



FIRST HALL, CIVIL COURT

JUDGE

HON. JOSEPH R. MICALLEF LL.D.

THIS DAY, Tuesday, March 26th, 2024

Case Number 21

Applic. No. 311/14JRM

Vito Domenico **BENVENGA**

VS

DIRETTUR ĠENERALI *VETERINARY AND ANIMAL WELFARE*¹

The Court:

Having taken cognizance once more of the Sworn Application filed by applicant Vito Domenico Benvenga on the 14th of April, 2014, by virtue of

¹ Change in designation authorized by decree dated June 4th 2014

which and for the reasons therein mentioned, he requested that this Court (a) declare and ordain that he is entitled to the payment from defendant Director-General of a sum totalling thirty-two thousand three-hundred and seventy euro and ninety-two cents (€32,370.92) representing an outstanding amount of unpaid salaries and allowances owed to him for the period between November 23rd 2011 and April 23rd 2013 in connection with his service engagement with the said Director-General; and (b) condemn defendant Director-General to pay him the said outstanding amount. Plaintiff requested also payment of costs;

Having seen its interlocutory decree of the 23rd of April, 2014, whereby it ordered service of the Application on the defendant and gave orders to the plaintiff as to the production of evidence on his part;

Having taken cognizance of the Sworn Reply filed by defendant Director-General on May 13th, 2014, whereby, by way of preliminary pleas, he pleaded that the correct designation of his office was “*Direttur Ġenerali Veterinary and Animal Welfare*” and that the requisite corrections be effected in the records of the case; that plaintiff’s claim was inadmissible as it was too vague and without discernible legal basis; he pleaded *res judicata*, insofar as regards plaintiff’s claim for arrears and allowances for the period between November 23rd 2011 and December 21st 2012, such claim falling within the remit of the judgment handed down by the Court of Appeal on November 29th 2012. As to the merits, Defendant pleaded that plaintiff’s claims were unfounded in fact and at law, since he had complied fully with the orders arising from the Appeals Court’s judgment² and had thus no further dues to settle with plaintiff, who has been accorded all the compensation for any damages he might have incurred. Defendant further averred that he had exercised his right to appeal as he was entitled to and had in no way acted in a frivolous or vexatious manner towards plaintiff for having done so. He pleaded further that plaintiff could always have availed himself of the right to ask the Court of Appeal to authorise him to execute provisionally the Industrial Tribunal’s award, but failed to do so for reasons best known to him. Finally, as to the claim for the payment of allowances, defendant pleaded that allowances are not automatically due and, in plaintiff’s case, were not due;

The first and the second preliminary pleas were withdrawn during the hearing of June 4th 2014, after the necessary decree and clarifications were registered. Plaintiff also reduced his original claim by nine-hundred and forty-four (€944) after proof of part payments was shown to the Court’s and to plaintiff’s satisfaction;

² Reference is made to the judgment dated 29.11.2012 in the case *Vito Domenico Benvenga vs Director-General Department for Agriculture & Fisheries Regulation* (Applic. No. 44/11RCP) – an appeal from an award by the Industrial Tribunal

Having ruled by decree made during the hearing of June 4th, 2014, on a request to that effect by counsel to plaintiff, that all proceedings of this case would henceforth be conducted in English;

Having taken note of the preliminary judgment of November 25th, 2014³, whereby the plea of *res judicata* was rejected, for the reasons therein stated;

Having taken note of the sworn testimony of parties as well as the documentary evidence adduced;

Having granted parties the faculty to file written submissions on the said preliminary plea;

Having seen the Note of Submissions filed by defendant on March 20th 2015⁴;

Having seen the Note of Submissions filed by plaintiff on September 24th 2014⁵;

Having heard additional oral submissions by counsel to the parties during the hearing of April 14th 2015;

Having examined all the relevant documents in the records of the case;

Having put off the case for judgment on the merits of the case;

Having Considered:

This is an action for payment of arrears in salary and unpaid allowances. Plaintiff is claiming the payment of a specified amount of unpaid salaries and corresponding allowances for a period spanning the time when an Industrial Tribunal ordered his reinstatement and pending the confirmation of that award by a judgment of the Court of Appeal on an appeal entered into by defendant from the Tribunal's ruling and until effective reinstatement;

³ Pp. 108 – 117 of the records

⁴ Pp. 149 – 154 of the records

⁵ Pp. 102 – 5 of the records

Defendant rebuts the claims as being unfounded in fact and at law. In particular, he argued that he had complied fully with the orders arising from the Appeals Court's judgment and had thus no further dues to settle with plaintiff, who has been accorded all the compensation for any damages he might have incurred. Defendant further averred that he had exercised his right to appeal as he was entitled to and had in no way acted in a frivolous or vexatious manner towards plaintiff for having done so. He pleaded further that plaintiff could always have availed himself of the right to ask the Court of Appeal to authorise him to execute provisionally the Industrial Tribunal's award, but failed to do so for reasons best known to him. Finally, as to the claim for the payment of allowances, defendant pleaded that allowances are not automatically due and, in plaintiff's case, were not due;

The relevant facts which emerge from the records of the case show that plaintiff was engaged by the relevant Ministry as official veterinarian in March 2006 under a one-year fixed-term contract of service. His engagement was extended by one-yearly extensions until 2010. After requesting confirmation that his employment had become one of an indefinite duration in terms of law (owing to the fact that he had been in aggregate employed without break for a period in excess of four years), in March 2011 he was informed that his contract was not being renewed;

On being thus informed, plaintiff referred the matter to the Industrial Tribunal, claiming breach of the law on the employer's part relating to the proper treatment of fixed-term employees and raising the issue of unfair dismissal. By virtue of an award handed down on November 22nd 2011⁶, the Industrial Tribunal upheld plaintiff's request and declared that his employment had been converted into one of an indefinite duration and ordered plaintiff's reinstatement within twenty (20) days thereof. Furthermore, the Tribunal awarded plaintiff by way of compensation the sum of eight thousand euro (€ 8,000), together with costs;

Defendant appealed the award in December of 2011. The appeal was dismissed by a judgment of the Court of Appeal of November 29th 2012⁷;

During the period when the proceedings regarding his dismissal were still under way, plaintiff was engaged as a freelance veterinarian with a clinic in Ta' Xbiex⁸;

⁶ Doc "DG1", at pp. 33 – 42 of the records

⁷ Doc "A", at pp. 3 – 17 of the records

⁸ His evidence under cross-examination at p. 138 of the records

Plaintiff was effectively reinstated in employment with the defendant Department on December 21st 2012⁹, and the payment of his salary was resumed upon effective reinstatement¹⁰ ;

The amount of damages liquidated by the Industrial Tribunal was paid in one sum of €8,000 by cheque to plaintiff in February, 2013, and was encashed by him on February 25th, 2013¹¹;

In October of 2013¹², plaintiff filed a judicial letter against defendant claiming payment of wages and allowances for the period between the date of the decision by the Industrial Tribunal and the date of his effective reinstatement;

Plaintiff filed this action on April 14th, 2014;

The legal considerations regarding the plaintiff's claims revolve around the issue of his entitlements as a dismissed employee during the period until he was reinstated by virtue of an award handed down by the Industrial Tribunal, which was subsequently confirmed by the Court of Appeal. He is claiming the payment of arrears in salary and allowances for that period spanning from 23rd November 2011 to December 21st 2012, which dues he has liquidated to amount to €32,370.92¹³. Basically, the plaintiff is relying on the principle that, once the Tribunal ordered his reinstatement in employment (which order was subsequently confirmed on appeal), following an unfair dismissal, he was entitled to recoup any salaries and allowances he was entitled to during the period running from the date of the reinstatement ordered by the Tribunal and of the effective date when he was reinstated;

Defendant argues that what plaintiff is claiming in this present suit is the same as the subject-matter of the claim he had raised before the Industrial Tribunal, and that plaintiff's claims for arrears in salary and payment of allowances in the present law-suit were determined upon by both the Tribunal and the Court of Appeal. He bases this argument on the declaration made by the Tribunal to the effect that appellant (plaintiff in the present proceedings) was not entitled to any remuneration for the time he was out of employment;

Plaintiff shoots down this line of reasoning by stating that there could never be any identity between what he claimed before the Industrial Tribunal and what he is presently claiming, for the simple reason that what he

⁹ Docs "DB1" and "JS1", at pp. 72 and 131 of the records

¹⁰ Evidence of Dennis Buttigieg at p. 87 of the records

¹¹ Doc "DB4" at p. 75 of the records

¹² Doc "B", at p. 18 of the records

¹³ Reduced to €31,426.92 by virtue of a declaration made by counsel on his behalf during the hearing of June 14th 2014, at p. 68 of the records

claimed then was in connection with his unjustified dismissal, whereas what he is claiming now is as a result of the reinstatement which the Tribunal had ordered. He submits that since the Industrial Tribunal was never requested the amounts he claims are due to him were never the subject-matter of the proceedings before the Tribunal;

That in its preliminary judgment, this Court has already ascertained that the unjustified termination of employment which was the basic object of the former proceedings could never be identified with a claim for payment of arrears in salary and payment of allowances for the time when the employment had been reinstated. Furthermore, the present claim refers to a period of the employment relationship which succeeded the time of reinstatement ordered by the Tribunal and could never have been anticipated during those proceedings, especially before it was to be known whether the claim regarding unjustified dismissal from employment was going to be upheld or not;

That, on a long-standing and widely-acclaimed construction of the principle involved, the legal effects of reinstatement are universally upheld to imply that the employer is “*to treat the employee in all respects as if he had not been dismissed. Thus his pay, pension, seniority rights, etc. must be restored to him, and he will benefit from any improvement in terms and conditions which came into operation whilst he was dismissed. Also, pay arrears and other lost benefits must be granted to him.*”¹⁴ Therefore, the period between an employee’s (unlawful) dismissal and his reinstatement shall, for all purposes and effects at law, be deemed to be a continuation of the employment contractual relationship¹⁵;

That, on the basis of these clear principles, plaintiff’s claim relies on valid and justifiable grounds. In the present case, plaintiff is requesting payment only for the period when the reinstatement ordered in his favour by the Industrial Tribunal was ordered (i.e. twenty days after the handing down of its award) to the date on which he was effectively reinstated. Therefore, no claim is being made for lost salary and allowances during the period from his effective dismissal throughout the proceedings before the Tribunal. The compensation granted to the plaintiff by the Industrial Tribunal appears to have catered for that aspect in the amount of damages liquidated¹⁶;

That the defendant’s main line of defence is that the plaintiff can raise no claim for such arrears in wages and allowances for the above-mentioned period, during which he had lodged an appeal from the Tribunal’s

¹⁴ Hepple & O’Higgins *Employment Law* (3rd Edit.) § 603 at p. 271

¹⁵ NM Selwyn *Selwyn’s Law of Employment* (9th Edit.) §§12.45 and 15.61 at pp. 344 and 457

¹⁶ Art. 81(2)(b) of Chap 452

award and until the date when the Court of Appeal disposed of his appeal. He argues that it was only on the confirmation of the Tribunal's award by the Court of Appeal that the award was enforceable. Furthermore, as long as plaintiff's claim refers to arrears in salary, such claim is utterly unfounded since plaintiff rendered no service whatsoever to the Department throughout the period when his case was pending on appeal;

That the Court cannot uphold defendant's line of reasoning. If, as was stated above, a reinstatement has the legal effect of retaining the contractual relationship of employment between the employer and the reinstated employee, that continuation endures even when the order for reinstatement is challenged. The plaintiff did not perform any service with the Department for reasons not imputable to him, but solely to the defendant's position that he would not call the plaintiff back until the issue was determined by the Court of Appeal. It has not been shown in any acceptable manner that it was plaintiff who dragged his feet in reporting for work after the Industrial Tribunal pronounced itself;

That, furthermore, just as the defendant may be justified in exercising his right to appeal the Tribunal's award, so too was the plaintiff's right to avail himself of the reinstatement granted to him by the Tribunal's findings. The fact that the Court of Appeal confirmed the Tribunal's award goes to buttress the plaintiff's claim, rather than impede it. The fact that the defendant did not immediately reinstate the plaintiff into his former employment constitutes an attempt to breach that continuity which is granted by law and to which the plaintiff, rightfully, is not willing to renounce. Furthermore, the confirmation by the Court of Appeal of the award for reinstatement has a retrospective effect from the date when the Industrial Tribunal's award was to become effective: it would only be otherwise if the Court of Appeal would have pronounced itself in this regard, which it did not do;

That another flaw in defendant's argument is that in exercising his right of appeal from the Industrial Tribunal's award, he was exercising a right which the law grants him and which, in being exercised in a reasonable manner, should not translate into making him liable for damages towards plaintiff. The fallacy of this argument betrays a lack of proper appreciation of the nature and effects of plaintiff's suit. Plaintiff has not filed an action for damages. He is claiming the payment of a sum which he would have been entitled to if his reinstatement were not delayed. It was entirely up to defendant to accept plaintiff back at work on being ordered to do so by the Industrial Tribunal, and defendant has not shown in any way that the overdue reinstatement of the plaintiff was due to something which depended on plaintiff's behaviour or procrastination;

That the Court also does not look favourably at the defendant's attempt to show that plaintiff was not altogether bereft of income during the period in question. The fact that plaintiff offered his professional services to a veterinary clinic "just to spend time instead of doing nothing"¹⁷ should not serve as an indictment to the validity of his claim under this lawsuit, but rather as an indication that, during that period, plaintiff tried his best to minimise the financial prejudice he was exposed to while the proceedings were pending on appeal. Nor should it be construed as an abandonment by the employee of the employment into which he was reinstated. On the other hand, the law does not preclude any employee from supplementing the emoluments earned from a particular employment with other income from another employment;

That, on the basis of these considerations, the Court finds that the defendant's mainline of defence is not defensible and will not be upheld;

That, with regards to the claim itself, the Court feels that it can rely on the information proffered by defendant himself¹⁸ to gauge the validity of the plaintiff's own calculations. Indeed, after the explanations given by an official witness¹⁹, there seems to be little or no dispute between the parties on this matter. Even plaintiff adjusted his initial claim slightly downwards, after clarifications were made on the payments of some of the allowances claimed. Furthermore, it transpired that the majority of the allowances claimed by plaintiff were standard defrayments envisaged in his contract and were not dependent upon chance or indeterminate activity;

That defendant, however, argues that plaintiff is wrong in basing his calculations to start on a particular date – November 23rd 2011 – which was a literal application of the date set by the Tribunal for the reinstatement. Defendant says that plaintiff's calculation ought to have started to run from December 13th of that year.

That it is evident that defendant is trying to raise the argument that the twenty-day time-limit imposed by the Industrial Tribunal for defendant to reinstate plaintiff was to be calculated as being "working days" and not running days. This line of argument is not borne out neither by the facts of the case nor by law. The award of the Tribunal speaks of "within twenty (20) days from today"²⁰. Had the Tribunal wanted to qualify that period, it had all the power to do so. Furthermore, in terms of law, a judicial time-period is to be considered

¹⁷ His testimony under cross-examination at p. 139 of the records

¹⁸ Cfr. Doc. "DBA" at p. 125 of the records

¹⁹ Cfr. The evidence of Dennis Buttigieg at pp. 156 – 9 of the records

²⁰ Doc "DG1", at p. 41 of the records

as running according to the calendar²¹ and starts to run as from the appointed date²². Thus, there is no period of adjustment to the period claimed by plaintiff;

That defendant also raised the issue that the amounts given by his representative as being due to plaintiff had he been in active employment during the period when his case was still pending appeal, were in actual fact the gross amounts that plaintiff would have been entitled to, and not the net amounts he would have received. The Court believes that is argument is only of relative value. In liquidating the amount as requested by plaintiff, the Court would be catering for the full contingencies which would have arisen had plaintiff been allowed back at work. If, as defendant states, plaintiff had been paid only the net amounts, it stands to reason that defendant, as employer, would have deducted the relative amounts of income tax and social security payments he was obliged by law to pay to the relevant authorities. Had defendant brought forward proof that he had made provision for this or otherwise defrayed such deductions, then this Court might have favourably considered this argument. But no such proof was forthcoming;

That plaintiff requested payment of interests. It is to be noted that plaintiff had liquidated his claim in an official letter he had filed against the defendant on October 29th 2013, and which was served upon the same on November 2nd 2013²³. Defendant does not appear to have rebutted that claim, nor has he relinquished his defence of arguing that no payment is due to the plaintiff throughout the time this law-suit has been pending;

That since the amount which the Court is going to uphold substantially compares to the amount claimed in that judicial act, it is right and proper that interest at eight *per centum* (8%) runs as from the date of service of that judicial act;

Therefore, for the above-mentioned reasons, the Court hereby declares and decides the case by:

Upholding plaintiff's first request since the claim is founded both in fact and at law;

Upholding the plaintiff's second request by liquidating the amount of arrears in salary and allowances payable to him to total the sum of thirty-one thousand four-hundred and twenty-six euro and ninety-two cents (€31,426.92), and orders defendant to pay plaintiff such amount together with

²¹ Art. 103 of Chap 12

²² Art. 102 of Chap 12

²³ Proof of service at p. 19 of the records

interest as from the date of service of the official letter filed by plaintiff on October 29th, 2013, to the effective date of settlement; and

Orders defendant to bear all **legal costs**.

Read and delivered

**Joseph R. Micallef LL.D.,
Judge**

26th March 2024

**Geraldine Rickard
Deputy Registrar**