

TRIBUNAL INDUSTRIJALI

Decizjoni Nru: 2931

Kaz Nru: 4061/ JB

Fil-Kwistjoni tax-Xoghol

bejn

Mark Muscat (K.I. 0281378 (M)

u

NGATT Consultancy Services Limited
(C82471)

Illum : 21/08 /2023

Dwar: Tkeccija mill-impieg allegata li hi ngusta

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

Introduzzjoni u dikjarazzonijiet tal-kaz (fil-qosor).

Dan il-kaz gie ntavolat permezz ta' rikors mill-Avv. Patrick Farrugia fis-27 ta' April, 2022 f' isem ir-rikorrent Mark Muscat.

“Is-Sur Muscat, ir-rikorrent, gie impjegat mas-socjeta' intimata f' Dicembru tal-2019, izda minghajr ma qatt inghata kuntratt tal-impieg, nonostante l-insistenza tieghu sabiex jinghata wiehed, parikolarment meta gie biex jiehu self ta' flus mill-bank, u dan bi ksur tar-Regolamenti dwar informazzjoni lill-impjegati (L.S 452.83). Ir-rikorrent dejjem agixxa b'mod professjonali fuq xoghlu u l-prestazzjoni tieghu kienet eccellenti, tant illi lanqas qatt ma rcieva twissija formali dwar prestazzjoni la personali u wisq anqas professjonali, salv ghal xi konversazzjoni nformali permezz ta' *WhatsApp*. Huwa kien dejjem disponibbli ghal telefonati f'kull hin ta' kull gurnata minghajr ebda rizervi, u dan minghajr ma qatt nghata mobile, laptop, jew linja tat-telefonija ghall-uzu tax-xoghol u ghaldaqstant kien juza devices personali.

Ir-rikorrent, kemm il-darba lmentata mad-direttur tas-Socjeta' Intimata dwar certi kundizzjonijiet illi kien qed ihossu skomdu bihom, fosthom il-fatt li l-istess direttur kien spiss imur minn wara dahar il-klijent fuq xoghol li kien ikun qed jiehu hsieb hu, kultant b'konsegwenzi negattivi. Fl-4 ta' Marzu 2022, l-esponent gie infurmat mid-direttur illi l-impieg tieghu kien ser jigi ufficjalment itterminat. Ir-rikorrent talab spegazzjoni ghalfejn kien qed jigi tterminat sommarjament u minghajr ebda raguni valida, u gie infurmat li dan kien minhabba allegata prestazzjoni mhux sodisfacjenti.

Ir-rikorrent lanqas qatt ma nghata ebda twissija formali dwar problemi ta'prestazzjoni fuq ix-xoghol, u wisq anqas qatt ma nghata ebda *performance improvement plan* sabiex ikun jista jtejjeb dan l-allegat nuqqas minn-naha tieghu, u ghaldaqstant ma seta' bl-ebda mod jifhem minn fejn tali allegazzjonijiet hargu."

Minn naha taghha, s-socjeta' ntimata, permezz tal-Avukati Karl Sammut u Bradley Gatt, ddikjarat kif gej b'risposta fis-27 ta' Mejju, 2022:

"Is-Socjeta' Intimata tesponi bir-rispett illi t-talbiet ta' Mark Muscat huma infondati fil-fatt u fid-dritt u ghandhom jigu michuda minn dan it-Tribunal peress lli dan huwa kaz ta' terminazzjoni ta' impieg ghal raguni valida u gusta, primarjament minhabba l-imgieba u l-prestazzjoni tax-xoghol.

L-esponenti hija socjeta' li toffri sevizzi ta' konsulenza u digital marketing specifika ghas-suq Malti.

Illi huwa ghal kollox skorrett li jintqal li l-esponenti ma pprezentawx kuntratt tal-impieg lill-Muscat. Kien Muscat innifsu illi talab lill-kumpanija esponenti biex, qabel huwa jiffirma l-kuntratt, Mark Muscat jinghata cans u hin biex ikun jista jikkonferma xi kwistjonijiet personali parikolarment relatati mal-impieg tieghu mal-UEFA. Wara illi Muscat informa lill-kumpanija esponenti li ried kopja tal-kuntratt, u wara li tkomplew xi diskussjonijiet fuq xi bonus structures, il-kumpanija esponenti baghtet kopja ta'kuntratt lil Muscat sabiex jigi iffinafinalizzat u iffirmit bejniethom. L-esponenti kemm il-darba fakkret il-Muscat biex jigi iffinafinalizzat u iffirmit l-kuntratt offrut lilu. Illi sakemm il-ligi ma tirrekjedix formalitajiet specifici, ftehim jigi meqjus li gie konkluz mal-accettazzjoni tal-offerta meta l-parti li taccetta l-offerta tkun konxja ta' dik l-accettazzjoni.

Meta wiehed iqis li Mark Muscat baqa jahdem mal-kumpanija esponenti u qatt ma talab tibdil fil-ftehim, Muscat ghandu jitqiesx li accetta t-termini stabbiliti fil-kuntratt ta' impieg offrut lilu ghall-finijiet kollha tal-ligi. Madankollu, anke jekk ghas-sahha tal-argument, il-kuntratt tal-impieg mibghut mill-esponenti ma jitqiesx li gie formalment accetta minn Muscat, dan xorta ghandu jigi kkonsidrat li jissodisfa d-dispozizzjonijiet tar-Regolament draw Informazzjoni lill-Impjegati (L.S. 452.83).

Minkejja li kwalunkwe pozizzjoni manigerjali tigi b'responsabbiltajiet kbar, Mark Muscat repetutamente u b'mod konsistenti naqas milli jwettaq ix-xogol assenjat lilu fiz-zmien miftiehem. Ukoll l-esponenti wissiet b'mod verbali lill-impjegat diversi drabi li sakemm l-prestazzjoni tieghu ma titjiebx, l-ingagg tieghu kien ser jintemm. Ta' min jghid li kull meta Muscat kien imsiefer fuq xoghol tal-UEFA, Muscat ma kien jaghmel l-ebda xoghol ghall-esponenti, minkejja li t-tasks assenjati lilu kienu jirrekjedju xoghol kostanti. Mhux biss, imma sahsitra kien regolarment jonqos milli jwiegeb emails u telefonati.

Id-decizjoni li jitkecca Mark Muscat ma kienitx wahda facli, partikolarment minhabba r-relazzjoni personali ta' hbiberija li tezisti bejn d-direttur tal-esponenti u Mark Muscat. L-intenzjonijiet tajba tal-esponenti huma wkoll riflessi fil-fatt li minkejja li kien hemm il-kundizzjonijiet kollha biex jitkecca Mark Muscat minhabba n-nuqqasijiet tieghu, l-esponenti xorta offriet severance package lil Mark Muscat, u dan minkejja li ma kien hemm l-ebda obbligu li taghmel dan. In-nuqqasijiet ta' Mark Muscat huma sostanzjali u jixhdu t-traskuragni, non-kuranza u t'farfir ta' doveri."

PROVI

F'dawn il-proceduri xehdu x-xhieda migjuba miz-zewg-parijiet, kif ukoll gew esebiti diversi dokumenti.

SOTTOMISSJONIJIET (Sintesi)

Dr. Bradley Gatt (on behalf of NGATT Consultancy Services Limited:

"During the proceedings, Mark Muscat portrayed a scenario in which NGATT Consultancy abruptly terminated his employment, suggesting that everything was going smoothly and without any issues. This when Mark Muscat was aware that NGATT Consultancy was deeply unsatisfied with his performance. His performance was initially satisfactory and this was confirmed by multiple parties including Michael Gatt and Prashant Patel during their witness.

Unfortunately, towards the end of 2022, Mark Muscat's work performance underwent a notable and sudden downturn, indicating a significant decline in his productivity and effectiveness in the workplace. This decline had a direct impact on overall team efficiency and output, causing delays in project completion and a decrease in the overall quality of work delivered. This decline also had a ripple effect on the workflow and collaboration with the other members of the NGATT Consultancy team.

The main reasons which led NGATT Consultancy to terminate the part-time employment of Mark Muscat are: 1. Missed Deadlines and Impact on Business, 2. Other team-mates were to blame, 3. Mark Muscat was duly notified about his performance.

It is pertinent to point out that Mark Muscat repeatedly received notifications from Asana through emails indicating that projects had missed their deadlines, and despite subsequent reminders, the issues persisted. To add, NGATT Consultancy took additional and proactive steps to further bring its dissatisfaction to the attention of Mark Muscat. Regular meetings were held in the offices of NGATT where such matters were discussed, and the delays caused by Mark Muscat were regularly on the agenda. As a consequence, several strongly-worded messages were sent to Mark Muscat through Whatsapp to emphasize the severity of the situation. Mark Muscat admitted to having received these messages in the sitting held on the 26th May 2023.

The Employment and Industrial Relations Act does not specify any particular requirement regarding the formalities or methods that are to be used when employers communicate with their employees. This means that a notification is deemed to have been duly given as long as (i) the employer sends correspondence through channels it normally uses for such purposes, (ii) such notification clearly describes the matter to which it relates, and (iii) such communication is received and acknowledged by the recipient, Missed Targets.

The unsatisfactory performance of Mark Muscat is not only based on subjective criteria. On the contrary, NGATT Consultancy established specific targets in collaboration with Mark Muscat himself, who as a manager, also contributed to setting those targets and defining the performance threshold. These targets were not met, and the performance of Mark Muscat and his department played a significant role in the shortfall.

Mark Muscat's parallel job with UEFA; conflict of interest and neglecting the needs of NGATT Consultancy:

Mark Muscat confirmed that, during the time when he was employed with NGATT Consultancy, he was also employed on a part-time basis with UEFA as a venue media manager. In his capacity as venue media manager, Mark Muscat was required to travel regularly to handle certain aspects of his duties with UEFA. This was another reason which contributed to the dismissal of Mark Muscat. While a short absence of a day or two may be understandable, an extended absence creates a different narrative altogether. Traveling for an extended period without fulfilling job duties raises significant concerns and can be seen as a breach of employment obligations. Unfortunately, the commitment that Mark Muscat had with UEFA was such that he neglected the needs of NGATT Consultancy.

Mark Muscat confirmed that for a consecutive period of four (4) weeks, he travelled to Qatar on a UEFA engagement. During such time, Mark Muscat admitted that he did not carry out any duties for the benefit of NGATT Consultancy. He claims that this was due to the fact that, during his stay in Qatar, he had no internet connection through Wi-Fi and mobile connectivity was very expensive. Although logically, one can accept that there may have been occasions during which Mark Muscat may not have had internet connectivity, the validity of his claim that he had no internet connection for the whole duration of his four (4) week stay in Qatar is surely doubtful, particularly considering Qatar's technological infrastructure. It is to be pointed out that during Mark Muscat's stay in Qatar, NGATT Consultancy representatives were trying to get in touch with him through different communication channels, but to no avail.

Regarding the question of Bonuses, there were some discussions between NGATT Consultancy and Mark Muscat for a potential bonus structure to incentivise and po-

tentially improve his performance, no formal agreement regarding this bonus was reached.

Upon the termination of Mark Muscat's employment, a voluntary termination payment was extended as an offer by NGATT Consultancy. This payment, equivalent to two (2) months' salary was not a mandatory requirement or obligation on the part of NGATT Consultancy."

L-Avv. Patrick Farrugia f'isem ir-Rikorrent:

"Ir-rikorrenti qatt ma nghata kuntratt tal-impieg, minkejja li dan talbu diversi drabi minghand id-direttur tas-socjeta' intimata, Nicholas Gatt. F'Settembru 2020, ossia wara kwazi sena impieg, Nicholas Gatt baghat biss kopja ta' kuntratt ta' impjegat iehor (bid-dettalji kollha ta' dan l-istess impjegat) lir-rikorrenti, u baqa' ma tahx kuntratt tieghu sa tmiem l-impieg. Dan b'hekk jikkostitwixxi ksur tar-Regolament dwar informazzjoni lill-Impjegati (L.S.452.83) (illum mhassra u sostitwiti mir-Regolamenti dwar Kundizzjonijiet tax-Xoghol Trasparenti u Prevedibbli), u dan apparti l-fatt li b'konsegwenza ta' dan il-ksur, ir-rikorrent baqa' ma setghax japplika ghal self bankarju sabiex jakkwista propjeta'.

Meta l-impieg tar-rikorrenti gie tterminat minn Nicholas Gatt, huwa la nghata raguni cara u valida ghal dan, la gie imwissi minn qabel b'mod car li kien hemm xi problemi serji u lanqas ma gie mghoddi minn proceduri dixxiplinarji (la formali u wisq anqas informali) li setghu jiggarrantulu l-opportunita' li imqar isemma' lehn meta rinfaccjat b'din id-decizjoni unilaterali. Ir-raguni li nghatat minn Nicholas Gatt (liema raguni, apparti li kienet vaga, lanqas inghatat bil-miktub) kienet relatata ma' revenue. Tant li waqt ix-xhieda tar-rikorrenti fil-28/4/23, meta mistoqsi nghatax raguni ghat-terminazzjoni tieghu, r-rikorrenti wiegeb: *"Ma nafx, ma nafx ghalfejn. Lili gabuli l-iskuza li n-numri kienu hzienu, li n-numru, ir-revenue tal-kumpanija kienu hzienu. Meta jiena naf li mhux veru kien il-kaz"*.

In oltre, s-surreferit huwa fattwalment sostnut mill-fatt li l-impieg ta'zewg impjegati ohra li xehedu f'dawn l-proceduri (cioe' Kursten Marmara u Kurt Caruana), gie tterminat b'mod hesrem ftit wara li dawn gew offruti kuntratt b'paga wahda bejniethom ghaliex is-socjeta' intimata ma riditx issostni l-pagi tat-tnejn li huma. Dawn gew imkeccija ftit gimghat biss qabel ma gie itterminat l-impieg tar-rikorrent-huwa car li dan ma kienx b'kumbinazzjoni u b'hekk jidher car li s-socjeta' intimata kellha l-intenzjoni li tnaqqas il-headcount. B'hekk id-difiza imressqa mis-socjera' intimata, li hija pjenament u unikament ibbazata fuq allegati nuqqasijiet fil-prestazzjoni tar-rikorrent, tizgarra b'mod assolut mar-raguni moghtija lir-rikorrent fil-mument tat-terminazzjoni tal-impieg tieghu flimkien mal-fatti koicidentalni fuq zvelati.

Dwar ix-xoghol l-iehor tieghu tal-UEFA, ir-rikorrent fit-28 ta' April, 2023 fuq mistoqsija tal-Avv Roselyn Borg, jekk il-kumpanija kienitx taf bih, ir-rikorrent Mark

Muscat wiegeb: *“Mill-bidunett kienu jafu bih dan ix-xoghol tal-UEFA. U mhux talli hekk, talli jiena wkoll kellimt lil UEFA biex niehu parir biex nara ezattament nistax naghmlu dan ix-xoghol u tawni l- go ahead. U tawni l-go ahead fuq bazi cara.”*

Inoltre id-direttur Nicholas Gatt ta' sikwit accetta biljetti ghal partiti tal-futbol ghalih, ghal familta u shabu, liema biljetti kienu jigu ottjenuti mir-rikorrent tramite l-pozizzjoni tieghu tal-UEFA, b'turija cara illu huwa certament ma kellu l-ebda problema b'dan l-arrangement.

Rigward l-kwistjonijiet tal-“missed deadlines”, ir-rikorrent huwa umli bizzejjed li jammetti li kien hemm drabi fejn certu xoghol ma wasalx fil-hin ghaliex fl-ahharnett huwa uman u zbalji isiru. B'danakollu, kien hemm diversi drabi fejn din it-tardezza ma kintx kawza ta' inadempjenza da parti tieghu, izda ta' dewmien min-naha tal-graphic designer, certu Gorg Gasashvili, li kien jghix l-Georgja u mhux Malta. Ir-rikorrent jissottometti li Gorgi Gasashvili kien sikwit jipprovdi skuzi varji ghadewmien tax-xoghol, u r-rikorrent kemm il-darba gibed l-attenzjoni ta' Nicholas Gatt dwar dan. Dawn l-istess tasks huma ftit fost mijiet ta' tasks ohra li gew kompluti fil-hin u b'mod sodisfacenti mir-rikorrent matul l-impieg tieghu.”

KUNSIDERAZZJONIJIET

Il-kompitu ta' dan it-Tribunal kien li jiddeciedi jekk it-terminazzjoni mill-impieg tas-Sur Mark Muscat kientx ghal raguni tajba u bizzejjed skont 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, d-dokumenti mill-partijiet u s-sottomissjonijiet finali tal-Avukati.

It-Tribunal isostni 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 jkollha opportunita' cara li tiddefendi ruhha, anke jekk hemm bzonn b' ghajnuna legali. Fil- kaz ta' Mark Muscat, dan qatt ma sar u it-Tribunal iqies dan l-atteggjament minn naha tas-Socjeta' Intimata bhala nuqqas serju. Tkeccija trid tkun ghal ragunijiet gravi bizzejjed u serji, ghandu jkun hemm processi dixxiplinari formali u b'opportunita' li kull min ikun qed jigi akkuzat jinghata kull cans li jiddefendi ruhu.

It- Tribunal ghandu sitwazzjoni quddiemu fejn ir-rikorrent kien impjegat part-time mas-Socjeta' Intimata, izda l-istess rikorrent kien impjegat 'part-time' ma entitajiet ohra. Dwar dan x-xoghol estern tar-rikorrent, s-Socjeta kienet totalment konxja ta' dan u qatt ma sabet oggezzjoni jew kunflitt ta' interess potenzjali. Fix-xhieda tieghu fit-28 ta' April, 2023, ir-rikorrent jistqarr li, *“mill-bidunett kienu jafu bih dan ix-xoghol tal-UEFA. U mhux talli hekk, talli jiena wkoll kellimt lil UEFA biex niehu parir biex nara ezattament nistax naghmlu dan ix-xoghol u tawni il-go ahead. Kien hemm ukoll drabi fejn jien kont nigi mitlub minn dirigenti ta' NGATT Consultancy*

Services biex nakkwista biljetti ghalihom.” Stante illi dan ma giex kontradett mill-intimati, huwa evidenti illi dan kollu kien qed isir bil-kompjacement tagghom.

Il-problemi jidher li nqalghu biss meta ir-rikorrent kien fuq xoghol tal-UEFA matul l-Arab Cup gewwa l-Qatar. Hawnhekk ir-rikorrent kellu diversi problemi ta' konnettivita' u sabiex ma jinqatax kemm jista jkun, tella kont ta' erba' mitt Ewro sabiex ta' sikwit ikollu konnesssioni ta' internet u jibqa' disponibbli. Ir-rikorrent qatt ma gie ikkumpensat mis-Socjeta' Intimata ghal dawn l-ispejjez. It-Tribunal jemmen bisshih li l-mawra li kellu ir-rikorrent fuq ix-xoghol l-iehor part-time ma kellhiex tnaffar b'xi mod ix-xoghol siewi li r-rikorrent kien ilu jaghmel mal-Kumpanija Intimata sa minn Dicembru 2019. *In oltre*, it-Tribunal huwa konvint illi l-prestazzjoni lavorativa tar-rikorrent kienet *in linea generali* wahda tajba u sodisfacjenti.

DECIDE

Ghalhekk, it-Tribunal, wara li ezamina u evalwa d-dikjarazzjonijiet ta' dan il-kaz, jiddeciedi li r-rikorrent Mark Muscat ma kienx jisthoqqlu terminu mill-impieg u ghalhekk dan jitqies bhala tkeccija mill-impieg li hi ingusta u ghalhekk hemm lok li jinghata kumpens.

Fil-komputazzjoni ta' dan il-kumpens, it-Tribunal ha konjizzjoni tas-somma ekwivalenti ghal xahrejn paga li l-kumpanija intimata diga tat lir-rikorrent.

Ghaldaqstant, il-Kumpens qed jigi stabbilit fl-ammont ta' tmintax-il elf u sitt mitt Ewro (Euro 18, 600), liema somma ghandha tithallas mis-Socjeta' Intimata fi zmien xahar mid-data ta' din id-decizjoni.

A tenur tal-Avviz Legali Nru 48 tal-1986, it-Tribunal jillikwida 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)