 2021. F'dan ir-Rikors, Milica Zivkovic tesponi li kienet impjegata mal-Intimata Meeting Point Hotel Management Malta Ltd. u dan fuq bazi full-time, b'pozizzjoni ta' housekeeping attendant. Il-kuntratt tal-impieg kien wiehed definit, li beda mis-7 ta' Settembru tas-sena 2020 u spicca fis-6 ta' Settembru 2021.

Ir-relazzjoni lavorattiva tal-esponenti ma bdiex mal-iffirmar succitat. L-esponenti fil-fatt, bdiex tahdem mal-intimata gewwa il-Housekeeping Department fl-4 ta' Lulju 2018. Sussegwentament, sforz tal-hidma tajba tal-esponenti, l-intimata ddecidiet illi gedded il-kuntratt tal-impieg, fejn hawnekk hija gholliet il-grad tal-esponenti minn Housekeeper Assistant ghall-Front Office Day and Night Receptionst. Maz-zieda fil-pozizzjoni, giet iz-zieda fil-paga. Ghalhekk fis-7 ta' Settembru, 2020, gie stabbilit illi l-esponenti kellha tibda tithalles bir-rata gross ta' sitt euro u tmien centezmi fis-siegha.

Ftit xhur wara, l-intimata tat is-sensja lill-esponenti, abbazi ta' proceduri dixxiplinarji li hija hadet kontriha. Dan gara fit-12 ta' Jannar 2020. Ir-ragunijiet li sejsu t-tkeccija de quo, huma infondati, ingusti u inveritieri. Jidher illi l-ittra mibghuta mis-socjeta' intimata biex tgharraf lill-esponenti dwar it-terminazzjoni tal-impieg taghha hija datata fit-12 ta' Jannar 2020, meta fin-notifika ta' terminazzjoni ta' impieg mibghuta mill-Jobs Plus, jidher car illi l-impieg tal-esponenti gie terminat fit-12 ta' Jannar 2021.

Ghandu jirrizulta waqt is-smigh ta' din it-talba illi s-socjeta' intimata agixxiet u qieggheda tkompli tagixxi bi ksur tad-dispozizzjonijiet tal-kapitolu 452 tal-Ligijiet ta' Malta fir-rispett tal-esponenti, u dan kif se jigi muri ahjar waqt it-trattazzjoni ta' din it-talba. Minkejja l-fatt illi l-esponenti nterpellat lis-socjeta' intimata sabiex tirratifika l-pozizzjoni taghha skond il-ligi, u ghaldaqstant tersaq ghal-likwidazzjoni u hlas ta' danni relattivi skont il-provvedimenti ta' artiklu 36(11) tal-Kapitlu 452 tal-

Ligijiet ta' Malta, u ghall-hlas ta' kumpens gust, is-socjeta' intimata ppersistiet bl-agir abbuziv taghha, u m'accretatx li tottempra ruhha mal-kuntratt tal-impieg.

L-Esponenti ghalhekk ma' kellha l-ebda ghazla ghajr illi tipprocedi kontra l-istess socjeta' f'din l-istanza ghat-tutela tad-drittijiet taghha. Hija tiddikjara milli b' rizultat ta' din it-tkeccija, hija sofriet danni reali u telfien iehor.

Is-Socjeta' intimata tramite l-Avv. Christine Calleja, minn naha taghha, tesponi illi t-tkeccija tar-rikorrenti permezz tal-ittra tat-tkeccija datata t-12 ta' Jannar 2021, sehhet ghal raguni gusta u sufficjenti skond il-ligi kif ser jigi pruvat waqt it-trattazzjoni tal-kaz odjern, u wara illi gie segwit ukoll process ta' dixxiplina. Illi ghaldaqstant, l-ebda kumpens jew ammont m'ghandu jithallas lir-rikorrenti.

Qabel ma ttiehdet id-decizjoni tat-tkeccija, l-istess rikorrenti kienet diga inghatat *warnings*, fosthom *warning* datata it-23 ta' Awwissu 2020 (Dok. MPH1) u *final warning* fit-12 ta' Novmbro 2020 (Dok,MPH2). Ir-rikorrenti kienet ikkontestat dan il-final warning (email immarkata Dok. MPH3), izda wara evalwazzjoni interna, dan gie kkonfermat (Dok, MPH4). B'risposta ghall-punt 5 tad-dikjarazzjoni tal-kaz tar-rikorrenti, huwa ovvja illi d-data 2020 hija zball u ghandha taqra 2021, kif infatti gie rifless fil-formula tat-terminazzjoni ma' JobsPlus, u fi kwalinque kaz ma jidhirx li dan hu relavanti.

Ghal dak li jirrigwarda t-talbiet tar-rikorrenti, fil-kaz illi t-Tribunal isib illi t-tkeccija kienet ingusta, it-Tribunal Industrijali, jista' biss jaghti kumpens abbazi tal-artiklu 36(ii) u cioe' nofs il-paga ghaz-zmien rimanenti (li qed jigi sottomess minn issa ma hux misthoqq f'dan il-kaz) u ma jistax jigi likwidat ebda kumpens iehor kif qed titlob ir-rikorrenti f'punt 3 tat-talbiet taghha, liema kumpens jista' jigi likwidat biss f'kazijiet ta' kuntratti ghal zmien indefinit.

### **PROVI (Sintesi):**

F'dawn il-proceduri xehdu: Milica Zivkovic (rikorrenti), Violeta Antic (Human Resources Associate), Boris Trnko (Reception), Peter Kriznar (Front office reservation & Revenue Manager), Ivan Scriha (Human Resources Manager), Carol Burgess (Operations Manager).

Milika Zivkovic: I would like to start off by saying that my relationship started off quite positive, .... When an opportunity arose to work at the Front Office as a receptionist, the management of the hotel saw potential in me.....I always proved to work efficiently. ...As opposed to what may have been implied by the company, I did not take frequent breaks and that I never spent more than 5 minutes in the bathroom....during the last few months that I was working at the hotel, I used reporting to work an hour before mu shift as I noticed that the hotel management staff were trying to pick on me even though other hotel employees used to report to work very frequently. I never left the reception desk without the approval and permission of my superiors and never left the reception desk unattended.....I recall that several times, other receptionists used to log in to the computer system with my credentials.

During the month of November 2020, the office manager had texted me and asked me to come in earlier than when my shift started on the 11th Nov, 2020. ....I reported to work at 11am, punched and went straight to the reception desk. ..I was informed by my colleague Ana whether I could go to Human Resources to have my ID. Card photocopied. Unexpectedly HR kept me for around 10-15 minutes. In the meantime I received a message from Ana, who said that she was hungry and wanted to go for break an hour early.

Re. Cigarette Breaks, the hotel had issued a policy prohibiting employees from smoking behind the reception desk. I always complied and used to smoke where permitted.

As for our performance reviews at the Front Office, it was not only my performance which suffered but even that of my colleagues as we did not have the necessary training or direction from the hotel management.

With regards to the incident mentioned by Mr. Ivan Scirha where he implied that I was insubordinate and claimed that I did not like the food of the hotel, I deny this completely, and I also say that I never took food from the kitchen or restaurant without the approval of my superiors, namely Mr. Ivan Scirha. We were promised meals yet did not have a specific time when we were supposed to eat. It seemed that we had to find the times ourselves, but whichever time I chose, this seemed to be never good enough.

At the front office, contrary to my time spent as housekeeper, I never felt appreciated and valued as an employee. I felt constantly picked on especially by Mr. Peter Kirznar who even referred to me as a paranoid. I was constantly made to apologize for things which now I know that I didn't do wrong.

Furthermore, I also used to feel intimidated and abused and I cannot forget when Mr. Carol Burgess embarrassed me in the middle of the reception by screaming and yelling at me. This happened when I was being accused of having brought chicken nuggets to the reception desk and made the reception area smell. I must say that the hotel's buffet restaurant is very close to the reception area and that the smell of food is obviously constantly present as it would be coming from the restaurant.

Xhieda tar-rikorrenti (2/ 12/ 2022): Dr. Erika Taliana for the defendant company (Cross-examination). "In para 2 of your affidavit you mention that you were always ready to help them, help the company, the hotel, even when you were not on duty..Can you please explain how you did this? Milica Zikovic replied," sometimes they needed me to change somebody, so I wasn't on duty at that moment,... I will find immediately someone to take care of my child or to take my son from school. Avv. Erika Taliana: You also stated that "an opportunity arose for me to work at the front office as a receptionist. You were explaining this opportunity... Milica: "I applied for it". Avv. Erika Taliana: In your affidavit you say; 'I used to start reporting to work an hour before my shift as I noticed that the hotel management staff for trying to pick on me'.....you were referring to instances where they were basically telling you that you were arriving late, so they were informing you, listen you arrived late. That is what you are referring to when you said that they were picking on you. Milica replied,' No, it's not the only thing they were picking on me'.....I wasn't arriving late...and my punctuality was ninety-nine percent. I was only late when the bus was late. That job meant everything.....If I was late it was 5/10 minutes.

Regarding training, Milica said that yes, she receives few trainings but...that was short explanation of some part...that is not training. Asked whether she took permission to take food from the kitchen's hotel, Milica answered that.... Every time when you are on the shift, go to ask or find manager's permission...'we had that rule at reception'.

Milica Zikovic was asked to comment on her performance review of the 28th October 2020 which was not satisfactory. She answered," so he was not interested for what is being done in the front office because he was busy with the other things... Asked to comment that her performance was a sixty percent, Milica replied that all the reception performances were not good, hers with them together....lower but not low.. like it was a disaster but in the moments when they are picking on me, of course, they will put it low.

Regarding the incident on the 20th August 2020 where there was a discrepancy in her cash (87 euros), Milica replied that Mr. Vella told her she was free to go as they will check on what could have gone wrong, Milica said, "no one approached me and told me I had to pay some money. So the money in that moment was found". Regarding the incident at the end of 2020 where she gave a room to guests and this room was already occupied. Milica answered 'but I cannot say yes or no because this is not a question of yes or no answer. Milica however confirmed that this happened., When asked what happened, Milica answered, " yes that happened. But that happened because previous night, previous week was prepared for Mr. Vassallo for his birthday, especially that room with flowers with all the decoration.... The operations manager Mr. Carol Burgess who was supposed to know the rooms and suppose to have all the information he gave to his cousins that room. Only one night and we have never been one night hotel especially not to guests who come to the restaurant to drink... especially not in that special room. So yes, that guest ended up in that room because operations manager gave them. He wanted to make them happy but unfortunately when Mr. Vassallo come on his birthday to take the room, he found the people inside and that suppose to not happen never because that room was prepared for him... it was the Operations Manager, Carol Burgess, at the evening who gave the keys to his cousin. Asked whether Milica had checked if the room was already allocated before then giving the keys to this other couple, Milica Zikovic answered, "I don't remember. I don't remember, It was.

Milica then said that, " Yes, I got a warning but that thing with reception desk can happen to anyone. Lawyer Erka Taliana..... moving on, 12th November 2020, you got another warning. Is that correct ....based on three incidents, one that you did not follow the policy of the company at the time when upgrading rooms because you wanted to change them when they told you not to change or upgrade, that you left the reception unattended and you gave a key card to someone to sleep at the hotel when this was not allowed, someone who was not supposed to be sleeping there. Milica replies 'a guy who was sleeping in the kitchen. Yes.

Dr. Analise Magri.....how were you treated as an employee? Witness: I was treated differently because I came from housekeeping...I wanted to learn new things so I started at reception, they accepted me really well, at the beginning, Mr Vella, the first office manager.....he was trying to do everything for us. .... there were many small things which they said led to my termination because in that case they would have to terminate much more people than me. When asked by Dr. Analise Magri, what led you to institute this case before the Tribunal? The witness answered- ' because when they terminated me I was on holiday leave and from HR text me and tell me I can go to HR Office and speak with Mr. Ivan Scriha.....I went and Peter Kriznar was there with Ivan Scriha...in that moment they told me that they terminated me.... I asked to return to Housekeeping... their answer was negative.... At that moment there was no vacancy there but when they were transferring me to reception, they wrote they were going to give me the chance to return to housekeeping if something doesn't work,... I would never have asked to go back to housekeeping but behind my story there is one thing, my son had a warrant he could not go out of Malta, also he didn't have a passport....if I loose work permit I had to go back.

SEDUTA: 11/2/2022. Witness Milica Zivkovic: We changed 3 executive housekeepers and with all of them I have really good communication. I never had and argue, everything was just how it should be... they knew that they could trust me, so it was amazing. When asked by Dr. Keith Borg re her relationship with the guests at reception, the Witness answered: : My relationship with the guests was good. I love to help all the time... there were a lot of good comments on Trip Advisor and Booking. Com.

Violeta Antic (Affidavit): I met Milica at the Housekeeping Department. I do not recall any complaints.... She was loved there and had a very good communication with everyone..... as from her very first day working at the Front Office, Milica was being monitored for her performance. I remember very clearly seeing the reports which were concluded on her work performance, and they were always positive reports reflecting her good work ethic. She was always punctual, very responsible and very polite with the guests. She was improving her skills every day. The Front office manager was satisfied with her work, especially in the busiest time when the hotel was full and sometimes overbooked.....Milica is a single mum and I must admit that I was very surprised how she never said she cannot work late shift...she was always there doing her best to be at the same level with her colleagues who had more experience in this role. In my opinion, she was a very, very good asset for the hotel.

Peter Kriznar: I joined the hotel in September 2020 and unfortunately Milica Zivcovic stood out from the rest for lack of performance and her negative attitude towards work... she was very stubborn and had a free will to think she can do whatever she feels like, she was not following the company procedures or any procedures that were part of the front office.....there were several incidents. April 2022 (Peter Kriznar gave evidence through zoom). Dr. Analise Magro: 'how were you aware of Milicia's conditions with regards to her health' Witness: Milicia at one point in time come to tell me she has some condition and she might be leaving. I was aware of that yes. Dr. Magri: And despite being aware of this, wasn't a reason maybe her shift could be so to say moved or arranged to accommodate her health condition of it? Witness: She never came to tell me...I was aware of the condition but she never came to tell me ...that she would not like to work during the night. Dr Analise Magri: Have you ever passed any comments with regard to Ms Viskovic to maybe more employees or even colleagues. Witness: The information that I discussed with certain employee and this is on a personal basis is never discussed with other colleagues. Dr. Analise Magri: So you have never passed any comments and maybe called her paranoid and that she lacks common sense? Witness: No.

Ivan Scriha: (Seduta 18/6-2021); Dr. Christine Calleja tistaqsi- ha nurik dokument, agreement dated 2019 u hawn pagament, ghidli daqsxejn x'inhu?

Xhud: Dan huwa pagament illi gie mitlub mis-sinjura lill-kumpanija fejn hi kienet ghaddejja..minn problemi finanzjarji.....kienet ilha sena impjegata.. tlabt permess tal-CEO u tas-CFO biex nohorgulha cekk halli hi tkun tista thallas il-working permit ghas-sena ta' wara li gejjja.... Ovvjament qbilna bit-termini li thallas 95 Euros fix-xahar lura...

Dwar problemi, ix-xhud zied jghid. ' minn dejjem kien hemm issues u jiena tip ta bniedem li ma tantx inhobb nohrog warnings, fil-fatt nahseb dik kienet l-uniku darba li kelli nittermina job, impieg ta'xi hadd f'hames snin li domt ir-Riviera. Il-mentalita' tieghi hija dejjem li nipprova nghati direzzjoni rather than niddixxiplina lin-nies u hafna drabi ghamiltha mas-sinjura li kienet tidhol tard u gieli kont fil-loading bay u rajtha diehla u tpejjep u siegha u nofs neqsin minuta meta suppost tibda fis-siegha u nofs u nkellimha bil-kwiet kollu u nipprova nghati direzzjoni.

Dwar l-warning dated 23/8/2020. Kienet inqalghet problema kbira gol-lukanda minhabba li s-sinjura ghamlet check-in ta' koppja, tathom room number, jidhirli li kienet rm 200 u meta din il-koppj telghet gol-kamra sabet tnejn minn nies go sodda.... U ovvjament inqala' chaos kbir. Ma kelli ebda alrenattiva ohra hlief li nibda niehu l-azzjoni u hragt l-ewwel warning tieghi fuq din il-bicca xoghol. Ix-xhud komplja jghid li ....riedet tidhol ticcekkja fuq is-sistema biex tara l-kamra li kienet allokata intuzatx il-lejl li ghaddha, fil-fatt intuzat il-lejl ta' qabel. Jigifieri, litteralment ma ccekkjajtx mas-sistema u ovvjament jiena ccekkjajt mal-operations manager ma min kellimni, ghamilt il-verifiki tieghi u dehrli li kelli nohrog warning dak il-hin stess mid-dar, bghatt il-warning....din kienet gravi hafna u fil-hotel inqala' panic kbir dak inhar filghodu....konna tajna xi compensation fuqha din, imma ovvjament jiena bhala Human Resources Manager ma nibqax nidhol izjed fiha il-bicca xoghol.

Dwar it-total assessment tar-rikorrenti, ix-xhud qal li dan kien ta' 60.7 percent li ghalina huwa daqsxejn below level, ghalkemm it's a pass mark, but normally dejjem ikunu over and above the 75/80 percent.

Ix-xhud kompli hekk- ..inzilt fis-security room u rajtha diehla u hierga f'hafna okkazzjonijiet mill-main door tal-lukanda and it was specifically written in the employee handbook illi l-impjegati ma jidhlux mir-revolving door ..hliet ic-CEO, ic-CFO u l-Human Resources Manager, ic-CEO Level Management. Haddiehor, l-impjegati kollha iridu jidhlu mill-loading bay, clock in and proceed to their work. Imma din le, diehla u hierga, apparti.....li rajt filmati ukoll li fis-2.00 ta' filghodu harget tpejjeb quddiem il-lukanda, il-porch tal-lukanda, harget tpejjep, jigifieri telqet il-front desk, jidhirli li l-anqas lis-security ma ghajtet biex joqoghodilha mad-desk biex jekk jinqala xi haga, idoqq it-telefon....hence hriegt in-notice of termination, ibbazata fuq dawn l-affarijiet, fuq din l-informazzjoni li nghatajt mis-superjuri taghha kemm l-Operations Manager u kemm il-Front Office Manager., u meta ezawrixxejt l-options kollha li kelli ghax qabel ma tajtha n-notice of termination.....tajjeb li wiehed jghid li qabel ma jiena I dismissed, mort fuq il-housekeeping executive u ghidtilha, isma hawnhekk ghandi kaz ta' dismissal tar-rikorrenti, u x'ser naghmlu, minflok nitfuha barra t-triq ghax ghaddejja minn problemi finanzjarji, lesta li tehodha lura biex tnaddaf il-kmamar, qaltli le, iva ghax dik kollha trouble u dik low performer u jien hemmhekk ma nahsibx li kelli iktar alternattiva x'naghmel milli nwaqqafha ghax, at the end of the day, il-pozizzjoni tieghi, vera li jiena ham in a sandwich, jigifieri l-impjegati, id-drittijiet tal-impjegati, imma rrid inhares lejn, niprotegi l-kumpanija wkoll. U hriegt in-notice of termination.

Dr. Analise Magro taghmel xi mistoqsijiet fuq ix-xhieda li kien ghamel Ivan Scriha fit- 18 ta' Gunju dwar li "inqaghlet problema kbira gol-lukanda minhabba li is-sinjura ghamet check-in ta koppja, tathom room number, meta din il-koppja telghet gol-kamra sabet tnejn minn nies gos-sodda..." Ivan Scriha xehed li ' cempilt l-operations manager...u qalli li kien hemm problema kbira..... ix-xhud kompli jghid li "qadt fuq l-operations manager u minhabba l-fatt ukoll li dawn huma, hemm it-trails fis-sistema, fil-property management system'..... ' jiena noqghod fuq dak li jghidli l-management, jekk il-management qed jghidli, isma hawnhekk dahlu dawn it-tnejn minn nies u qalli ghax din ma ccekkjajtx is-sistema ghax kieku kienet tinduna li f'din il-kamra diga hemm in-nies....'

Carol Burgess: Fuq mistoqsijiet ta' Dr. Christine Calleja: Xhud: ...Jiena li nafha ovvjament mix-xoghol u ovvjament kelli ftit problemi biha diversi drabi. L-iktar wahda li kelli problema kienet meta kelli xi klijenti gejjin il-lukanda, kien il-hadd, u tathom ic-cavetta ta kamra u fiha kien hemm diga in-nies, dawn it-tnejn minn nies jidhlu u jsibu il-klijenti li dahlu l-Hadd filghaxija ... fis-sodda, din kienet problema li jien kelli nsolvi apparti li waqajna ghac-cajt, swietilna ftit compensation. Ix-xhud qal li r-rikorrenti"ma kinitx xoghol dak il-lejl, l-ghada kienet xoghol u hi tat ic-cavetta hazina jew ic-cavetta ta kamra okkupata. Il-procedura hija li inti suppost dejjem ticcekkja jekk ghal li jista jkun il-kamra inbieghetx il-lejl ta' qabel ghax il-kmamar ma jigux allokati fil-gurnata. Kien hemm hafna affarijiet bhal dejjem trid tmur tpejjep, generalment tmur tpejjep jekk tara n-nies gejjin, allura lil shabha thalliehom jew lil-kollega taghha thallieha wahidha.

Boris Trnko: Affidavit ( April 2022) I feel that the managers Mr. Carol Burgess and Mr. Peter Kriznar have treated Ms. Milica Zivkovic in an unfair and biased manner and that they had an agenda to push her out of the hotel in any way possible. One particular shift, Milica seemed very distraught. Mr Burgess had yelled at her for eating in the back office which she did to be able to help our new colleague who was still in training.

I am aware that Milica was yelled at and got a verbal warning for smoking at the backyard behind the reservations. I know that employees, including myself had used this area to smoke. Following Milica's verbal warning for smoking in this area, I also smoked a cigarette there and not only did I not get a warning for it, but I was, in fact, joined by Mr. Carol Burgess.

With regards to room 200 which was requested by a repeat guest and was prepared for him a day before by the house-keeping team since the repeat guest had an early check-in. On the night before the arrival, there was a couple that walked into the house to have a few drinks and later decided that they would like to stay in the hotel. At that moment, they were talking to me, and Mr. Burgess was present at the reception. Mr. Carol Burgess told me to give them the room that was requested by the repeat guest since the couple were close friends of our purchasing manager. I did as told and checked the people in and gave them the keys. The next morning Milica gave the room to the repeat guest as she was informed the day before by housekeeping that the room is ready and waiting for them, but unfortunately the couple was still in the room at that time and it resulted in a warning to Milica.

Boris Trnko (Sitting (3/2/2023): Dr. Christine Calleja : Why do you say that Mr. Carol Burgess and Peter Krisnar had an agenda to push her out? Where did you get this from? So I felt that way because every small incident that they can say something about they for sure said it and then even sometimes reacted. If just gave me a feeling that like we're trying to get rid of you....Lawyer: So it was your impression. Boris Trnko: yes. Asked by the lawyer whether Milica could have checked the room, Mr Boris Trnko replies, 'Yes, she could have checked but I mean I understand that sometimes these things get overlooked so it's really not something that's we have a warning and the receptionist have somebody in the room, in an occupied room at least two or three times in their career..

Boris Trnko (sitting April 2022). Dr. Analise Magri asks " Were you ever approached by your superiors to give any comments nor feed back on Ms. Viskovic performance? Witness: So when Mr Krizmar started working in there..... sometimes he would ask me what do I think of my colleagues and it was not directly about Ms Viskovic but it came up in the conversation and he was mentioning that she is a bit paranoid and how should I say sometimes she seems a bit stressed which I think it was not the case. Mostly, if she was stressed, it was because of the problems that she had in the work place because how they were treating her.

### **TRATTAZZJONI TAL-AVUKATI ( Sintesi).**

Avv. Christine Calleja (Ghas- Socjeta' Intimata).

Il-kazijiet ta' tkeccija nahseb jistghu jinqasmu b'mod generiku f'zewg tipi. Ghandek kazijiet fejn l-impjegat jaghmel xi haga anke jekk tkun ta' darba, tant kemm hija gravi li l-employer ikun kostrett... li jkecci. Jigifieri ikun ragonevoli anke jekk ikun incident wiehed biss. Izda hafna drabi ikollna kazijiet ta' xi hadd li matul perijodu ta' zmien ikun hemm hafna incidenti zghar li avolja jekk tehodhom wahedhom m'humiex gustifikazzjoni biex tkecci, imma umbaghad meta tehodhom fliemkien huma raguni tajba biex tkecci... meta repetutament ghamel hafna minor breeches. U propju huwa dak il-kaz li ghandna illum.

Jekk it-Tribunal jara d-dokumenti li pprezentajna, jigifieri anke evidenzjati, kemm mill-policies u kemm mill-warnings li nhargu li fl-ahhar il-kumpanija waslet f'punt fejn ma setgħtx tittollera iktar dawn in-nuqqasijiet. Jekk wiehed jara ix-xhieda ta' Ivan Scriha, Karol Burgess u Peter Krisnar jikkonferma dan. Is-sinjura mhux vera li riedu jehilsu minnha tant li fil-bidu, meta kellha bzonn xi flus minhabba xi problema familjari u anke tawha xi forma ta' loan biex ikunu jistghu jghinuha. Is-

Sinjura Zivkovic kienet originarjament tahdem fil-household keeping u meta kien hemm vacancy ghall-front office, tawha cans li tidhol fil-front office.... Zgur jigifieri li ma kienx kaz li dawn dahluha u riedu jehilsu minnha.

Is-Sur Ivan Scriha fix-xhiedha tieghu jaghti l-elenku tal-incidenti kollha u dawn kollha nghataw jew verbal jew written warnings fuqhom. Ta' min isemmi wkoll il-performance review li nghata qabel it-tkeccija, li kienet wahda ta' sixty per cent (60%), way below dak li wiehed kien jistenna. Wara kull incident kienu jwidbuha. L-anqas il-housekeeping ma riduha lura ghax r-risposta taghhom kienet, fejn kienet tahdem qabel, le *because she is not a good performer*. Zgur li ma ngibet l-ebda prova ghalfejn kellhom jaqbd maghha. Dan mhux xi kaz ta' diskriminazzjoni. Meta wiehed jiehu l-assjem tal-incidenti kollha f'daqqa, wiehed ma jkunx jista' hlief jikkonkludi li t-tkeccija kienet altru mmeritata.

Avv. Analise Magri: (ghall-attrici Milica Zivkovic).

Meta l-attrici kienet fil-house-keeping department, ma naqbilx mal-kollega, anzi kienet tircievi performance previews tajbin ukoll, kif anke kien ikkonfermat mix-xhieda ta' Violeta Antic. Infatti qalet li ir-rikorrenti kienet serja u tajjeb fix-xoghol. Giet accettata bhala receptionist fil-front office tal-hotel, kellha zieda fil-paga.

Dwar il-kaz li kienet nghatat cavetta zbaljata mir-rikorrenti fejn intqal li qamet kommozzjoni, is-Sur Ivan Scriha dakinhar hu stess ma kienx attenda ghax-xoghol u qaghad biss fuq dak li kien qallu nis-Sur Burgess u xorta il-warning inghata mis-Sur Ivan Scriha. Dak inhar tal-incident ir-rikorrenti ma kientx xoghol. Hawnhekk tohrog il-kolpa li dejjem baqghet tircievi s-Sinjinorina Zivkovic.

Kif certament jaf ben tajjeb dan it-Tribunal id-diskrezzjoni ta' x'jirrizulta ghal raguni tajba u sufficjenti hija totalment f'idejn id-deskrizzjoni tat-Tribunal u li m'hemm l-ebda ligi li tghidlek din hija raguni tajba jew dik m'hijjex.

L-Avukata rreferiet ghal sentenzi tat-Tribunal u kkonfermati mill-Qrati tal-Appell fosthom sentenza f'ismijiet Lotta Malmberg kontra Fortis Limited, sentenza li ssostni dwar l-importanza illi qabel impjegat/a jigi mkecci mix-xoghol, jinghata s-smigh illi huwa mparzjali u jinghata cans illi il-persuna tiddefendu ruhha. Hawnhekk ma garax. Is-Sinjinorina Zivkovic ma nghatat l-ebda smigh li kien imparzjali u ma nghatat l-ebda opportunita' illi titkellem u taghti l-versjoni taghha u ghalhekk din it-tkeccija tmur ghall-kontra li qalet is-sentenza tal-Qorti tal-Appell.

It-tkeccija saret fi zmien il-pandemija tal-Covid 19 li kien difficilissimu biex wiehed naturalment isib impieg. Ms Zivkoviv apparti minn hekk kienet ghaddejha wkoll minn problemi ta' sahha u kienet ukoll qeghda trabbi t-tifel wehidha, Din it-tkeccija kellha konsegwenzi serji hafna forsi iktar minn tkeccijiet ohrajn.

### **KONSIDERAZZJONIJIET:**

Il-kompitu ta' dan it-Tribunal kien li jiddeciedi jekk terminazzjoni mill-impieg kientx ghal raguni tajba u bizzejjed skond il-ligi. Dan ghamlu billi analizza l-fatti u xtarr bir-reqqa dovuta l-argumenti kollha mqajjma matul dan il-process u dan kif sponuti mix-xiehda, id-dokumenti mill-partijiet u t-trattazzjonijiet finali.

It-Tribunal dejjem sostna li tkeccija mix-xoghol ghandha tkun *'the very last resort'*. U jekk issir tkeccija din ghandha issir wara li l-persuna koncernata tinghata kull opportunita' li tinghata smigh kif jixraq, imparzjali, u li tiddefendi ruhha, anke jekk hemm bzonn b'ghajnuna legali. Fil-kaz ta' Milica



Zivkovic, dan qatt ma sar. L-istess Qrati f'Malta diversi drabi sostnew illi l-impieg huwa l-ghajn tal-ghajxien ghall-haddiema u ghall-familji taghhom, huwa sagru. Tkeccija mix-xoghol trid tkun konsegwenza ta' xi offiza gravi. Jirrizulta b'mod car li f'dan il-kaz, in-numru ta nuqqasijiet msemmija kienu minghajr dubbju, trivjali u inokwi.

## **DECIDE**

Ghalhekk, it-Tribunal wara li ezamina w evalwa d-dikjarazzjonijiet ta' dan il-kaz, il-provi, kif ukoll is-sottomissjonijiet taz-zewg nahat, jiddeciedi li r-rikorrenti, Ms. Milica Zivkovic ma kienx jisthoqqilha terminu mill-impieg u ghalhekk dan jitqies bhala tkeccija mill-impieg li hi ngusta u ghalhekk hemm lok li tinghata kumpens.

Il- Kumpens qed jigi stabbilit fl-ammont ta' Tnax il-elf, erba mija u tmenin Euro (Euro 12, 480) liema kumpens ghandu jithallas mis-Socjeta' intimata fi zmien xahar mid-data ta' din id-decizjoni.

A tenur tal-Avviz Legali Nru 48 tal-1986, it-Tribunal jillickwida d-drittijiet dovuti lill kull min assista lill-partijiet fl-ammont ta' tlieta u disghin Euro u sbatax l-centezmu (Euro 93.17) kull wiehed.

B'hekk tintemm din il-kwistjoni tax-xoghol.

(Iffirmat)

Is-Sur John Bencini  
Chairperson

Vera kopja

Daniela Manicolo  
Ghas-Segretarja