



MALTA

QORTI TAL-APPELL
(Sede Inferjuri)

ONOR. IMĦALLEF
LAWRENCE MINTOFF

Seduta tal-14 ta' Ġunju, 2024

Appell Inferjuri Numru 98/2023 LM

Timotheus Englebert Schnell (Passaport Ġermaniż nru. C4KCRNVK1)
(‘l-appellant’)

vs.

Comlux Malta Limited (C 43524)
(‘l-appellata’)

Il-Qorti,

Preliminari

1. Dan huwa appell magħmul mir-rikorrent **Timotheus Englebert Schnell (Passaport Ġermaniż nru. C4KCRNVK1)** [minn issa ‘l quddiem ‘l-appellant’] mid-deċiżjoni [minn issa ‘l quddiem ‘id-deċiżjoni appellata’] mogħtija mit-Tribunal Industrijali [minn issa ‘l quddiem ‘it-Tribunal’] fil-5 ta’ Ottubru, 2023, fil-

Kwistjoni tax-Xogħol nru. 3852/JD, fejn iddecieda t-talbiet tiegħu fil-konfront tas-soċjetà intimata **Comlux Malta Limited (C 43524)** kif ġej:

“Decision

The Tribunal examined all the submissions, notes, supporting documentation, affidavits, and transcripts of testimony given during the hearings.

Having made its considerations thereon and assessed all the material in its totality the Tribunal hereby decides that the claimant’s dismissal was unfair and that by way of compensation the respondent shall pay the claimant within sixty calendar days from the publication of this Decision seventy-four thousand and four hundred Euros (€74,400.00).

As per legal notice 48 of 1986 of the laws of Malta the representation fees for each party shall be €93.17.

Thus Employment Issue No. 3852/JD is hereby closed.

The Tribunal could not decide this case within the stipulated period of one month from the date of the referral due to the number of deferments.”

Fatti

2. Il-fatti ta’ din il-kawża jirrigwardaw l-allegazzjoni magħmula mill-appellant ta’ tkeċċija ngusta fil-11 ta’ Mejju, 2020 mix-xogħol tiegħu minn mas-soċjetà appellata ma’ min huwa kien impjegat b’kuntratt għal żmien indefinit bħala *AirBus Captain*. Huwa kien beda jaħdem mas-soċjetà appellata fis-7 ta’ Ottubru, 2018, u b’effett minn April 2001 huwa nħatar *Financial Controller* tagħha. Izda fid-data msemmija tal-11 Mejju, 2020 l-impjieg tiegħu ġie tterminat, u ntalab li jiffirma n-*notice of termination*, fejn ir-raġuni għat-tmiem tal-impjieg tiegħu ġiet imnizzla bħala “*termination by mutual agreement*”. L-appellant ma ffirmax l-imsemmija *notice of termination* peress li huwa ma kienx

jaqbel mar-raġuni għat-tmiem tal-impjieg tiegħu, għaliex fil-fehma tiegħu tali tmiem tal-impjieg kien wieħed ingust u illeċitu.

Mertu

3. L-appellant istitwixxa proċeduri quddiem it-Tribunal fit-12 ta' Ġunju, 2020 fejn talab l-imsemmi Tribunal sabiex:

"...jisma' u jiddeċiedi l-kawża li qed jagħmel l-esponent dwar allegat tkeċċija ngusta u dan kollu fit-termini tal-liġi hawn fuq imsemmija u jakkorda dak il-kumpens li dan it-Tribunal Jogħgħbu opportun fiċ-ċirkostanzi u skont il-liġi."

4. Is-soċjetà appellata wiegħbet fid-29 ta' Ottubru, 2020, fejn filwaqt li tat il-verżjoni tagħha taċ-ċirkostanzi tal-każ odjern, talbet sabiex it-Tribunal jiċċad it-talbiet tal-appellant fl-intier tagħhom.

Id-deċiżjoni appellata

5. Dawn huma l-konsiderazzjonijiet tat-Tribunal li wasluh għad-deċiżjoni tiegħu:

"3. Considerations

- 3.1. *In December 2019, two months before the decision to terminate was taken, the claimant was offered training for Line Training Captain/Training Captain. The role of such a Capt. involved the training of other pilots. This meant that the respondent had full faith and trust in Schnell's technical and interpersonal skillset to enable Schnell to assume responsibility for the safety of the flying of the aircraft and for the wellbeing of the crew during flights;*
- 3.2. *Since the claimant turned down the offer, "Battocchio wanted to discuss with Schnell why he refused the offer for promotion. During that*

telephone conversation Battocchio switched his focus to Schnell's use of the motorbike also outside working hours and asked him not to make such use. Schnell accepted." (fn. 29 Mr Schnell's affidavit received by the Tribunal on 29th September 2022) The respondent did not deny that the claimant accepted to give up the use of his motorbike. Furthermore such acceptance was made notwithstanding that according to Mr. Schnell, Mr Chishima was never in the least concerned when they used to frequent each other and Mr Schnell attended most of such private meetings with his motorbike. (fn. 30 Ibid)

- 3.3. *"Three weeks before the issue of the letter of termination of his employment Schnell was asked by Chishima to organize a dinner event for representatives of Universal Entertainment Corporation, which Schnell did. Neither the claimant nor the respondent informed the Tribunal what happened during those three weeks which could have justified the complete fallout of the Chishima-Schnell relationship.*
- 3.4. *Two days prior to the notice of termination the Company acknowledged the communication from Schnell that confirmed that he would be arriving in Malta on Feb. 16 for a simulator training session for his Licence proficiency Check." (fn. 31 Ibid). Certainly, the claimant can't be accused of travelling to Malta without approval.*
- 3.5. *When Mr Schnell was asked by Adv. Farrugia, who assisted the respondent, why he did not contact Mr Shishima to ask him to explain why he sent the Company the "Timo no longer" email (fn. 32 Doc. Com 1) Mr Schnell replied that he didn't contact him because he became aware of Mr Shishima's email during the Tribunal proceedings. Pressed further by Adv. Farrugia to explain why he (Mr Schnell) did not contact Mr Shishima once their relationship was so good, friendly, and personal, irrespective of when Mr Schnell learnt about Mr Shishima's damning email, Mr Schnell confirmed that he did not contact Mr Shishima because he was dismissed by Complux and not by Mr Shishima. And in any case he and his family were migrating to another country, while looking for suitable arrangements for his ailing mother-in-law, and all that in the turmoil of the Covid-19 pandemic (fn. 33 Testimony of Mr Schnell during the sitting of 10th November 2022) These replies do not convince the Tribunal!*

The complainant lost a lucrative employment and was constrained to migrate with his family, live on State unemployment benefit, borrow

money, and follow a course leading to a train driver's licence. And he did not bother to ask his good friend Mr Shishima why he demanded Mr Schnell's employer not only to replace him but to dismiss him!

- 3.6 *Mr Schnell denied that there were any negotiations between him and the Company regarding the termination of his employment; he testified also that he had, "no clue", how the settlement agreement draft was brought about. (fn. 34 Ibid)*

This contradicts the testimony of the Company's Head of Human Resources, Mr. Xuereb (see 2.4)

- 3.7. *On the morrow of Schnell's being given the notice of termination the Company advertised a call for applications for full-time employment as A318 Captain based in South East Asia (Doc. TS40) This vacancy was the post that was occupied by the claimant. (fn. 35 Ibid) This lends credence to the respondent's claim that Mr Chishima was resolute that he did not want Mr Schnell anymore as the Captain of his principal's aircraft. For the Company, who preferred retaining Mr Schnell, as explained by Mr Zanetto, the CEO, in the last paragraph but two of 2.6.3, the situation reached a point of no return.*

- 3.8. *The Company did not give Mr Schnell the reason/s for terminating his employment in writing. Neither the notice of termination (fn. 36 Doc. D) nor the draft settlement agreement dated 26th February 2020, which are the only two documents issued by the Company at the time of its giving notice of termination, bear any such reason/s. Reason/s for termination of employment ought to be given clearly, officially, and in writing so that the employee concerned may avail himself/herself of due process.*

- 3.9. *The reasons were given during the Tribunal proceedings (see 2.2, 2.5) These reasons, given by Mr Battocchio, the respondent's Vice President of Flight Operations and Mr Schnell's superior, contradict the explanation given by Mr Zanetto, the respondent's CEO, for the termination of the claimant's employment, as per 2.6.3. Mr. Battocchio emphasized Mr Schnell's shortcomings as a cockpit crew member whereas Mr Zanetto maintained that he couldn't find fault with Mr Schnell and that it was the client's representative's demand to relieve the client from Mr Schnell's services that led to Mr Schnell's employment termination; indeed the client's representative went even further by requesting Mr Schnell's dismissal, a deliberation (the dismissal) which*

was none of the client's business but was the prerogative of the respondent as the complainant's employer.

- 3.10. *The Company had not taken disciplinary action re the list of Mr Schnell's alleged failings given in 2.5. It should have at least issued written warnings because the alleged shortcomings of Mr Schnell as a cockpit crew member were not minor. The taking of such disciplinary action would have made Mr Schnell very much aware that he was expected to behave more responsibly and professionally, notwithstanding the CEO's testifying that the dismissal was motivated by Mr Chishima's request and not due to any professional failing on the part of the claimant.*
- 3.11 *In its note of final submissions the respondent stated that, "There was no procedure to be followed on the occasion of the dismissal because there was no disciplinary matter requiring investigation or feedback from the claimant at all. This was a strictly operational matter consequential to a client's request." – a diametrically opposed version to the testimony of Mr Battocchio.*
- 3.12. *Mr Schnell's testimony conflicts with Mr Zanetto's regarding the client's growing discontent with Mr Schnell's services. Mr Schnell testified that he had an excellent relationship with Mr Chishima whereas Mr Zanetto testified that Mr Schnell did not satisfy the wishes, and need of the client's representative, and did not empathise with the culture of Mr Chishima (see 2.6.3).*
- 3.13. *The Tribunal is not satisfied with Mr Schnell's reasons for not contacting the client's representative to see why Mr Chishima requested that Mr Schnell's employment be terminated. Mr Schnell's lack of communication with Mr Chishima on such a serious matter once he got to know the primary reason of his employment's termination tends to imply that Mr Schnell and Mr Chishima fell out. The Company however failed to provide convincing proof of this to satisfy the Tribunal.*
- 3.14. *Though the respondent attempted to find a suitable alternative post with the Company after it decided to withdraw Mr Schnell's services from its client it did not provide the Tribunal with convincing evidence of such attempts. 2.6.3 shows Mr Zanetto's attempts at reconciling any differences between Mr Chishima and Mr Schnell and at considering an alternative posting within the Company but Mr Zanetto testified that all the aircraft were linked to particular pilots.*

Yet in 2.3.2 Mr Battocchio, who in his affidavit of December 2020 signed as VP Flight Operations but by April 2022 was appointed as the respondent's Managing Director, testified that Mr Schnell could fly one aircraft that was available. He did not say why he did not offer Mr Schnell to be attached to that aircraft. There was another aircraft available but since it was based in San Marino Mr Schnell would have to obtain a San Marino licence. This requirement however was proven by Mr Schnell to be incorrect. (fn. 37 Doc. TS11) And therefore the Tribunal is not convinced that the Company did not have a suitable alternative post for Mr Schnell thus securing his continued employment with the Company.

At the same time, the Tribunal notes that Mr Schnell's refusal of the offer to be promoted Line Captain restricted further the possibility of finding Mr Schnell a suitable alternative placing in the Company.

3.15. The dismissal took place in May 2020, two months after the Covid-19 was declared to be a pandemic, with the airline industry being among the worst hit by it, closing employment opportunities for airline pilots.

3.16. The Tribunal came to the conclusion that according to the respondent what sealed the decision to terminate Mr Schnell's employment was the respondent client's representative's bidding for the dismissal of Mr Schnell. The only proof that the respondent submitted to the Tribunal about this was Mr Chishima's email of 10th February 2020 to Mr Fadi El Samad, the respondent's Head of Customer Service, and copied to Messrs Zanetto, Battocchio, Xuereb, and others. The Tribunal deems such evidence as insufficient. It finds it bewildering for the Company not to have produced Mr Chishima in person or via a virtual platform as a witness so that he might give his version directly to the Tribunal and be cross-examined. This is incomprehensible for the Tribunal especially because in his email Mr Chishima made himself totally available to give his testimony to the Tribunal and yet the respondent did not avail itself of the offer. (fn. 38 "...I pleasure to court to fight with him...").

Also, the Tribunal finds it unacceptable for the Company to give a list of alleged offences without submitting a single document as evidence (fn. 39 Except for the incidents of driving a motor-bike and of refusing a promotion, both of which incidents were corroborated by Mr Schnell; the Tribunal does not need to enter into the merits as to whether these two incidents constitute any wrongdoing since it was eventually made amply

clear by Mr Zanetto and confirmed by the Company's final submissions that Mr Schnell was dismissed at the behest of Mr Chishima, the client's representative, and not because of any wrongdoing on the part of Mr Schnell) especially when two months before the issue of the notice of termination Mr Schnell was offered training to be promoted to line Training Captain. As an aviation company it marches on records and documentation. It should allocate the necessary time and resources to maintain the employees' disciplinary record in a context of constructive personal development.

- 3.17. *On the other hand the Tribunal finds it equally incomprehensible why the claimant considered it unnecessary to enquire with Mr Chishima, who had given him "the impression that Mr Schnell was a close friend and confidant" of his (fn. 40 Claimant's note of final submissions), why he requested the Company to dismiss him. The Tribunal is not satisfied with the reasons that he gave (see 3.5). Once the claimant learned that Mr Chishima initiated the claimant's employment termination process and if Mr Schnell believed, as he did, that Mr Chishima respected him, the Tribunal wonders why Mr Schnell stayed aloof from Mr Chishima – a strong mitigating factor in calculating the respondent's liability.*
- 3.18. *The claimant was in the service of the respondent for one year and seven months – a relatively short period that mitigates the respondent's liability."*

L-Appell

6. L-appellant ipprezenta r-rikors tal-appell tiegħu fis-16 ta' Ottubru, 2023, fejn qiegħed jitlob lil din il-Qorti sabiex:

"...jogħgobha tilqa' dan l-appell billi tbiddel, tvarja u tirrifirma s-sentenza mogħtija mit-Tribunal Industrijali fil-kwisjoni tax-xogħol bejn Timotheus Engelbert Schnell u Comlux Malta Limited nhar il-ħamsa ta' Ottubru tas-sena elfejn u tlieta u għoxrin (05.10.2023) [Kaž. Nru. 3852/JD] ('Decision number 2942') u, għaldaqstant, filwaqt li tikkonferma dik il-parti tas-sentenza li permezz tagħha t-Tribunal Industrijali ddecieda u ddetermina li t-tkeccija tal-appellant mill-impieg tiegħu mal-kumpanija appellata kienet waħda ingusta, tirriformaha u tbiddilha billi tgħaddi sabiex, hi

*stess, tillikwida ammont ta' kumpens spettanti lill-appellant abbażi tal-provi u tar-
rizultanzi probatorji relattivi, u dan fid-dawl tal-aggravji u tal-konsiderazzjonijiet
suespost, bl-ispejjeż relattivi taż-żewġ istanzi a karigu tal-kumpanija appellata”.*

Jgħid li l-aggravju tiegħu huwa li t-Tribunal naqas milli japplika jew applika ħażin id-disposizzjonijiet tal-para. (a) tas-subartikolu 81(2) tal-Kap. 452, billi naqas milli jillikwida u jistabbilixxi ammont ta' kumpens abbażi tad-*“danni reali u telfien li jkun bata l-ħaddiem li jkun ġie mkeċċi mingħajr kawża ġusta kif ukoll ċirkostanzi oħra, inklużi l-età u s-snajja tal-ħaddiem li jistgħu jaffettwaw il-potenzjal tal-impieg ta' dak il-ħaddiem”.*

Ir-Risposta tal-Appell

7. Is-soċjetà appellata wiegħbet fit-30 ta' Ottubru, 2023, fejn filwaqt li tirrileva li l-appell odjern ma sarx skont id-disposizzjonijiet tas-subartikolu 82(3) tal-Kap. 452, titlob sabiex din il-Qorti tiċċad l-appell interpost mill-appellant fl-intier tiegħu, u tikkonferma d-deċiżjoni appellata.

Konsiderazzjonijiet ta' din il-Qorti

8. Din il-Qorti ser tgħaddi sabiex qabel xejn tikkunsidra jekk l-appellant ottemporax ruħu mad-disposizzjonijiet tas-subartikolu 82(3) tal-Kap. 452, u għalhekk skont is-soċjetà appellata l-appell tiegħu huwa null u bla effett skont il-liġi. Il-Qorti tirrileva li dan is-subrtikolu jitlob li appell minn sentenza tat-Tribunal, għandu jsir biss fuq punt ta' liġi, u dan fiċ-ċirkostanzi hemm imfissra, fosthom fejn il-każ jirrigwarda l-allegata tkeċċija mingħajr kawża ġusta. Meħud in konsiderazzjoni li t-talba tal-appellant quddiem it-Tribunal kienet proprju għal dikjarazzjoni li huwa tkeċċa mingħajr kawża ġusta, din il-Qorti tgħid li l-appell

odjern jista' jkun permess biss jekk jaqa' fil-parametri stabbiliti mis-subartikolu ċċitat, u għalhekk sejra tgħaddi sabiex tinvestiga jekk l-appellant ottemporax ruħu mas-subartikolu 82(3) tal-Kap. 452.

9. L-appellant jispjega li huwa jhoss ruħu aggravat bil-mod kif it-Tribunal illikwida l-kumpens li huwa kellu jirċievi, u saħansitra anki bl-ammont hekk likwidat. Jirrileva li kif assodat fil-ġurisprudenza, appell minn deċiżjoni tat-Tribunal limitat għal-likwidazzjoni ta' kumpens, jikkostitwixxi appell fuq punt ta' liġi *ai termini* tas-subartikolu 82(3) tal-Kap. 452. In sostenn tal-argument tiegħu, huwa jagħmel riferiment għal dak li qalet din il-Qorti fid-diversi sentenzi ċitati minnu, u anki għad-dispożizzjonijiet tal-para. (a) tas-subartikolu 81(2) tal-Kap. 452. Isostni li meħud dan kollu in konsiderazzjoni, id-deċiżjoni appellata ma tindikax bl-ebda mod il-kriterji mfissra taħt il-para. (a) tas-subartikolu 81(2) u/jew dak li wassal lit-Tribunal sabiex illikwida l-kumpens fl-ammont in kwistjoni, u kif dan l-ammont huwa maqsum. Jikkontendi li għalhekk hawnhekk jirrizulta każ fejn it-Tribunal *"fajjar ċifra mingħajr motivazzjoni"*.

10. Il-Qorti tagħraf li tassew fejn it-Tribunal stabbilixxa s-somma tal-kumpens li ddeċieda għandha tithallas lill-appellat, huwa naqas milli jagħti l-motivazzjoni sħiħa tiegħu dwar kif wasal għall-imsemmija somma. Huwa minnu li t-Tribunal irrileva li l-fatt li l-appellant kien ilu biss fl-impjieg tiegħu għal sena u seba' xhur, kellu effett fuq ir-responsabilità tas-soċjetà appellata lejn l-appellat, iżda dan mhuwiex biżżejjed sabiex jitfisser sew kif l-imsemmi Tribunal wasal għall-ammont ta' kumpens likwidat minnu favur l-appellat. Il-Qorti digà kellha l-opportunità li tirrileva li mingħajr motivazzjoni xierqa, il-partijiet ikunu qegħdin jiġi mcaħħda mhux biss minn kull raġuni li tkun wasslet lit-Tribunal għad-

deċiżjoni tiegħu, iżda anki mid-dritt ta' appell jekk dan ikun il-każ. Għaldaqstant il-Qorti tikkunsidra li l-appellant għandu raġun jilmenta min-nuqqas ta' motivazzjoni fir-rigward tal-likwidazzjoni tal-kumpens dovut lil mingħand is-soċjetà appellata.

11. L-appellant ikompli billi jirrileva li l-unika spjegazzjoni li pprovda t-Tribunal fir-rigward tar-responsabilità għall-ħlas ta' kumpens min-naħa tas-soċjetà appellata, kienet tikkonsisti fin-nuqqas li huwa sab fil-konfront tiegħu meta għażel li ma jikkomunikax ma' rappreżentant ta' klijent tas-soċjetà appellanta, wara li huwa kien sar jaf li kien proprju dak ir-rappreżentant li kien talab għat-tmiem tal-impjieg tiegħu. Il-Qorti tikkunsidra li l-appellant hawnhekk qiegħed biss jieħu spunt sabiex jagħmel is-sottomissjonijiet tiegħu fil-mertu, fejn ikompli billi jfisser għaliex huwa ma jaqbilx mat-Tribunal fir-rigward tal-likwidazzjoni proprju tal-kumpens li dan tal-aħħar iddeċieda li għandu jithallas mis-soċjetà appellata lill-istess appellant. Dan kollu ċertament ma jistax jiġi kkunsidrat li jolqot xi punt ta' liġi, u għaldaqstant il-Qorti hija prekluzi mil-liġi li tittrattah u tiddeċidieh.

Decide

Għar-raġunijiet premessi, il-Qorti filwaqt li tiddikjara li l-appell tal-appellant fejn dan jolqot il-mertu huwa wieħed irritu u null, u għaldaqstant tastjeni milli tiegħu konjizzjoni tiegħu, tibgħat l-atti lura quddiem it-Tribunal u tordnal sabiex jispjega l-motivazzjoni tiegħu dwar kif huwa llikwida l-kumpens ta' erbgħa u sebghin elf u erba' mitt Euro (€74,400) pagabbli mis-soċjetà appellata lill-istess appellant, wara li jieħu konsiderazzjoni ta' dak kollu li qalet

din il-Qorti f'din is-sentenza, u josserva wkoll dak li jipprovdi l-artikolu 81(2) tal-Kap. 452.

L-ispejjeż tal-proċeduri quddiem it-Tribunal, għandhom jibqgħu kif deċiżi, u dawk tal-appell odjern għandhom jithallsu nofs bin-nofs bejn il-partijiet.

Moqrija.

**Onor. Dr Lawrence Mintoff LL.D.
Imħallef**

**Rosemarie Calleja
Deputat Registratur**