



MALTA

**Court of Appeal
(Inferior Jurisdiction)**

**Hon. Judge
LAWRENCE MINTOFF**

Sitting of the 18th September, 2024

Inferior Appeal Number 107/2023 LM

David Joaquin Goncalves Geraldes (I.D. no. 160953A)
(‘the Appellant’)

vs.

BEM Operations Limited (C 70387)
(‘the Appellee’)

The Court,

Preliminary

1. This appeal was filed by the plaintiff, **David Joaquin Goncalves Geraldes (I.D. no. 160953A)**, [hereinafter ‘the appellant’], from the decision delivered on the 18th October, 2023, [hereinafter referred to as ‘the appealed decision’] by the Industrial Tribunal [hereinafter referred to as ‘the Tribunal’] by means of

which his claims against the defendant company **BEM Operations Limited (C 70387)** [hereinafter referred to as ‘the appellee’], were decided as follows:

“Tenut kont tal-fatti kollha tal-każ kif ġew esposti f’dan il-proċess, it-Tribunal huwa tal-fehma li dan kien każ ta’ temm ta’ impjieg bħala miżura dixxiplinarja fejn l-Appellant ingħata ċans li jirranġa l-prestazzjoni lavorattiva tiegħu qabel ittiegħdet id-deċiżjoni ta’ tkeċċija u fiċ-ċirkostanzi jaqta’ u jiddeċiedi li din it-terminazzjoni tal-impjieg tal-Appellant la kienet ingusta u lanqas abbużiva.”

The facts

2. The plaintiff had filed a claim on the 21st July, 2021, by means of which he explained that he was employed by the defendant company as a Customer Service Agent (International), with effect from the 14th December 2016. The plaintiff explained that on the 18th May 2021 he was informed by management that his contract of employment was being terminated for disciplinary reasons. The plaintiff said that he was never informed what were the misdemeanours which led to the termination of his employment. He added that he never had problems at the place of work, and that he was always considered as one of the best employees the company had, until a new Head Manager, identified as Richard Jensen, was employed by the defendant company. The plaintiff explained that there were different country support markets at his place of work, and that he used to fulfil his duties in the Portuguese section of the company since he is a Portuguese national. He added that the defendant company organises monthly competitions to determine who is the best employee of the month and that he was receiving the best feedback from the company’s clients, and that for three consecutive years he always managed to

obtain one of the best three placings within the company, month after month. The plaintiff explained that as soon as Richard Jensen was employed by the company, he started reprimanding him over trivial matters, such as the length of his toilet breaks, when the plaintiff explained that during an eight-hour shift he would take a maximum of two toilet breaks, and sometimes he would take no such breaks at all. He further added that he used to start his working day by logging on to his computer to verify what his duties for the day were, and that whenever he was assigned to work on the chat window, he would log on to the chat platform and make himself available for clients. He added that as soon as he made himself available on the platform, clients would start logging in and he would start dealing with them. The plaintiff explained that his problems with Mr Jensen started over a disagreement involving the few minutes when an employee would excuse himself from the chat platform, since Jensen insisted that the employee had to remain 'available' on the chat, whereas he disagreed with this. The plaintiff explained that these instructions were given because the managers' bonuses were calculated according to the number of chats received by the employees, and if an employee had to render himself unavailable for a while, that chat opportunity would be lost, thus impacting the manager's bonus. The plaintiff said that if he had to remain 'available' when he was not, this would reflect badly on his work output, since the client would believe that he was going to be attended to, when in reality the employee would not be available to help him out, and thus he would end up earning a bad review from the client. The plaintiff said that he had drawn the attention of the company to the fact that these instructions made little sense for the employees, for the clients, and for the company itself. He further added that he never said that he was not

going to follow these instructions, but that after this episode, the management's attitude in his regard changed for the worse. He further explained that he spoke to his team leaders about this, but he was ignored even further. He said that following this, he spoke to Mr Jensen again, who was the head manager of the customer support department, who then informed him that this was all a misunderstanding, and that the plaintiff was right. The plaintiff explained that after a few days, another Team Leader issued the same instructions once more and this showed the plaintiff that there was no misunderstanding, but rather that this was company policy. He said that he kept on asking for a reason as to why these instructions were being given, but he kept on being ignored. The plaintiff further added that in March 2021, the company asked its employees whether they were interested in working overtime, and that he had replied immediately to this message, stating that he was indeed available to work extra hours. The plaintiff said that his message was ignored even though the team leaders had seen it. He added that he felt further aggrieved by this behaviour and that he had registered a complaint with the Human Resources department of the defendant company. Three or four days after, he received a final warning, where he was informed that he had shown lack of respect towards his team leaders. He said that the only information he was given was in connection with alleged bad behaviour which had taken place some six months earlier, and which had nothing to do with the report filed by him. The plaintiff said that during a disciplinary meeting held in April 2021, he had asked for a reason why he had never been punished or reprimanded before these incidents took place, however no reply was given by the company. The plaintiff said that he felt that he should not sign the final

warning because this was issued against him abusively. He also said that around seven weeks after he was issued the final warning, he felt the need to go on a toilet break while at work, however when he asked his team leader to excuse him, the team leader asked him to remain 'available' on the chat. The plaintiff explained that he informed the team leader that this is no professional way to treat clients. Subsequently to this, the plaintiff decided not to go on a toilet break, and he remained logged on to the system. After work he felt unwell, and a doctor certified that he was indeed suffering from gastric flu. The plaintiff said that he explained this to the defendant company, however while on sick leave he received a phone call where he was asked when he was due to return to work, and that on his return to work he was to turn up twenty minutes earlier than the log-in time, because he was due to have a meeting with the HR Manager. The plaintiff said that upon his return to work, he found that the access he had previously enjoyed to the chat platform had been removed. On the 18th May 2021, he was informed that his employment was being terminated due to disciplinary breaches, and that closer to that day, his performance at work had begun to slacken. The plaintiff said that this made no sense, because in the eighteen days prior to the termination of his employment he had reached 100% customer satisfaction, which means that he was being unjustly dismissed.

3. The plaintiff said that the disciplinary hearing held by the defendant company was null and without effect, because this took place with no respect to the principles of natural justice, and this in view of the fact that Richard Jensen was one of the people chairing this session. The plaintiff said that this goes against the principle of *nemo iudex in causa propria*, and that any evidence

presented in this hearing should be considered null and void. He further added that from the time-frame presented, it should be clear that his employment was terminated because he availed himself of two days' sick leave as ordered by his doctor. He further added that according to Maltese Law, an indefinite contract of employment should be accorded the highest degree of protection, and that there has to be a good and sufficient cause for the termination of such an employment contract. The plaintiff said that neither was his dismissal from work a proportionate measure, and that he believes there were ulterior motives which led to this termination, especially in view of the fact that he had complained about the practice suggested by Mr Jensen. The plaintiff asked the Tribunal to order the defendant company as his employer, to issue a clean and positive Certificate of Termination, that would leave no doubt in the minds of future prospective employers, that he was a good employee; to issue an order that this was an unfair dismissal; to declare that the defendant company's decision to terminate the plaintiff's employment was a result of intolerable behaviour on the part of the company, which led to his unfair dismissal; to declare that the defendant company had abusively terminated his employment contract and that consequently the plaintiff had suffered considerable damages; to order the quantification and the liquidation of the damages suffered by the plaintiff; to condemn the defendant company to pay the plaintiff the damages liquidated and to order it to pay the costs of the proceedings within a short and reasonable time; and to issue all those orders and directives that the Tribunal deems suitable and opportune in accordance with the case.

4. The defendant company replied that the plaintiff had been its employee between the 14th November 2016 and the 18th May 2021. It further explained that it used to expect a certain level of performance and professionalism from its employees, especially from those who were in regular contact with its clients. It further added that the plaintiff's performance had not been good, and that in fact he had never featured as one of its top five performers, and that the plaintiff's attitude had always been problematic both with its clients as well as with his colleagues. The defendant company further claimed that despite numerous warnings, the plaintiff failed to change his attitude at work, which is why the disciplinary hearing was set. It further claimed that following considerations made by the Disiplinary Board, it had issued one final warning against the plaintiff on the 26th February 2021 because of his attitude, and that despite this, the plaintiff persisted with his attitude and with his poor performance. It said that on the 14th May 2021, the plaintiff had been suspended from his duties on full pay because of the poor quality of his work and his attitude with the clients. The defendant company explained that following the Disciplinary Hearing of the 18th May 2021, it had terminated the plaintiff's employment because of his attitude and the poor quality of his work. In concluding the defendant asked the Tribunal to find against the plaintiff's claims, and to find that there were sufficient reasons at law to justify the termination of his employment.

The appealed judgment

5. The Tribunal made the following considerations in its judgment:

“Ġabra fil-qosor tax-xhieda

Alison Galea bdiet ix-xhieda tagħha billi qalet li hija tokkupa l-kariga ta’ Head of Talent Development fl-HR Department tas-soċjetà intimata. Hija qalet li l-appellant fi ħdan il-kariga li kien jokkupa kellu l-inkarigu li jikkomunika direttament u jirrispondi lill-klijenti internazzjonali bis-suq ewlieni jkun dak Portugiż. Hija spjegat li hija kienet tippresjedi l-laqqgħat li jkunu ‘smiġġ formali ta’ dixxiplina’ fejn kienet tassigura li l-proċess ikun rispettatt min-naħa tagħhom. Wara hija għaddiet biex tat id-dettalji ta’ smiġġ li kien involut fih l-Appellant fi Frar 2021, li kien ġie inizjalat fuq Email ta’ Richard Jensen Head CS Operations, fejn huwa kien għamel referenza għal xi ilmenti dwar l-operat tal-Appellant. Hija stqarret li wara diskussjonijiet li kellha kemm ma’ Jensen u anke ma’ Vitor Borges Silva Customer Service Team Leader li kien is-superjur dirett tal-Appellant, kien ġie deċiż li l-każ ikun ittrattat bħala smiġġ dixxiplinarju formali. Hija qalet li l-ilmenti dwar l-Appellant kienu relatati mal-imġiba tal-Appellant lejn is-superjuri tiegħu bħala insubordinazzjoni fejn ma kienx jagħmel dak li kien ikun dirett biex jagħmel u attegġjament mhux xieraq.

Hija kompliet li s-smiġġ dixxiplinarju kien sar fis-26 ta’ Frar, 2021. Hija qalet li prezenti apparti hi u l-Appellant kien hemm Luana Cortes mill-HR, Richard Jensen u Vitor Borges Silva. Hija qal li dakinhar l-Appellant ma kienx assistit minkejja li kien infurmat li seta’ jkollu lil xi ħadd miegħu. Hija spjegat li fil-bidu tas-smiġġ min-naħa tal-Management issir spjegazzjoni dettaljata ta’ dak li qed ikun jiġi mixli bih l-impjegat. Hija spjegat li matul dan il-meeting li kien pjuttost twil, għal kull akkuza ta’ imġiba mhux xierqa jew insubordinazzjoni l-Appellant kien jixxiftja l-ħtija fuq it-Team Leader u xi drabi anki lejn Jensen bħala l-Head Operations. Ix-xhud stqarret li wara deliberazzjoni min-naħa tagħhom kien ġie deċiż li l-Appellant jingħata ‘final written warning’ datat dakinhar tas-smiġġ. Hija kompliet li l-appellant kien infurmat li huwa kellu 5 ġranet fejn huwa seta’ jappella minn din it-twissija u li tali appell kien ikun irid isir lil Geraldine Gilford HR Director.

Ix-xhud qalet li fl-1 ta’ Marzu bagħtet Email lill-appellant li fiha kien hemm anness ir-‘written warning’ u huwa rrisponda lilha fil-5 ta’ Marzu fejn qalilha li ma kienx qed jaqbel mat-twissija li ngħata u li ma kienx ser jiffirma d-dokument anness. Hija stqarret li hija ma kinitx qed tqis il-korrispondenza tal-Appellant bħala appell iżda bħala risposta lilha tal-Email li kienet bagħtet lill-Appellant. Ix-xhud stqarret li fl-Email li hija bagħtet lill-Appellant spjegatlu li l-firma tiegħu kienet qed tintalab bħala irċevuta li huwa kien irċieva t-twissija u li jekk irid jappella kellu jibgħat Email separata lil Geraldine Gilford mingħajr il-ħtieġa li l-HR ikun ikkupjat. Hija stqarret li sa fejn taf hi, appell min-naħa tal-Appellant ma sarx. Hija kompliet li xi ftit ġranet wara rċeviet

komunikat b'Email mingħand Vitor il-Line Manager tal-Appellant fejn għarraf li l-Appellant kien qed jitlob kumpens bħala tpartit għat-tkeċċija tiegħu. Hija tenniet li t-tkeċċija tal-Appellant f'dak l-istadju qatt ma kienet ikkontemplata.

Ix-xhud kompliet li fl-14 ta' Mejju ntbagħtet Email mingħand Maria Alina Cordos li hija l-Customer Service Director li tiġi fuq Jensen, fejn għarrfet li l-Appellant kien bagħat sitt Emails li għaliha kienu attentat frawdolenti biex ikun jindika produttività oġhla min-naħa tiegħu. Ix-xhud qalet li Alina kienet bagħtet din l-Email peress li kienet konxja li l-Appellant kien ingħata twissija aħħarija u dwar il-prestazzjoni fqira u l-imġiba tiegħu. Ix-xhud kompliet li Alina kienet ikkuntattjathom għaliex ħasset li dawn kienu atti ta' imġiba skorretta grossolana, fejn anke min-naħa tal-Appellant kien uza lingwaġġ mhux xieraq ma' klijenti. Ix-xhud qalet li rċeviet kopji ta' Chats li għaddew bejn l-Appellant u klijenti li jindikaw lingwaġġ mhux aċċettabbli. Hija stqarret li f'dak l-istadju Alina kienet irrakkomandat li l-Appellant ikun sospiż bil-paga sħiħa.

Ix-xhud kompliet li dan l-avveniment wassal għat-tieni smiġħ ta' dixxiplina li kien seħħ nhar it-18 ta' Mejju, 2021 u li eventwalment wassal għat-terminazzjoni tal-impjieg tal-Appellant, smiġħ li kien presedut minn Geraldine Gilford. Hija qalet li hija kienet prezenti sabiex tiegħu noti ta' dak li kien qed iseħħ. Hija qalet li s-smiġħ kien wieħed qasir u li fiha kien ġie spjegat lill-Appellant is-severità ta' dak li kien qed jiġi mixli bih. Hija qalet li r-rispons tal-Appellant kien wieħed kwiet. Hija qalet li wara li saret deliberazzjoni kien ġie deċiż li minħabba s-severità tal-akkużi, l-impjieg tal-Appellant kellu jiġi fi tmiemu. Hija kompliet li l-ittra tat-terminazzjoni nħarġet dakinhar stess.

Geraldine Gilford bdiet ix-xhieda twila tagħha billi qalet li hija tokkupa l-kariga ta' HR Director ma' Betclick Group fejn tiegħu ħsieb kemm l-uffiċċju ta' Malta u ta' tliet uffiċċini oħra fl-Ewropa. Dwar it-terminazzjoni tal-impjieg tal-Appellant hija bdiet billi stqarret li qabel tali terminazzjoni kien hemm azzjonijiet dixxiplinari oħra fil-konfront tiegħu li kienu ġew inizjalati fi Frar 2021, fejn kien hemm każi ta' komportament mhux rispettuż, atitudni negattiva, u insubordination lejn is-superjuri tiegħu. Hija spjegat li dak li wassal għat-tkeċċija tiegħu kienu akkużi ta' xogħol li kien għamel li ma kinux skont l-ordni tas-superjuri u li kien hemm anke fraudulent chats li hu kien uza biex ikun jista' jtella' l-punteġġ tal-performance tiegħu. Hija spjegat li fil-każ li wassal għat-terminazzjoni tal-impjieg tal-Appellant hija ma kinitx involuta direttament mill-ewwel iżda kienet konxja peress li kienet tkun involuta fl-Emails li kienu jiġu skambjati.

Hija kompliet li fit-23 ta' Frar, 2021 kien sar l-ewwel meeting dixxiplinarju fejn hija ma kinitx prezenti, iżda kien hemm il-kollega tagħha Alison, li ltaqgħet magħha wara sabiex ittiha feedback ta' x'kien sar f'dik il-laqgħa u li fih kien ġie deċiż li l-Appellant jingħata final warning. Hija kompliet li tali twissija nħarġitlu nhar l-1 ta' Marzu, 2021.

Hija qalet li fil-5 ta' Marzu huwa (l-Appellant) kien bagħat Email lil Alison fejn kien qalilha li ma kienx qed jaqbel ma' din it-twissija u fejn Alison kienet weġbitu u spjegatlu li l-proċedura hi li l-appell irid ikun indirizzat lil Geraldine (ix-xhud). Ix-xhud kompliet li fil-5 ta' Marzu kienet irċeviet Email mingħand Vitor li kien it-Team Leader u li lejha l-Appellant kien jirrapporta, fejn kien għarrafhom li l-Appellant tkellem miegħu u qallu li kien jikkunsidra li jiġi kumpensat biex jirriżenja. Hija spjegat li d-direzzjoni tagħhom kienet li jingħata twissija bil-miktub u mhux li jiġi terminat l-impjeg. Hija qalet li fil-25 ta' Marzu irċeviet Email mingħand l-Appellant fejn infurmaha li ma kienx qed jaċċetta l-final warning li kien ingħata qabel nhar l-1 ta' Marzu. Hija qalet li kienet irrispondietu fejn għarrfitu li tali appell ma setax jiġi kkunsidrat peress li kienu nqabzu l-ħamest ijiem li matulhom seta' jappella. Hija infurmatu li però kienet lesta li tiltaqa' miegħu fil-preżenza ta' Luana Cortes u jiddiskutu s-sitwazzjoni. Hija kompliet li l-laqgħa deskritta minnha bħala informali saret nhar l-14 ta' April, 2021.

Hija spjegat li matul din il-laqgħa l-Appellant qal li kien ingust miegħu li hu biss kien ingħata tali warning u li tali twissija kien imissha saret ukoll fil-konfront ta' żewġ Team Leaders oħra li kienu jdejquh, kienu rude man-nies u kien hemm nies fil-Customer Services Department li ma kinux kuntenti bihom. Hija qalet li tali laqgħa damet madwar siegħa u nofs. Hija kompliet li matul din il-laqgħa hija kienet insistiet mal-Appellant sabiex jiffoka aktar fuq xogħlu għaliex il-prestazzjoni tiegħu kienet ftit baxxa.

Hija kompliet li wara din il-laqgħa kienet iltaqgħet ma' David u ma' Richard Jensen bħala superjuri tal-Appellant u fejn wara sar anke follow-up meeting magħhom fil-preżenza tal-Appellant, nhar il-25 ta' April, 2021. Ix-xhud kompliet li nhar l-14 ta' Mejju rċeviet Email mingħand Alina Cardos li hija CS Director fejn għarrfet lill-HR Group li l-Appellant kien għamel żbalji ftit riskjużi fix-xogħol tiegħu, fejn hija spjegat x'kienu n-nuqqasijiet imwettqa minnu. Ix-xhud wara tat deskrizzjoni elaborata ta' dawn in-nuqqasijiet. Hija sostniet li dawn in-nuqqasijiet mhumiex aċċettabli partikolarment mill-Appellant li kien jaf sew kif irid ikun kondott ix-xogħol b'mod partikolari ma' klijenti VIP kif kien f'dan il-każ riferut. Hija kompliet li kien ukoll ġie rilevat li l-Appellant kien qed jimmanipola l-Customer Satisfaction Score b'tali mod sabiex jagħti stampa aktar pożittiva tal-prestazzjoni tiegħu milli fil-fatt kienet. Hija spjegat kif ikun kondott tali score u kif tista' ssir tali manipulazzjoni tiegħu.

Gilford spjegat li l-Appellant minkejja li kien jaf li huwa ma jistax jisservija klijenti VIP għax dan kien isir minn dipartiment apposta xorta għamel hekk. Ix-xhud qalet li bħala Management kienu ftieħmu li jiltaqgħu miegħu uffiċjalment bħala każ dixxiplinarju

nhar is-17 ta' Meju, 2021. Hija qalet li f'dak il-meeting flimkien magħha kien hemm ukoll Vitor bħala Team Leader u Richard Jensen li kien Head of Operations. Hija spjegat li matul dan il-meeting staqsew lill-Appellant jagħti spjegazzjoni ta' għemilu, fejn huwa qal li dakinhar ma kienx qed iħossu sew u li kien qatta' ħafna ħin fit-toilet. Hija sostniet li matul din il-laqgħa l-Appellant ma ta l-ebda spjegazzjoni plawsibbli ta' għemilu.

Gilford qalet li wara dan il-meeting infurmawh li huwa kien qed jiġi sospiż on full pay sakemm isiru aktar investigazzjonijiet. Hija stqarret li meta komplew jiddeliberaw appena giet konkluża din il-laqgħa kkonkludew li l-impjeg tiegħu kellu jiġi terminat. Hija kompliet li l-għada reġgħu sejhulu biex jiltaqgħu miegħu, fejn kien gie spjegat lilu li wara li ddeliberaw kien gie deċiż li l-impjeg tiegħu jiġi mitmum. Ix-xhud qalet li matul din il-laqgħa l-Appellant kien kalm u aċċetta tali konklużjoni. Meta mistoqsija jekk qabel il-każi riferuti mix-xhud, kienx hemm każi oħra fil-konfront tiegħu x-xhud qalet li ma setgħetx tkun taf għaliex il-proċedura hija li warnings ikunu mneħħija mir-records wara sena. Hija stqarret ukoll li ma tafx li qabel dawn l-avvenimenti l-Appellant kien ġibed l-attenzjoni tagħhom fuq xi haġa dwar li huwa kien ġibed l-attenzjoni ta' Richard Jensen fuq xi haġa partikolari li taffettwa l-bonuses tagħhom, f'dan il-kuntest hija stqarret li ma tafx kif jinħadmu l-bonuses ta' agents għax dawn isiru mis-CS Department.

Hija qalet li d-dettalji li xehdet dwar manipulazzjoni tas-CSS mill-Appellant ingħataw lilha mis-CS Department għaliex huma jamministraw l-operazzjonijiet li jsiru hemmhekk. Ix-xhud ipprezentat kopji ta' korrispondenzi f'forma ta' snapshots li jagħmlu referenza għal żewġ laqgħat, waħda online u oħra in persona li skont ix-xhud kienu saru nhar is-17 u t-18 ta' Meju, 2021 rispettivament. Ix-xhud spjegat li fl-ewwel laqgħa l-Appellant gie mgħarraf b'ċertu nuqqasijiet waqt il-qadi tad-doveri tiegħu u fejn huwa ngħata ċ-ċans jagħti l-verżjoni tiegħu. Hija kompliet li xi nofs siegħa wara din il-laqgħa hija bagħtet Email lill-Appellant fejn infurmatu li huwa kien qed jiġi sospiż 'on pay' sakemm jagħmlu l-investigazzjonijiet tagħhom. Hija qalet li wara din il-komunikazzjoni hija bagħtet Email oħra lill-Appellant fejn avzatu li kienet ser issir laqgħa oħra miegħu.

Dwar it-tieni laqgħa li saret nhar it-18 ta' Meju, 2021, ix-xhud qalet li kienet f'din il-laqgħa fejn l-Appellant gie mgħarraf bit-temm tal-impjeg tiegħu. Hija spjegat il-proċedura wżata fil-każijiet fejn impjegat ikun qed jiġi mixli li wettaq xi azzjoni gravi. Hija qalet li l-ewwel issir laqgħa fejn l-impjegat jiġi spjegat lilu n-nuqqas u jingħata ċ-ċans jagħti l-verżjoni tiegħu. Kompliet li wara din il-laqgħa l-management iddelibera

dak li jkun sema' u wara ssir laqgħa oħra mal-impjegat fejn jinfurmawh b'dak li jkun iddeċieda l-Management.

Richard Jensen beda x-xhieda tiegħu billi qal li huwa Head Customer Operations ta' BEM sa minn Diċembru 2018, fejn huwa jimmaniġġja t-Team Leaders, u fejn allura l-Appellant kien jirrispondi għal wieħed minnhom. Huwa qal li r-relazzjoni tiegħu mal-Appellant kienet waħda ta' kollegi fuq il-post tax-xogħol. Ix-xhud spjega f'ċertu dettall ir-responsabbiltajiet li kellu l-Appellant li kien ġie impjegat ma' Betclick qablu, bħala Customer Service Agent, fejn ġiet deskritta minnu bħala funzjoni importanti għaliex hija l-wiċċ tal-kumpannija meta klijent ikollu problemi. Ix-xhud wara ta spjegazzjoni dettaljata ta' kif jinħadem il-performance bonus abbażi ta' KPIs li jkunu ġew issettjati mill-management u fejn l-impjegat ikun konxju tagħhom. Huwa stqarr li ma jafx li kien hemm xi okkażjoni fejn impjegat ma ngħata l-ebda bonus minħabba l-prestazzjoni tiegħu għajr fejn dan ikun ingħata xi warning. Huwa qal li l-ammont ta' bonus kien ivarja skont il-prestazzjoni.

Huwa qal li huwa nġieb konxju ta' problema fil-prestazzjoni tal-Appellant jew minn team leader min-naħa Portugiża jew minn xi nies involuti hemmhekk. Ix-xhud wara għadda sabiex jispjega kif titkejjel il-prestazzjoni tal-agents. F'dan il-kuntest ix-xhud ippreżenta dokumenti li huma computer generated li jindikaw li l-prestazzjoni tal-Appellant meta komparata ma' agenti oħra kienet waħda fqira, fejn huwa tenna li kaġun ta' dan l-Appellant kellu l-ewwel smiġħ dixxiplinarju fejn wassal għall-ewwel twissija. Huwa qal li l-attitudni tal-Appellant waqt dan is-smiġħ kienet li ma jaċċettax l-informazzjoni ppreżentata. Ix-xhud stqarr li huwa kien konxju tal-prestazzjoni fqira tal-Appellant għaliex kien ikun infurmat mis-superjuri diretti tal-Appellant. Ix-xhud tenna li l-proċeduri tal-aħħar li wasslu għat-terminazzjoni tal-impjieg tal-Appellant kienu għaliex kien hemm repetizzjoni tal-prestazzjoni hażna tiegħu u li kaġun tagħha kien ingħata l-ewwel twissija.

Ix-xhud stqarr li l-interazzjoni fix-xogħol mill-Appellant kienet tkun waħda limitata ħafna għaliex huwa (ix-xhud) kien responsabbli minn madwar mitt ruħ, fejn kien ikun interessat li jara li l-operazzjoni timxi b'mod tajjeb. Ix-xhud qal li kull deċiżjoni dixxiplinarja bħal f'dan il-każ, ma tkunx meħuda minnu waħdu iżda jkun hemm l-involvement ta' membri oħra tal-management. Ix-xhud spjega li l-irwol tiegħu fil-bord li wassal għat-terminazzjoni tal-impjieg tal-Appellant kienet kemm li jiddeċiedi u anke li jagħti dettalji dwar xiex kien qed ikun akkużat. Ix-xhud saħaq li l-proċeduri dixxiplinarji fil-konfront tal-Appellant ma kinux relatati mal-availability issue. Ix-xhud qal li deċiżjoni dwar jekk jitteħdux proċeduri dixxiplinarji fil-konfront ta' impjegat tkun waħda kollettiva bl-involvement tal-HR. Huwa spjega li kemm fir-rigward tal-ewwel

proċeduri fil-konfront tal-Appellant fejn kien ingħata final warning u anki fit-tieni proċeduri fejn wasslu għat-terminazzjoni tal-impjieg tiegħu, kien l-HR li ddeċieda li jinbnew tali proċeduri, wara li tkun ingabret l-informazzjoni mid-dipartiment. Ix-xhud ikkonferma li fl-14 ta' Mejju, 2021 huwa kien bagħat Email lil Maria Alina Cordos li hija l-Customer Service Director fejn kien staqsa għall-opinjoni tagħha għax fil-fehma tiegħu l-impjieg tal-Appellant kellu jkun terminat malajr. Meta x-xhud gie muri dokument li juri li l-Appellant irċieva zieda u apprezzament għall-prestazzjoni tiegħu għall-istess perijodu indikat minnu (mix-xhud) fejn il-prestazzjoni tiegħu (tal-Appellant) kienet deskritta bħala fqira, ix-xhud wieġeb li spjegazzjoni bħal din tista' tingħata mill-HR f'Malta għaliex minn hemm kien intbagħat id-dokument riferut.

Vitor Borges Silva beda x-xhieda tiegħu billi qal li huwa ilu jaħdem mas-soċjetà intimata għal madwar 3 snin u jokkupa l-kariga ta' CS Agent, fejn huwa ltaqa' mal-Appellant. Huwa kompli li l-Appellant kien ilu jirrapporta lilu għal madwar 3 xhur. Ix-xhud stqarr li matul dawn it-tliet xhur, il-prestazzjoni tal-Appellant kienet problematika fejn huwa ma kienx jilħaq il-KPIs, u dan kemm mil-lat ta' kwantità u anke kwalità. Huwa qal li xi xahar qabel it-terminazzjoni tal-impjieg tal-Appellant kien tkellem miegħu dwar dan u ħass li kellu jingħata ċans, bit-tama li l-affarijiet jitrangaw. Ix-xhud irrefera bħala l-problema maġġura kienet ir-relazzjoni tal-Appellant mal-klijenti. Ix-xhud tenna li fuq bażi personali r-relazzjoni tiegħu mal-Appellant kienet waħda tajba, fejn iddeskrivieh bħala persuna b'karattru li joħloq ambjent tajjeb f'team. Ix-xhud spjega f'ċertu dettall l-involviment tiegħu bħala superjur tal-Appellant fiż-żewġ proċeduri ta' dixxiplina li ttieħdu fil-konfront tal-Appellant.

David Joaquin Goncalves Gerald beda billi qal li huwa qabad jaħdem mas-Socjetà intimata fl-2016 u dan bħala Customer Support Agent. Huwa qal li fil-ħames snin li dam jaħdem mal-kumpannija qatt ma kellu xi problema ma' ħadd. Huwa tenna li qatt ma kellu xi ilment mingħand ħadd, u fejn matul dan iż-żmien huwa kellu tliet managers u qatt ma kellu xi problema ma' ħadd minnhom. Huwa kompli li dan għajr fl-aħħar sena meta daħal l-aħħar manager. Huwa qal li kull xahar kien ikollhom bħal performance competition u huwa dejjem kien jirrankja mal-ewwel għaxrra. Huwa sostna li l-problemi bdew meta daħal il-manager il-ġdid. L-Appellant saħaq li matul il-ħames snin ta' impjieg huwa qatt ma ngħata xi twissija, iżda li ġara huwa li kien għamel ilment dwar il-manager tiegħu u filwaqt li dwar dan l-ilment huwa qatt ma ngħata risposta, minflok ingħata warning u wara ftit ġimgħat tkeċċa.

Huwa wara għadda sabiex spjega xi episodji bħal li huwa kellu żewġ minuti sabiex ikun jista' jmur jagħmel toilet, u dwar darba fejn kien qed jaħdem overtime fejn ix-xift kien jispiċċa fl-22.00 u dan għaliex kellu kont li ried jivvalidah. Huwa spjega li wieħed

mill-managers tfielu l-kompjuter fejn qallu li dan ma setax jagħmlu wara l-ħin tax-xift. Huwa qal li f'it tal-ġimgħat qabel ġie mkeċċi u dan minħabba prestazzjoni lavorattiva ħażina, huwa kien irċieva Email mingħand l-HR fejn ferħulu għad-dedikazzjoni tiegħu u ngħata żieda fis-salarju u bonus. Huwa spjega nuqqas ta' qbil li kellu mal-manager Jensen u dan għaliex huwa (Jensen) kien qed jinsisti miegħu li meta jmur toilet jibqa' online. Huwa spjega li din ma tregix għaliex jekk meta huwa jkun illargat jidħol klijent u jibda chat ma jkun hemm ħadd biex iwiegħbu. U dan bil-konsegwenza li din tirrifletti ħażin fuq il-prestazzjoni tiegħu u jkollha effett negattiv fuq il-bonus tiegħu. Huwa spjega li meta huwa jibqa' online anke meta jkun hemm xorta jibqa' jidher li daħlet chat u dan ikun jirrifletti tajjeb għall-manager bħala ammont ta' chats li daħlu iżda mill-banda l-oħra tkun tirrifletti ħażin fuqu (l-Appellant) għaliex tkun tidher li daħlet chat u huwa ma rrispondihix.

lx-xhud wara għadda jispjega x'seħħ fil-jum li huwa tkeċċa. Huwa qal li dakinhar appena kien qabad jaħdem fuq chat, beda jhossu mhux tajjeb u f'xi ħin waqt li kellu wġiegħ f'zaqqu talab sabiex imur it-toilet iżda ma tħalliex imur. Huwa kompli jispjega li huwa kompli xogħol dak in-nofs ta' nhar għal 4/5 sigħat bla waqfien, iżda fil-break mar għand it-tabib fejn qallu li huwa kellu infezzjoni u kellu jieqaf mix-xogħol għall-mistrieħ. Huwa kompli li malli wasal id-dar ikkomunika ma' Richard Jensen u baġħatilhom ċertifikat mediku permezz ta' Email, u minn hemm huwa ntemmlu l-impjieg. U fejn kien ikkomunika miegħu Jensen via Teams u ġie infurmat li huwa ma kienx ser ikun jista' jaħdem iżjed u ġie mgħarraf li kien imkeċċi l-għada jew xi jumejn wara, l-ewwel permezz ta' Email u wara permezz t'ittra mingħand l-HR.

Meta kontro-eżaminat l-Appellant ċaħad illi nhar is-17/5/2021 kien attenda 'a disciplinary meeting' fejn qed jingħad mill-management illi fih ingħata ċans jagħti l-verżjoni tiegħu dwar ċertu nuqqasijiet li kien qed jiġi akkużat bihom u anke rrefera għall-meeting li kien attenda għalih l-għada bħala 'informal meeting that I was fired'. Huwa sostna li qabel dik il-laqgħa tat-18/5 huwa kien irċieva telefonata permezz ta' Teams minn Richard Jensen fejn ġie mgħarraf li l-impjieg tiegħu kien ġie tterminat.

Tiago Vinagre beda x-xhieda tiegħu billi qal li huwa jaf lill-Appellant peress li kien jaħdem miegħu ma' Betclick fejn it-tnejn kienu jaħdmu fuq customer support fil-kariga ta' Customer Service Representative. Huwa tenna li ma jafx b'xi kazi ta' warnings fil-konfront tal-Appellant però semma lil Richard bħala persuna Head of Customer Support li kellu xi problemi personali mal-Appellant. Huwa tenna li ma jaf xejn dwar il-prestazzjoni professjonali tal-Appellant, fejn qal li l-impjieg tiegħu kien intemm fl-2019 u dan fil-kuntest li l-impjieg tal-Appellant intemm fl-2021.

Alan Alvez beda x-xhieda tiegħu billi qal li huwa kien jaħdem mal-Appellant fil-kumpannija Betclick. Huwa qal li dam f'dan l-impjieg bejn l-2017 u 2020. Huwa stqarr li l-prestazzjoni tal-Appellant kienet dejjem tajba ħafna. Huwa kompli li l-prestazzjoni marret għall-aqħar meta lejn l-2019 kien hemm bidla fil-Manager. Huwa qal li kien sema' li kien hemm xi kunflitt bejn dan il-manager ġdid Richard Jensen u l-Appellant iżda ma jafx dettalji.

- **Sintesti tat-trattazzjonijiet tal-każ**

Avv. Lara Pace għan-nom tas-soċjetà intimata bdiet billi rreferiet għaż-żewġ raġunijiet li kaġun tagħhom l-impjieg tal-Appellant kien terminat. Semmiet li fl-aħħar ta' Frar 2021 huwa kien ingħata twissija u wara li ġiet segwita proċedura ta' dixxiplina fit-18 ta' Mejju, 2022 huwa safa mkeċċi. Hija qalet li fi Frar 2021 il-kumpannija li kieku kienet veru li qabdu miegħu setgħet itterminat l-impjieg tiegħu iżda minflok tawh Final Warning. L-Avv. Pace qalet li minkejja li l-Appellant kellu l-fakultà li jappella minn din id-deċiżjoni ma appellax. Hija qalet li f'dan l-istant l-Appellant kien sostna li Richard Jensen kien qabad miegħu. Dwar il-fatt li l-Appellant ma kienx appella, l-Avv. Pace stqarret li huwa ma kienx għamel hekk għaliex kien kellem lil Vitor Borges Silva l-Line Manager tiegħu li dwar it-terminazzjoni tal-impjieg tiegħu (tal-Appellant) fejn talab kumpens għal tali terminazzjoni.

L-Avv. Pace sostniet li d-deċiżjoni li l-impjieg tal-Appellant ma kinitx deċiżjoni ta' Richard Jensen waħdu iżda kienet deċiżjoni kollettiva tal-Management. L-Avv. Pace tenniet li anke wara li huwa kien ġie terminat kien interessat biss f'kumpens. Hija sostniet li anke meta ttieħdet id-deċiżjoni li l-impjieg tal-Appellant ikun terminat anke f'din iċ-ċirkostanza huwa ma appellax minn tali deċiżjoni kif kellu l-fakultà li jagħmel. L-Avv. Pace sostniet li l-Appellant, minflok irrefera l-każ quddiem it-Tribunal Industrijali għaliex huwa kumpens biss irid.

Avv. Rachel Tua għan-nom tal-Appellant bdiet billi qalet li l-kumpannija għandhom mod kif jiddefendu ruħhom billi jagħmlu allegazzjonijiet mibnija lil hinn mill-verità u dan apparti l-proċeduri dixxiplinarji wżati fil-konfront tal-Appellant. Hija qalet li fix-xhieda tagħhom Jensen, Gilford u Galea kienu konfligġenti. Dwar dan irreferiet li Galea qalet li l-ewwel laqgħa dixxiplinarja ta' Frar 2021 saret fis-26 u Gilford qalet li bdew fit-23 ta' Frar. L-Avv. Tua qalet li l-Appellant kien ilu jaħdem mal-kumpannija numru ta' snin u l-issues bdew meta daħal Kap tad-Dipartiment. Hija rreferiet ukoll għall-proċess ta' dixxiplina ma kienx wieħed formali u sostniet li tali proċeduri kienu kontra l-liġi u bi ksur tal-Fundamental Human Rights, u dan għaliex il-proċeduri ma kinux 'formally stipulated ab initio by the law'. L-Avv. Tua sostniet li t-termination letter li ngħata l-Appellant fit-18 ta' Mejju, 2021 ma kinitx valida u dan fil-kuntest tat-

telefonata li l-Appellant irċieva mingħand Jensen jumejn qabel fejn dan kien għarrfu li l-impjieg tiegħu kien terminat.

- **Konsiderazzjonijiet tat-Tribunal**

Dan il-każ jinkwadra sitwazzjoni ta' terminazzjoni ta' impjieg, fejn is-soċjetà intimata sostniet li dan seħħ minħabba poor performance tal-Appellant. Mill-banda l-oħra, l-Appellant ċaħad dan kollu u waqt il-proċess apparti li rribatta l-argumenti dwar poor performance sostna wkoll li din it-terminazzjoni setgħet seħħet minħabba n-nuqqas ta' qbil li kien ikollu mal-Manager Richard Jensen.

Fir-rigward tal-prestazzjoni lavorattiva tal-Appellant, l-argumenti tal-partijiet kienu kompletament kontrastanti. Is-Soċjetà intimata tgħid li r-rizultati miksuba mill-Appellant kienu fqar u mill-banda l-oħra l-Appellant jiċċad kollox.

Il-fatt jibqa' li għall-Management is-sitwazzjoni ma baqgħetx sostenibbli u dan għaliex l-Appellant minkejja twissija finali li kien ingħata fis-26 ta' Frar, 2021 il-prestazzjoni lavorattiva tiegħu baqgħet ma wrietx titjib. F'April 2021 il-Management saħansitra anke kellu laqgħa oħra mal-Appellant fejn huwa ġie mitlub jibdel l-attitudni tiegħu u jimmeljora l-prestazzjoni tiegħu.

It-Tribunal ikkontempla bir-reqqa l-argumenti tal-Appellant fejn saħaq li l-proċess tad-dixxiplina adottat mill-Management ma kienx wieħed li seta' jiġi meqjus bħala 'proċess ta' dixxiplina formali'. Fil-kuntratt tax-xogħol ma kienx indikat li għandu jkun hemm xi proċedura partikolari dwar kif għandu jkun kondott tali proċess.

Li hu żgur hu li t-terminazzjoni ta' dan l-impjieg ma seħħitx b'rizultat ta' dismissjoni sommarja iżda wara li kien hemm kuntatti bejn il-partijiet fejn il-prestazzjoni lavorattiva tal-Appellant ġiet diskussa u dan kemm fi Frar 2021 fejn huwa ngħata 'twissija finali' u anke f'Mejju 2021 fejn effettivament ittiegħdet id-deċiżjoni tat-temm tal-impjieg.

Dan it-Tribunal xtarr bir-reqqa dovuta kull dettall li ħareġ waqt dan il-proċess u b'mod partikolari jekk dak li kien mixli bih l-Appellant kienx kif allegat. It-Tribunal huwa sodisfatt li l-aġir tal-Appellant kif allegat mis-Soċjetà intimata ġie effettivament ippruvat.

It-Tribunal huwa sodisfatt illi l-Appellant kien ingħata ċansijiet biżżejjed sabiex jirranġa l-operat tiegħu qabel ittiegħdet id-deċiżjoni li jiġi mkeċċi, inkluż twissija ċara li jekk mhux se jirranġa kien ser jintemmlu l-impjieg, iżda l-attitudni tal-Appellant lejn il-prestazzjoni tax-xogħol tiegħu baqgħet ma laħqitx l-aspettattivi tal-Management.”

The Appeal

6. The appellant filed his application on the 30th October, 2023 whereby he requested the Court to revoke and set aside the decision given by the Industrial Tribunal on the 18th October, 2023.

7. The appellant's grievances are that the Tribunal's judgment is null since the acts of the proceedings by decree of the Tribunal had to be conducted in the English language, and yet the final decision of the Tribunal was handed in Maltese. The appellant referred to a judgment handed down by the local courts in 1957, which decided that a criminal sentence handed down in the Maltese language was null because proceedings ought to have been conducted in the English language. The appellant referred to article 7(b) of the Judicial Proceedings Act to strengthen his point.

8. The appellant further held that the facts of the case were not interpreted correctly by the Tribunal, as from the acts of the proceedings it should have resulted that he was not given several warnings, but one final one and that he was dismissed without a termination letter, over a phone call. It was only after the said phone call that the termination letter was written and handed to him. The appellant further claimed that the Industrial Tribunal failed to consider the provisions on termination found in the Employment and Industrial Relations Act.

The appellees' reply

9. The appellee company stated in its reply, that the decision given by the Tribunal is just and merits confirmation. It further added that this appeal is a frivolous attempt by the appellant to render a legally valid decision null. It further held that the Judicial Proceedings Act applies to procedures held before the civil and the criminal courts, not before the Industrial Tribunal, which has the power to regulate its own procedure. The appellee further held that the parties had come to an agreement before the Tribunal, that whereas proceedings were to be conducted in the English language, the final decision could be given in the Maltese language. Therefore, the appellant's request to have the proceedings declared null, should not stand.

10. The appellee referred to the provisions of article 82(3) of Chapter 452 of the Laws of Malta, and held that in such cases, there is an appeal only on points of law. It explained that the said point of law has to be clear and connected to evidence brought before the Tribunal, and that the grievance should not be tantamount to a claim that the Tribunal failed to consider the evidence presented properly.

Considerations by the Court

11. This Court shall now proceed to consider the grievances raised by the appellant in his appeal filed on the 30th October, 2023, by means of which he is requesting this Court to annul, revoke and set aside the decision handed down by the Tribunal on the 18th October, 2023.

15. The Court, as correctly asserted by the appellee company, refers to the provisions of article 82(3) of Chapter 452 of the Laws of Malta, which states that appeals from decisions given by the Industrial Tribunal may only be made on points of law. The Court cannot see how an examination of the evidence over the number of warnings the appellant received during the time he was employed by the appellee company, amounts to a point of law. Moreover, by virtue of this grievance, the appellant is requesting this Court to go over the evidence presented before the Tribunal again, and to make an assessment over whether the correspondence the appellee had with the appellant over the years, and the various meetings held with him regarding his attitude as well as regarding his performance, are tantamount to a warning or a disciplinary measure. The Court is of the opinion that it is not empowered by law to do so, and that from a reading of the appealed judgment, it turns out that the Tribunal carried a very thorough analysis of the evidence presented to it prior to arriving at a decision. In view of these considerations, the Court is turning down the appeal filed by the appellant.

Decide

For the above reasons, the Court decides to reject the appellant's appeal, and confirms the appealed decision in its entirety.

All expenses in respect of the present proceedings, shall be borne by the appellant.

Read.

**Hon. Dr Lawrence Mintoff LL.D.
Judge**

**Rosemarie Calleja
Deputy Registrar**