

TRIBUNAL INDUSTRIJALI

Decizjoni Numru:3009

Kaz Numru 4052/JB.

Fil-Kwistjoni tax-xoghol bejn

XYZ

u

Augustea Technoservices Ltd (C 81536)

Illum: 28.06.2024

Dwar tkeccija mill-impieg allegata li hi ngusta.

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

FACTS OF THE CASE:

Application of XYZ, holder of Greek passport number: XXXXXXXXX tramite Lawyer Jean Carl Abela.

On the 9th of April, 2020, the applicant had signed a contract of employment where by means of such contract, the defendant company engaged the applicant as Operations Manager on an indefinite period. The applicant was also ordered to provide services to a subsidiary office in Greece, that is Iblea Ship Management Limited (Tax registry number 996737914 of Public financial service of ships of Piraeus. Such Greek office is a subsidiary to the Maltese Company bearing the same name, that is Iblea Ship Management Ltd (C98389), whereby the latter has as a shareholder Augustea Malta Holding Limited (C 84759), whereby this latter company has as a shareholder Augustea Atlantica S.R.I. (Registration Number: 07666080630). Augustea Atlantica S.R.I. Is affiliated with Augustea Holding S.P.A. (Registration No: 06659941212), which this latter company are the shareholders of the defendant company and which all of the stated companies and subsidiaries operate under the same group of Companies and interests.

Although there was no contract of employment signed by the applicant with Greek subsidiary Iblea Ship Management Ltd (Tax registry number 996737914 of Public financial service of ships of Piraeus), a letter dated 5th. August 2021 (Doc. DM2) was sent to the applicant by the defendant company which clearly indicated that the applicant was to be transferred and offered a contract with Iblea Ship Management. That according to such letter, the applicant's role with the Greek office was to be that of Operation Manager and was to commence either from the establishment of the office in Greece or from the 1st of September, 2021, where such employment was to be of an indefinite nature; although the applicant had never signed a contract of employment, he nevertheless commenced working with such office during his employment with defendant company.

During his employment, the applicant never received negative comments with respect to the work he carried out for the defendant company and Iblea Ship Management Ltd. In fact, he continuously received positive comments with respect to his work and his dedication towards his work. By means of an email dated 30th November 2021, the applicant received a 'Letter of Notice of Redundancy' (Doc DM3) which letter indicated that the applicant's employment was to be terminated on the 1st of December 2021 and consequently, his contract of employment would no longer be in force. That redundancy is not the genuine and true reason behind his termination of employment and consequently the applicant's termination amounts to an unfair dismissal by the defendant company. The defendant company also failed to observe its obligations concerning the Transfer of Business Regulations (L.N. 433 of 2002)

Therefore, in view of the premises and as it will be proven during the course of the proceedings, the applicant humbly requests this Tribunal to:

1. Declare that the applicant's employment was unjustly and unfairly terminated without just cause of law, by the defendant company;
2. Liquidate a just compensation resulting from the unjust termination of employment;
3. Orders defendant company to pay such liquidated compensation sum to the applicant.

Reply of Augustea Technoservices tramite Av. Matthew Brincat and Dr. Lara Pace.

Respectfully submits that the plaintiff was employed with the Augustea Technoservices Ltd., as an operational Manager, as detailed in his statement of case, on an indefinite contract of employment commencing on the 5th of April 2020, which was already produced in evidence with the application of the plaintiff. It is indeed correct that the work which was previously carried out by Augustea Technoservices Ltd has been transferred and uprooted from Malta to a company, which operates in Greece, namely Iblea Ship Management Ltd (C98389) and that the work preciously carried out by the plaintiff is no longer available in Malta with Augustea Technoservices Ltd.

As is also confirmed by the plaintiff in his application, he was offered a job with Iblea Ship Management in line with the pertinent regulations applicable in Malta, however, as will be evidenced during the course of the proceedings, the plaintiff was not happy with the arrangement and effectively the transfer of employment did not take place for reasons which are still linked to the plaintiff and his exigences, therefore Augustea Technoservices Ltd., being his original employer prior to the transfer, had no choice but to declare him redundant.

Preliminarily, the defendant company is aware that there are pending proceedings in Greece filed by the plaintiff against Iblea Ship Management Ltd., (C 98389) and the defendant company is hereby requesting this Industrial Tribunal to stay proceedings until the outcome of that case is finalised since the plaintiff's remedies according to law lie mainly with Iblea Ship Management and not with Augustea Technoservices Ltd. Therefore the current proceedings should be suspended so that the outcome of the proceedings in Greece provide the plaintiff with a remedy in that court, then the plaintiff should not be given a remedy against Augustea Technoservices Ltd as well, since Augustea Technoservices Ltd., already fulfilled its obligations by giving the plaintiff the opportunity to work in Greece and moreover, without prejudice to the rest of this response, even if this Industrial Tribunal were to determine that the Transfer of Business (Protection of Employment) Regulations (Subsidiary Legislation 452.85) had to be applied, the defendant company has already paid out an ammount to the plaintiff, being his notice money paid out during redundancy and this should be taken into consideration by the Tribunal when and if any compensation is granted.

Therefore, for the reasons outlined above, and as will be shown during the course of the proceedings, the defendant company, humbly requests this Industriail Tribunal to declare that the claims of the plaintiff are unfounded at law and that no compensation is due.

Deċizzjoni Preliminari (Nru: 2856) - fis-7 ta' Ottubru, 2022, it-Tribunal ha deċizzjoni dwar jekk għandux jew le li għandu gürisdizzjoni li jisma' dan il-każ. Hawnhekk sema' l-partijiet jittrattaw l-eċċezzjoni preliminari mressqa mill-intimati Augustea Technoservices Ltd. Dan wara li sema it-Trattazzjonijiet tal-Avukati Lara Pace, u Jean Carl Abela.

It-Tribunal fela' u studja bir-reqqa l-eċċezzjoni preliminari mressqa mill-Kumpanija Intimata u s-sottomissjonijiet ulterjuri mressqa mill-partijiet fuq talba tal-istess Tribunal. Dan minhabba li dan il-każ fih element internazzjonali li t-Tribunal ried jivvaluta sew sabiex fl-ewwel lok jiddetermina il-gürisdizzjoni tiegħu u konsegwentament, jekk għandu gürisdizzjoni, jiddeċiedi fuq l-eċċezzjoni preliminari fid-dawl tal-ordinament güridiku tagħna u l-qafas legislattiv tal-Unjoni Ewropeja.

Għaldaqstant, wara li t-Tribunal ikkunsidra l-fatti kollha rilevanti tal-każ, jiddikjara illi għandu gürisdizzjoni in kwantu għall eċċezzjoni preliminari mressqa mill-Kumpanija Intimata illi t-Tribunal għandu jissospendi l-proceduri sakemm tigi deċiza kawza li-rikorrent fetah fil-Greċja, it-Tribunal ikkunsidra illi ghalkemm l-istess rikorrent ressaq kawza fil-Greċja, il-kawza fil-Qorti Griega mhix kontra l-istess entita' güridika u mhix tal-istess kawza ta' azzjoni li ressaq quddiem it-Tribunal.

Għaldaqstant, it-Tribunal filwaqt li jiddikjara li għandu gürisdizzjoni li jisma' l-każ, jiddeċiedi illi jirrispingi l-eċċezzjoni tal- Kumpanija Intimata u jordna l-prosegwiment tal-każ.

WITNESSES:

Marco Giros (General manager with Augustea Technoservices Ltd and later as General Manager of the group Augustea Maritime Transportation), Cesare Guerrieri (One of the Directors of the Company), XYZ, Lawyer Claudette Fenech (Representative of the Registry of Companies within the Malta Business Registry).

SINTESI TAS-SOTTOMISSJONIJIET TAL-AVUKATI.

Dr. Lara Pace for the Defendant Company (Augustea Technoservices Limited (Malta):

Mr. XYZ(Plaintiff) was employed with Augustea Technoservices Limited (Malta) as an operational manager. The Company provides technical services to ship owners.

Under oath, Mr Marco Giros (General Manager of Augustea Technoservices Limited) declared that the Defendant Company had clear and specific objectives. In 2021, Mr Giros explains that (under suggestion of the main customer), a new company named Iblea Management Limited was incorporated and registered in Malta and the ship management offices of Iblea were set up in Athens(Greece), in order to render a better service to the main client of the Defendant Company. It must be pointed out that Iblea is a separate and distinct company from the Defendant Company.

Under oath, Mr Marco Giros explains” “ Augustea Technoservices at the time had as a main client actually the one client for dry bulk vessels, a Greek company, called Star Bulk; that is the ship owner that gave Augustea the contract for the management of some of their vessels... the performance in terms of services, according to our Greek client, was not satisfactory, For this reason, the client pushed the company to reorganise the way the services were performed, and one of the main points was that

he wanted to have the company nearer to his office in order to improve the communication and the way that the problems were dealt with, so he wanted the company to be relocated to Athens.”

As a result of this reorganisation and in accordance given by Cesare Guerrieri (one of the Directors of the Company,) a number of employees accepted to have their employment transferred to Iblea and their employment was effectively relocated to Greece. The employees who were not willing to relocate to Athens resigned from their employment with the Defendant Company. It is also worth pointing out that as at date of submission, there are no employees with the Defendant Company.

Marco Giros explains that, in fact, the Plaintiff was given an opportunity to relocate to Iblea and Greece with the same terms and conditions of employment. Marco Giros, under oath, states that the Plaintiff did not accept to transfer with the same terms and conditions of employment but wanted to negotiate a higher salary. In his testimony, the Plaintiff makes it clear that the salary was a main issue of contention in the relocation, and he also tries to pin it down on Mr. Giros by stating that Mr. Giros wanted to reduce the Plaintiff’s salary. The Plaintiff conveniently states that Mr. Giros suggested that the Plaintiff’s salary should be reduced, objectively it is not logical to think that Mr. Giros first proposed to reduce the Plaintiff’s salary and eventually agreed to a higher salary.

The evidence produced in this Industrial Tribunal and also during the cross-examination of the Plaintiff, indicate that the Plaintiff always wants to have everything his way by contesting everything even through long and winded communication. Following the negotiations of the commitment letter, the Plaintiff, was still incapable of meeting his obligations and once again, wanted to have matters his own way when he states that, “ Of course, the reason why I could not be on the 1st of September, was basically the very lengthy and delayed procedure as you will see from so many messages I sent, because I had two dogs and in Cyprus and in most of the mediterranean countries, August is the peak of the holidays and its very difficult to find a place to have your pets or anything like that, if that was already agreed months before, I would be able to have the dogs left in a hotel. Because the returning date was not confirmed, I was supposed to go to Greece to work from the office and find an apartment, that means to say, that I could not say to the hotel “I will come”. I will allow my dogs. I will leave my dogs here and I would come back that day”, however, this could be possible only September when hotels are more flexible because, of course, they want to serve all of their clients’.

To this end. Marco Giros remains consistent in the evidence he has given in both examination and in fact during cross-examination, he states the following:

Xhud: ... I said that the company wanted to move to Athens, that the company wanted to keep having a relationship with him and him moving to Athens, that the company wanted to keep having a relationship with him and him moving to Athens, and said that, of course, the company would like not to have an extra cost because of this move, so would like to keep the same terms and conditions of the people moving to Athens.

Avv. Alan Zerafa: You explained last time that XYZ wanted improvement of the terms and conditions. And am I correct in understanding that this request, he made it to you personally?.

Xhud: Yes, yes.

Avv. Alan Zerafa: At the moment that XYZ made such a request, did you explain that the company was only obliged to transfer with the same terms and conditions to him?

Xhud: No, I mean

Avv. Alan Zerafa: You did’nt explain this.

Xhud: Actually I’ m not even aware, that the company is obliged to move him with the same terms and conditions, the company can agree to move him with whatever terms and conditions. I don’t understand the question.

Avv. Alan Zerafa: That is another thing, we will come to that. My question is, did you explain to him that he had to move with the same terms and conditions?

Xhud: As I tell you, we wanted him to move with the same terms and conditions and he said no but I want to have improvement of the conditions. That was discussion, it was-.

Avv. Alan Zerafa: So you entered into negotiations with XYZ.

Xhud: Yes, yes, yes.

Avv. Alan Zerafa: And you were involved in these negotiations?

Xhud: Yes, absolutely.

Avv. Alan Zerafa: When did these negotiations between the company represented by you and XYZ stop and why?

Xhud: The negotiations stopped when we agreed on the conditions.

The evidence given by Mr. Giros indicates that the Plaintiff did not want to be transferred with the same terms and conditions of employment but wanted to renegotiate his employment terms, which he managed to achieve even though he tries to pin blame on the Company for this matter and yet even when such terms and conditions of employment were agreed, in accordance with his exigencies, he again wanted to postpone the start date with Iblea.

The Plaintiff, also provides that an explanation as to why he unilaterally decided to go to Athens at a later date and in examination, he states the following:

As Francesca - the General Manager of Iblea was in copy, where I am saying I will be in Greece in the beginning of September, which is very logical because I had to leave my dogs somewhere in the beginning of September in order then to arrange to go to Greece. There was no response in that message and that was because in my understanding, the company had no problem at all. Much more, I sent another message with all managers in copy that I will be in Greece on the 7th or 8th of September and I asked if that would be a problem, and Ms Francesca Trotta said, "It's good with me. There is no problem". And there is a message from Ms. Francesca Trotta, "what matters for you is to be here on the 15th - or something like the middle of September - 'where we have an audit', so that I will represent the company Iblea as Operations Manager, and therefore, I kept everybody informed for this developments and for when I was planning to be in Greece because otherwise, it was impossible, I was chasing Mr Giros five months for this matter, five months from April... I'm sorry the communication was cut off. And this is how I ended up in Greece the date I just...

As set out in the evidence given by the Plaintiff, Francesca Trotta is employed with Iblea, and if the Plaintiff's has any claims to address, these should be addressed to Iblea, which is not a named defendant in this case and which company has a separate and distinct personality from the Defendant Company. In his own examination, the Plaintiff also states that:

Continue insisting on changing of the terms, and Mr. Giros said," XYZno problem, communicate with Iblea when you have to be there",

Therefore, if the Plaintiff is alleging that his employment with Iblea did not take effect, there is nothing which the Defendant Company could do. Moreover, it must be underlined that there are separate proceedings against Iblea in the courts of Greece and there, any alleged claims against. Iblea should not be taken into consideration by this Industrial Tribunal. Moreover, it must be pointed out that the Plaintiff contributed to his termination. Based on the evidence produced by the Defendant Company, it is clear that the Plaintiff had the obligation to commence his employment on the 1st of September 2021 but continued changing the goal posts of the commencement date to suit his needs, to this end, Mr Giros also states under oath the following:

“ So finally, he started showing up in Greece after the 1st of September 2021, let's say, one week after or something like this, he started showing up in Greece, but he was not ready yet for the final move because he was still organising himself and so on and so on”.

On the 30th of November 2021, the Plaintiff was given notice of termination of redundancy with effect from the 1st December 2021. In the letter of termination, which was signed by Mr, Marco Giros, the Plaintiff was informed that the Defendant Company, “ is restructuring activities reducing substantially its technical management services, closing all contracts with the ships currently owned by the client, hence all departments including the Operations Department in which you work, are going to be reorganised reducing the staff”.

Compensation:

Should this Industrial Tribunal determines that the Plaintiff's claims are to be upheld, in the Defendant's humble opinion, when awarding compensation, account needs to be taken of the fact, Iblea is not a named defendant in this lawsuit and there is another pending lawsuit in Greece. Moreover, the Defendant Company has given the Plaintiff three months' notice as set out in the contract of employment. In addition to this, regard must be given to the employee's tenure as he had been in employment with the Defendant Company from 2020 and terminated in 2021. It follows from this that the Plaintiff was only in employment for around 20 months.

Additionally, it is important to note that the Plaintiff contributed to his termination and the compensatory award, if this is to be awarded, should be reduced by such proportion as this Industrial Tribunal thinks just and equitable elements according to his exigencies, including the start date with Iblea which he kept postponing to suit his personal exigencies.

Avv. Alan Zerafa:

Evidence Produced by the Parties: The two main witnesses produced by the parties were Mr. Marco Giros, the General Manager of the defendant company and the plaintiff himself, Mr. DSM.

Marco Giros testified that plaintiff was asked if he was interested in moving to Greece. He stated that the plaintiff did not want to have the same terms of condition meaning that he wanted to improve the terms of condition of his contract, which included a higher salary and a longer notice period. An agreement was reached between the parties which led defendant company to issue a commitment letter for the employment with Iblea Shipping Management Limited which stated that plaintiff should start working on the 1st of September 2021. The plaintiff later explained that since there wasn't any feedback from Mr. Giros regarding his relocation to Greece, on the 9th of April 2021, he sent another message to the owner, Mr. Raffaele Zagari.

asking him once again to have a meeting to discuss the position of the company. Plaintiff testified that following this email, there had been some meetings with Mr. Marco Giros, there were, however few and far between. Asked in cross-examination during the sitting held on the 16th June, 2023, whether he was objecting to the relocation in Greece under the same terms and conditions, plaintiff explained that NO, he was not objecting to the transfer.

One month later i.e on the 24th of July 2021, Mr. Giros sent him a letter with an employment letter, which employment letter had no reference to his position but just the Department of Operations. There were a number of e-mails between Mr. Giros and the plaintiff. However, on the 3rd of August, 2021, plaintiff sent an email informing defendant company that because of the need to relocate as soon as possible, he was selling part of his property in order to go to Greece. On the 5/8/2021, plaintiff

received another employment letter from Mr. Giros with the title of Operations manager (Doc DM 2). Plaintiff also testified that during this time, he was working both with defendant company and Iblea. He explained that this was a transition period.

It is to be pointed out that on 22/8/21, plaintiff sent an email where both Mr. Giros and Ms Trotta were included, saying that he will be in Greece in the beginning of September (Doc. DM 19). Plaintiff explained that he arrived in Greece on the 8/9/21 and went straight to the Iblea offices where he was working. At the same time, plaintiff was looking for an apartment which he managed to rent which required advance payments also for the months of November and December 2021. He also notified Iblea that he needed to go back to Cyprus to finalize the relocation arrangements. In Cyprus, plaintiff continued working remotely.

Plaintiff testified that on the 26/10/21, Mr. Giros asked for an online meeting which took place the very next day. In the online meeting, Mr. Giros and Ms Trotta told plaintiff that his employment was being terminated. It is worth noting that the termination was announced after plaintiff had been working for almost 50 days in the office of Iblea in Greece acting as Operations manager for both companies, and after he had left Greece and was already back to Cyprus to arrange for his permanent relocation. Both the general managers of defendant company and Iblea were fully aware of this.

Plaintiff explained that following this online meeting, he persistently asked Mr. Zagari and the other officials of the company to have a meeting in order to be given the reasons behind the decision to terminate his employment. Nevertheless, Mr. Giros was not allowing any further contact with Mr. Zagari and when he was replying, Mr Zagari's e.mail address was being deleted (Doc DM 19). Defendant company alleged that plaintiff was not happy with the transfer of employment from Malta to Greece and that this transfer did not take place because of the plaintiff and his exigences. However, during these proceedings, defendant company came up with other excuses to justify its course of action. These excuses included that (a) plaintiff did not have the right qualifications and skills, (b) plaintiff's performance was not satisfactory, and (c) plaintiff did not go to Greece on 1st September 2021 as indicated in the commitment letter dated 5th August 2021.

It is also pertinent to point out that at the same time that defendant company was communicating to plaintiff that his employment was being terminated, a new employee was being engaged. This can be clearly seen by an email dated 20 November, 2021 showing that Christos Lalas had been engaged by the defendant company as Operations Manager, just eight days later, defendant company sent an email to plaintiff with a ' Letter of Notice of Redundancy'. This was also confirmed by Mr. Giros, who asked in cross-examination at that time did the company start looking for a new Operations Manager, he testified that this was around the month of November 2021.

It has therefore transpired that plaintiff's employment was neither excessive nor superfluous, but that defendant company had unilaterally decided to terminate plaintiff's employment for other reasons. It is the humble opinion of plaintiff that, by doing so, defendant company has violated the principle of good faith, and this to the detriment of plaintiff. In addition, the fact that redundancy is not genuine and true reason behind the termination of employment of plaintiff has also been proven by the testimony of Mr. Marco Giros, where, in order to try and justify defendant's company actions, Mr Giros comes up with a series of other reasons why plaintiff's employment was terminated. Plaintiff humbly submits that, in itself, this further proves that this was not a case of redundancy. According to Mr. Giros, this termination occurred because Iblea was looking for a person with a different set of skills. It is simply not true that plaintiff's skills or performance were not satisfactory.

The reason why plaintiff was not in Greece on the 1st September 2021 was because of the delays of defendant company. For over two months plaintiff had been chasing Mr. Giros to have a meeting.

Furthermore, Mr. Giros and Ms Trotta were made aware of Plaintiff's difficulty to be in Greece on 1st of September 2021, and agreed that plaintiff could arrive in Greece a few days later. Plaintiff had asked Ms. Trotta if it was possible for him to go to Greece around 7 or 8 September. Ms Trotta replied by saying "Good with me. Thank you." It is uncontested that plaintiff arrived in Greece on the 8th September 2021 and started working immediately. This clearly demonstrates that the reason given by defendant company that termination of plaintiff's employment was because plaintiff was not in Greece on 1st September 2021 is simply unfounded.

Another important point: It has been proven that plaintiff was being told by Mr. Giros that "you will receive the new contract and only after you will give the resignation to move from one company to the other, while, at the same time, he was being asked by Ms. Trotta to "stay with your contract until we have the AFM. Considering that defendant company and Iblea operate under the same group of company and interests, to the extent that it was Mr. Giros (General Manager, Defendant Company) who discussed the terms of plaintiff's relocation to Greece shows that there was collusion between the two General Managers of the company so that during this transition period of relocation and set up of the business of the new company Iblea, plaintiff works as Operations Manager for and representing both defendant company and also Iblea in different occasions and official legal steps of the new company such as the audit in Greece that the Manager of Iblea wanted the plaintiff to be present and help with, and then when the transition had occurred, they terminated plaintiff's employment on the false pretext of redundancy. This collusion can also be implied from the fact that the plaintiff was induced by defendant company, through the lengthy exchanges, that he was going to be employed with the new company Iblea, when the latter was never planning to actually hire plaintiff. This has been veiled by the purported gross negligence exercised by defendant company with regards to its obligations under the transfer of Business laws, It has been shown by the evidence produced in this case that Mr. Giros, in his capacity of General Manager of defendant company, has failed to inform plaintiff about the obligations that defendant company has in cases of a transfer of business under Maltese Law.

TRATTAZZJONIJIET FINALI (Fil- Qosor).

L-Av. Lara Pace:

L-uniku ħaga li xtaqt nittratta hija l-kumpens li qed jigi mitlub quddiem dan it-Tribunal. Bażikament il-mod kif it-talba tal-kumpens hija s-salarju li r-rikorrent kien jircievi tul l-impieg tiegħu għal prattikament minn meta gie tterminat sad-data tan-nota. Il-kumpens fil-każijiet tal-impieg fejn jidhol dak li tgħid il-Kap, 452 jikkellem fuq a compensatory award u mhux danni per se; dak li fic-Civil insejnhulhom danni for loss of profit or loss of remuneration. It is a compensatory award li ġejja mil-Ligi Ingliza u li Norman Selwyn, awtorita' fejn jidhol il-ligi tal-impieg Ingliza, jgħid li a compensatory award needs to be based on the equitable discretion of the Tribunal. Jigifieri, it is a compensatory award tal-allegat breach li min iħaddem ikun għamel versu l-impjegat. Ovvjament, it-Tribunal għandu jiehu ċ-ċirkustanzi, l-fatturi tal-kaz u l-Ligi tagħti a non exhaustive list ta' x'inhuma l-fatturi li dan it-tribunal għandu jikkonsidra, nkluż l-eta' tal-impjegat, it-tenure, il-fatti tal-kaz itself. Ir-rikorrenti kien ilu mpjegat għal ftit aktar minn sena mas-soċjeta' ntimata. Meta tigi kkwotata d-deċizjoni ta' Publius Davison li hija deċizjoni tal-qorti tal-Appell, tistabilixxi prinċipju importanti li l-award irid jkun proporzjonat u ragonevoli.

Qed jigi kkwotat il-gross basic salary meta f'dawn l-affarijiet, dejjem tigi mahduma l-baži tan-net salary, Dan ir-rikorrenti ma jistax jippretendi li aħna inhallsu xi ammont, meta hu, fil-verita' kien jiehu hafna inqas għax tithallas it-taxxa u s-sigurta' soċjali minn dan l-ammont. Meta tara il-fatt li huwa' l-bogħod mill-eta' tal-irtirar and he is very capable, he is a skilled employee; hu stess jgħid li

he is a very skilled employee, jġifieri his capacity to enter the labour market again is very high. Jġifieri meta tiegħu in ċirkustanzi dawn l-elementi li l-kumpens li qed jigi mitlub hija esagerata u rragoinevoli fl-opinjoni tas-socjeta' intimata. It-trasferiment jekk kellu jsir kellu jsir lejn kumpanija Maltija oħra li jisimha Iblea Shipping Company Limited li hija kumpanija kompletament separata u distinta. Jista' jkun huma relatati, pero' mhijiex parti minn dawn il-proceduri l-Iblea u hemm proceduri oħra u evidenza anka fil-process li hemm proceduri fil-Greċja kontra din il-kumpanija. Jġifieri ma nistgħux ahna ngħidu li t-tort jew allegat tort, jekk hemm xi tort ta' Iblea għandha tassumiehom is-Socjeta' Intimata Augustea Technologies Limited għax huma żewg soċjetajiet separati, distinti u għandhom personalita' ġuridika separata. Jġifieri ma tistax dan Augustea Technologies Services Limited tassumi xi tip ta' liability jekk hemm ta' Iblea Shipping Company Limited u in kwantu dan Iblea mhijiex parti mkien dawn il-proceduri u hemm proceduri separati l-Greċja li għandhom pendenti quddiem l-Qorti Griega.

L-Avv. Alan Zerafa:

Fir-rigward tal-kumpens u s-sottomissjonijiet li għamlet l-abbli kollega tiegħi, ma naqbilx magħha huwa fuq il-principju illi joħrog mis-sentenza ta' De La Rue. Il-Qorti kienet qalet li isma din l-idea illi hawn illi għaliex wieħed ifittex għal kumpens taħt il-Kapitlu 452 tfisser illi m'għandux dritt illi jieħu danni daqs il-liġijiet civili l-oħrajn hija idea zbaljata. Jekk wieħed sofra danni minhabba l-agir tal-Principal, id-danni għandhom jittieħdu kollha. Mhux għaliex qegħdin isiru fil-qafas tal-ligi industrijali, allura t-Tribunl għandu jaqbad u jnaqqas l-ammont u jgħid u iva għas-sahha tal-argument, int sofrejt mija danni, pero' għax-dawn id-danni sofrejthom fil-qafas tax-xogħol tiegħek, fil-qafas tal-ligi industrijali, mela allura minn mija ha ntik tletin, Jekk wieħed jistabilixxi d-danni, dawk huma d-danni, m'għandu jkun hemm l-ebda tnaqqis.. Mhux biss id-danni effettivi illi għandhom jigu likwidati fil-każijiet tat-Tribunal Industrijali, imma anki saħansitra danni morali.

Terminazzjoni gieli iggib numru ta' riperkussjonijiet inkluz dawk psikologiċi, nkluz dawk morali, nkluz ta' misthija għaliex tkecejt.

Is-soċjeta ntimata dejjem tagħmel il-punt illi Augustea u Iblea huma żewg kumpaniji separati għaliex għandhom personalita' ġuridika differenti, u hemmhekk on paper jiena naqbel magħha, hekk hu, pero' f'dan il-kaz u wrejna l-kumpaniji huma fformati mill-istess nies. Meta r-rikorrenti kien qiegħed jittratta l-mod kif sejjer jimmuvja l-Greċja kien qed jittratta mas-Sur Giros. Fil-korrispondenza li kienu jgħaddu dak iż-żmien bejn ir-rikorrenti u r-Rappreżentanti taż-żewg kumpanija, ir-Rappreżentanti kollha kienu lkun kkuppjati, l-owner huwa l-istess owner, is-Sur Zagari u allura ma nistgħux aħna nuzaw dik l-arma billi ngħidu, isma għax dawn huma żewg kumpanija separati, ninħbew wara dak li ngħidulu l-corporate veil kull meta biex nidhru li ahna żewg persuni separati mentri fir-realta', dawn il-kumpanija huma mmanegġjati mill-istess nies.

KUNSIDERAZZJONIJIET.

Il-kompitu ta' dan it-Tribunal kien li jiddeċiedi jekk it-terminazzjoni mill-impieg tar-rikorrenti Is-Sur XYZ kientx għal raguni tajba u bizzejjed skond il-ligi. Dan għamliu billi analizza l-fatti u xtarr birreqqa dovuta l-argumenti kollha mqajjma matul dan il-poċess u dan kif sponuti mix-xhieda, speċjalment ix-xhieda tar-rikorrenti, kif ukoll dik tas-Sur Marco Giros (General Manager tal-Kumpanija), d-dokumenti mill-partijiet u it-trattazzjonijiet finali tal-Avukati.

It-Tribunal isostni li tkeccija mix-xogħol għandha tkun ‘ the very last resort’, u jekk issir xi tip ta tkeccija, din għandha issir wara li l-persuna koncernata tingħata kull opportunita’ li tingħata smiġh kif jixraq u imparzjali u jekk hemm bzonn b’għajjnuna legali. Fil-kaz tas-Sur XYZ, dan qatt ma sar u it-Tribunal iqies dan l-atteggjament minn naħa tas-Socjeta’ Intimata bħala nuqqas ta’ professionalita’ u rettitudni. Ir-rikorrenti kien impjegat bħala Operations Manager u kien ukoll ordnat jipprovdi s-servizzi lil uffiċju sussidjarju ġewwa l-Greċja, ossia Iblea Ship Management Ltd. Kien haddiem li kien jieħu ix-xogħol tiegħu b’serjeta’ u b’inpenn shih. Qatt ma irċieva kummenti negattivi minn għand is-Socjeta’ Intimata. Ir-rikorrenti aċċetta li jiġi ttrassferit il-Greċja u ikompli jaħdem minn hemm taħt l-istess nomenklatura u fil-fatt kien diga beda jaħdem minn hemm, meta f’daqqa waħda tkecca permezz ta’ email, datata 30 ta’ Novembru, 2021 u li l-impieg tiegħu kien qed jiġi tterminata kawza ta’ ‘ redundancy’. Kif hareg car, speċjalment mix-xhieda tas-Sur Marco Giros, kollox kien qed jindika, li ir-rikorrenti kellu jibda ix-xogħol tiegħu fl-1 ta’ Settembru, 2021. Izda minhabba diffikultajiet kbar li kellu jiffaccja ir-rikorrenti biex jirringa u jissetilja l-affarijiet tiegħu, beda ix-xogħol f’ Atena fit granet wara bi ftehim ma Ms. Trotta. Għar-rikorrenti, it-terminazzjoni mix-xogħol kien ovvjament ta’ ‘shock’ kbir, aktar u aktar meta sar jaf li gie impjegat persuna ohra bl-istess nomenklatura li kellu hu! Zgur u bil-provi, dan assolutament ma kellux jkun kaz ta’ redundancy.

DECIDE:

Għalhekk, it-Tribunal, wara li eżamina bir-reqqa u evalwa d-dikjarazzjoni ta’ dan il-kaz, jiddeciedi li r-rikorrenti XYZ ma kellu qatt jiġi ddikjarat ‘redundant’, izda dan huwa kaz car ta’ tkeccija ngusta mill-impieg u għalhekk ir-rikorrenti għandu jedd li jircievi kumpens xieraq li jkun jirrifletti t-telf li sofra b’konsegwenza tad-deċizjoni zbaljata li hadet is-Socjeta’ Intimata fil-konfront tiegħu.

It- Tribunal jagħmel referenza għall- kapitlu 81 (a) u (b) meta gie biex jistabbilixxi l-ammont ta’ dan il-kumpens u għandu jqis id-danni reali u telfien li jkun bata l-haddiem li jkun gie imkecci mingħajr kawza gusta, kif ukoll cirkustanzi ohra, inkluzi l-eta’ u s-snajja tal-haddiem li jistgħu jaffettwaw il-potenzjal tal-impieg ta’ dak il-haddiem.

Ir-rikorrent tkecċa fit-30/11/21, izda kien tħallas tax-xahar ta’ Dicembru 2021. F’Ġunju tal-2023 kien qal illi kien sab xogħol u kellu jibda jaħdem. U għalhekk, wara li t-Tribunal ha in konsiderazzjoni dan kollu, inkluzi spejjez ohra ta’ skarigg bla bzonn u safar, qed jordna li ir-rikorrenti jingħata kumpens ta’ Euro 120,000 (mija u ghoxrin elf). Dan għandu jithallas mis-Socjeta’ Intimata fi zmien xahar mid-data ta’ llum.

B’ hekk tintemm din il-kwistjoni tax-xogħol.

(Iffirmat)

Chairperson: John Bencini, B.A. (Hons), Lic. Phil., Lic. Theology., M.O.M.