



**Fil-Qorti tal-Magistrati (Malta)**

**Bhala Qorti ta' Ġudikatura Kriminali**

**Magistrat Dr. Donatella Frendo Dimech LL.D., Mag. Jur. (Int. Law)**

**Seduta D.I.E.R.**

**Illum:** 5 ta' Dicembru, 2017

**Il-Pulizija  
(Spettur Sylvana Zrinzo Azzopardi)**

**-vs-**

**Giuseppe Schembari, detentur tal-karta tal-identita` numru 22875A**

Il-Qorti,

Rat l-akkuza redatta bil-lingwa Ingliza migjuba fil-konfront tal-imputat Giuseppe Schembari u cioè talli:

In his capacity as principal, residing at 8, Northumbria, Flat 5, Triq ix-Xolfa, San Pawl il-Baħar and/or being the person responsible to pay outstanding wages, he has failed to pay the **Wages** due for the period commencing on the 3<sup>th</sup> December, 2014, and ending on the 30<sup>rd</sup> May, 2015, amounting to **€4,491.68**, he has failed to pay the **Weekly Allowance** due for the period commencing on the 3<sup>rd</sup> December, 2014, and ending on the 30<sup>th</sup> May, 2015, amounting to **€58.86**, he has failed to pay the **Vacation Leave** due for the period commencing on 1<sup>st</sup> January, 2015, and ending on the 30<sup>th</sup> May, 2015, amounting to **€357.56**, he has failed to pay the **Cost of Living Increase** due for the period commencing on the 1<sup>st</sup> January, 2015, and ending on the 30<sup>th</sup> May, 2015, amounting to **€12.64**, he has failed to pay the **public holidays** due for the period commencing on the 8<sup>th</sup> of December, 2014, and ending on the 1<sup>st</sup> of May, 2015, amounting to **€635.63**, he has failed to pay the **Statutory bonus** due for the period commencing on the 3<sup>rd</sup> of December, 2014, and ending on the 30<sup>th</sup> of May, 2015, amounting to **€65.64** and he

has failed to pay part of the overtime worked on a Sunday due for the period commencing on the 26th of April, 2015, and ending on the 30<sup>th</sup> of May, 2015 amounting to **€213.37** globally amounting to **€5,827.28**, wherein the sum of €3,150.00 has been paid on account and therefore the remaining amount due is that of two thousand six hundred and seventy-seven euro and twenty-eight cents (€2,677.28), owed to **Maurizio Bellina (ID 23380A)**, ex-employee of the above-mentioned principal on the 30<sup>th</sup> of May, 2015.

The Court is respectfully being asked, in accordance with Article 45(1) of Chapter 452 of the Laws of Malta, to order the accused to pay the penalties established by law, and, in accordance with Article 45(2) of Chapter 452 and of Regulation 22 of the Legal Notice 247 of 2003 as amended by Legal Notice 427 of 2007 and 259 of 2012 of the Laws of Malta to order the accused to pay **Maurizio Bellina (ID 23380A)** the amount of two thousand six hundred and seventy-seven euro and twenty-eight cents (€2,677.28) for the reasons specified above.

Jigi rilevat mill-ewwel illi ghalkemm l-imputat gie mharrek b'citazzjoni redatta bil-lingwa Ingliza, il-proceduri saru fil-lingwa Maltija fejn kienu appuntati diversi interpreti sabiex jigi assigurat li l-imputat, kontinwament assistit mill-abbli difensur tieghu, kien qed jifhem u jsegwi l-proceduri f'liema ta anke x-xhieda tieghu;

Rat id-dokumenti;

Semghet ix-xhieda;

Semghet it-trattazzjoni tal-partijiet;

Ikkunsidrat

Illi xehdet **Dr Maria Anthea Bonnici** li spjegat kif l-parte leza, Maurizio Bellina, ressaq *claim* mad-dipartiment tar-relazzjonijiet industrijali ghal xoghol rez lill-imputat izda li baqa' minghajr kumpens ghalih. Meta d-dipartiment gie mgharraf bis-sighat u granet ta' xoghol li inhaddmu minn Bellina – u dan abbazi ta' informazzjoni li ghaddilhom l-istess Bellina<sup>1</sup> - rrizulta li dan kellu jithallas diversi ammonti ohra *inter alia* allowances, overtime u bonus kif ukoll ammont addizzjonali bhala paga. Ghalkemm l-imputat kien wera lid-dipartiment il-workings tieghu,<sup>2</sup> Bellini ma kienx qabel magghom. Ittemm ix-xhieda taghha billi tfhiem li meta persuna tressaq claim id-dipartiment ma jidholx f'arrangamenti li seta' kien hemm bejn l-impjegat u l-imghallem imma huma jikkalkolaw u jiddeterminaw dak li bil-ligi ikun dovut lill-impjegat, irrispettivament minn kwalunkwe arrangement li seta' kien intlaq.

Illi **Maurizio Bellina** xehed kif kien ilu jaf lill-imputat madwar 30 sena ghax kienu mill-istess rahal u kien jafdah.<sup>3</sup> Kien hemm qbil fuq rata differenti minn dik li sussegwentement kienet qed tigi indikata fuq il-*payslip* . Zied li

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<sup>1</sup> Dok. AB1 a fol.10; AB3(c)a fol.25 u AB3(e) a fol.35

<sup>2</sup> Dok. AB3 a fol.16

<sup>3</sup> Fol.40

“kien hemm hafna affarijiet li ma hallasnix, tal-festi pubblici, basic wage, bonus u l-weekly allowance....ma thallasx il-cost of living, il-vacation leave u l-overtime tal-Hdud.”. Meta halla l-impjeg, li kien ta bajjad u kahhal tal-frakkas fuq lukanda,<sup>4</sup> kien ghadu dovut ammont ta’ flejjes u ghalkemm ipprova bil-kelma it-tajba ma wassalx mal-imputat u kien ghalhekk li ghamel claim mad-dipartiment.<sup>5</sup>

Dwar il-payslips esebiti x-xhud spjega li “L-ewwel haga dawn tahomli tliet xhur wara li kont bdejt nahdem mieghu, mbaghad lili qalli li din il-payslip kienet ghalih biss qalli hekk jew hekk il-ftehim bejniethom hu li hu u tieghek ha ntihomlok kif suppost.... Jien bdejt f’Dicembru tahomli fi Frar. L-ohrajn bhala payslip qatt ma tahieli.”. Jinsisti li kien iffirma fuq dawk li nghatwlu minhabba dak li kien qallu u cioe` li l-payslips kienet ghall-uzu tal-imputat bl-inteza cjara li hu kien ser jimxi mal-ftehim milhuq bejniethom. Daqstant iehor hu kategoriku li hu ma kienx ircieva il-payslips li mhux ffirmati minnu!<sup>6</sup>

Jigi sottolinejat li mill-bidu nett Bellini jindika diversi ammonti li kienu thallsu lili mill-imputat li jammontaw ghal €3,150.00.<sup>7</sup>

Illi l-imputat **Giuseppe Schembari** xehed li kien ilu jaf lil Bellini ghal 30 sena ghax kienu jghixu f’Ragusa u kien ihallsu fil-bidu tax-xahar kif ukoll f’nofs ix-xahar kien itih akkont tal-paga li jkun ser jircevi.<sup>8</sup> Ix-xhud jghid li kienu ftehm u b’rata ta’ €4.19c is-siegha.<sup>9</sup> In kontro-ezami jghid li Bellini kien jahdem madwar 20 siegha kuljum u li kien hemm jiem “**Kien hemm drabi fejn ma kienx jigi fost il-gimgha u kien jigi s-Sibt u l-Hadd...Ma niftakarx jekk kinitx doppja [hlas ghall-gurnata xoghol nhar ta Hadd]**”.<sup>10</sup> L-imputat jghid li Bellini kien jithallas bonus u weekly allowance u dwar il-payslips jaghmel dikjarazzjoni li in parte tikkorrobora dak li qal Bellini dwar il-mod tardiv li kienu jasslu l-payslips<sup>11</sup> meta jammetti li “L-ewwel tlieta saru normalment jigifieri fil-hin u ffirmajthom u dan, it-tlieta l-ohra konna ghamilnihom imma peress li kien hemm ghagglja fuq ix-xoghol ma kontx iffirmajthom, ma kontx ghamilt dati biex imbghad **naghmluhom wara**”. Il-Qorti tinnota li l-unici payslips iffirmati huma mill-parte leza u, li kif qal hu, kienu jinghataw wara ammont ta’ zmien; ma hemmx payslips bil-firma tal-imputat.<sup>12</sup>

Tqum il-mistqosija: Allura **jekk il-payslips suppost jakkumpanjaw il-paga, il-paga meta kienet tasal, f’liema forma u kif inzamm rendikont dwarha?**

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<sup>4</sup> Fol.39

<sup>5</sup> Fol.38-40

<sup>6</sup> Fol.39

<sup>7</sup> Fol.37 kif ukoll fol.25-28

<sup>8</sup> Fol.46

<sup>9</sup> Fol.47

<sup>10</sup> Fol.50

<sup>11</sup> Fol.39 xhieda ta’ Bellini

<sup>12</sup> Dok. RG a fol.58-63 fejn l-unici payslips iffirmati minn Bellini huma dawk ghax-xhur ta’ Dicembru 2014 sa Frar 2014.

Mistoqsi mill-Qorti dwar il-prova ta' flejjes li kien jghaddi akkont lil Bellini dan ma jressaq ebda prova izda jaghmel dikjarazzjoni li aktar il-quddiem tigi kategorikament michuda mill-accountant tieghu meta hu jghid "*nista ngib il-haddiema l-ohrajn illi dina sisteja li nuzaha ma' kulhadd*"<sup>13</sup>

Iktar inkwetanti hu li Schembari jghid li ma kienx jaf ghaliex Bellini qabad u halla l-impjeg! Dan minn habib li kien ilu jaf 30 sena; jinghad mill-ewwel li l-Qorti ma temminx lill-imputat fuq din l-asserzjoni u tistaqsi imma kif jista jitwemmen fuq il-kumplement tax-xhieda tieghu jekk anke fuq dettal tant inokwu mhux qed ikun veritjier?

Illi **Massimo Borg** accountant tal-imputat xehed li hu kien jahdem il-paga abbazi ta' dak li jkun intqal lilu mill-imputat. Schembari kien itieh is-sighat u kien jahdem il-payslip bir-rata li kienu ftehm u li skond hu kienet ta' €4.17 izda "*konferma tal-payment on account ma kienx ikolli xahar b'xahar sewwa pero` kien jirringa hu mieghu...Jien kont intih il-payslips u kien jirringa mieghu direttament*".<sup>14</sup> In kontro-ezami jirrizulta li Borg kien joqghod fuq dak li kien jghidlu l-imputat meta jigi biex jahdem il-hlas dovut u skond hu Bellini ma kellux jithallas tal-hadd ghax "*Il-Hadd ma kienux jahdmu*".<sup>15</sup> **Dan jigi kontradett mill-imputat innifsu** meta qal: "*Kien hemm drabi fejn ma kienx jigi fost il-gimgha u **kien jigi s-Sibt u l-Hadd...Ma niftakarx jekk kinitx doppja [hlas ghall-gurnata xoghol nhar ta Hadd]***".<sup>16</sup>

Cahda kategorika ta' dak li jipprova jgieghel jitwemmen l-imputat kien dwar il-fatt li kienet tithaddem sistema fejn l-impjegati l-ohra kienu jithallsu akkont bhal ma kien isir ma Bellini:

*“Qorti: Allura rigward impjegati ohra*

*Xhud: Le, Le...*

*Qorti: Mieghu biss kien jaghmel hekk*

*Xhud: Iva, iva...Fil-fatt kien jafdah ghax kien ilhom iktar minn 20 sena jew ma nafx kemm hbieb.*"<sup>17</sup>

Jigi mfakkar li Schembari kien qal hekk: "*nista ngib il-haddiema l-ohrajn illi dina sistema li nuzaha ma' kulhadd*".<sup>18</sup>

Illi minn ezami komparattiv bejn il-payslips u dak li skond id-dipartiment kien dovut lill-impjegat tirrizulta diskrepanza fl-ammonti u l-konsiderazzjoni ghal hlas relattiv. Per ezempju ghax-xahar ta' Dicembru 2014 fejn hemm "Additions" fl-ammont zghir ta' €11,<sup>19</sup> biss biss id-dipartiment jattribwixxi €115 ghall-festa tat-8 ta' Dicembru, 2014 biex ma jissemiex ukoll bonus u

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<sup>13</sup> Fol.54

<sup>14</sup> Fol.67-68

<sup>15</sup> Fol.75

<sup>16</sup> Fol.50

<sup>17</sup> Fol.77-78

<sup>18</sup> Fol.54

<sup>19</sup> Fol.29

weekly allowance f'ammont komplessiv iehor ta' €17.13.<sup>20</sup> L-istess ghax-xahar ta' Jannar u Frar 2015 fejn il-payslip turi li ma kien hemm ebda hlas maghmul apparti ghal basic wage filwaqt li d-dipartiment jindika diversi hlasijiet bhala dovuti oltre` il-basic wage!

Illi mir-rizultanzi processwali din il-Qorti tqis ix-xhieda tal-parte leza bhala wahda li hi *safe and satisfactory*, li ssib korroborazzjoni mhux biss mill-istess payslips li juru bic-cjar li ma kienx qed jithallas dak kollu dovut lilu skond il-ligi, izda anke minn dikjarazzjonijiet li jaghmel l-istess imputat li hu cjar lanqas lill-accountant tieghu ma kien qed jinfurmah dwar il-granet tal-Hadd li kien jahdem Bellini. L-imputat ma joffrix kredibilita` kuntrarjament ghal Bellini li ma sab ebda problema jindika l-hlasijiet li kien irceva minghand l-imputat.

Fl-ahhar nett il-Qorti tqis li wasal iz-zmien li jitnedew kampanji nformattivi mid-dipartiment tal-impjeg u relazzjonijiet industrijali sabiex il-pubbliku ikun mgharraf bi pratici adoperati minn certi employers li kull ma jmur qed ikunu aktar mifruxa li l-ghan taghhom hu li minghajr ebda skruplu jisfruttaw lill-impjegat/i. Ix-xoghol jaghti d-dinjita` lill-bniedem u ma ghandux ikun bniedem iehor li arbitrarjament u illecitament icahhad lil min ikun gharaq l-gharaq ta' xbinu minn dak dovut lilu sabiex ikompli jarrikixxi ruhu. Rebgha ghall-flus li tghaffeg u tikkalpesta lil dak li fl-ahhar mill-ahhar ikun strumentali ghal tali arrikiment!

Hu ghalhekk li d-dipartiment ghandu jigi msahhah u rinforzat b'dawk ir-rizorsi kollha necessarji, kemm bhala personnel kif ukoll rizorsi finanzjarji, sabiex ikompli jservi ta' tarka kontra agir kriminuz u llegalitajiet ohra mwettqa kontra min qed jipprova jaqla' l-ghixien tieghu.

Ghal dawn il-mottivi, wara li rat l-artikoli 5, 22, 23, 45, 46, u 47(2) tal-Kapitlu 452 tal-Ligijiet ta' Malta, tar-regoalmenti 8(1), 8(4), 8(5) u 22 tar-Regolamenti dwar l-Organizzazzjoni tal-Hin tax-Xoghol. (Avviz Legali 247 tal-2003; S.L.452.87) u tar-regolament 3 tal- Ordni ta' Standard Nazzjonali dwar Allowance fil-Gimgha, (Avviz Legali 112 tal-1988; S.L. 452.62), ssib lill-imputat hati tal-imputazzjoni migjuba fil-konfront tieghu, u tikkundannah ghal multa ta' €1,000, kif ukoll tordnah ihallas lil Maurizio Bellina l-ammont ta' elfejn, sitt mija seba u sebgħin Ewro u tmienja u ghoxrin centezmu (€2,677.28) ghar-ragunijiet elenkati fl-imputazzjoni migjuba kontra tieghu.

**Dr Donatella Frendo Dimech LL.D., Mag. Jur.(Int. Law)**

**Magistrat**

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<sup>20</sup> Fol.25