

Kopja Informali ta' Sentenza



TRIBUNAL GHAL TALBIET ZGHAR

**GUDIKATUR DR.
PETER BORG COSTANZI**

Seduta tas-17 ta' April, 2008

Talba Numru. 36/2007/1

Diana sive Diane Ascjak

-vs-

Fred Vandecasteele

Sitting of the 17th April 2008

The Tribunal

Plaintiff has requested that the defendant pays her the sum of seven hundred and two Euro and thirty-one cents (€702.31) - (Lm301.50c) representing compensation for services rendered when she worked with the defendant between the 1st of May 2006 and the 12th of June 2006.

The defendant asked that the records be translated into the English language since he is of Belgian nationality and does not understand Maltese.

On the merits he contested the claim as being unfounded in fact and at law. He also stated that it was not true that the plaintiff worked with him for the period alleged, that is from the 1st of May 2006 till the 12th of June 2006 and therefore she is not entitled to be paid anything. In truth the plaintiff had worked with him for some small period of a few days as a trial period. This period ended before Easter of 2006, that is before the 16th of April 2006 and when the work was at its peak in Easter, she went abroad to England. Until that period she was paid fully. Therefore, the allegations of plaintiff are totally untruthful and should be rejected.

Having heard the evidence of Charles Asciak, Maria Farrugia, Marie Georgette Farrugia, plaintiff and defendant.

Having seen all the records of the case and the documents exhibited.

Considerations

Defendant operates a delicatessen shop in Victoria, Gozo where he produces Belgian chocolate pralines and other confectionary products.

From the evidence submitted it results that plaintiff was irregularly employed with the defendant in his delicatessen shop at Victoria, Gozo. Between the period of January and April 2006 she worked on a regular and was paid at a rate of approximately two Maltese Lira (Lm2) per hour. Plaintiff is stating that she was not paid for the hours she worked between the 1st of May 2006 and the 12th of June 2006.

Plaintiff confirmed that she did work during that period. She also produced her diary for 2006 where she listed the

days and times she worked for Mr Vandercastele. Maria Farrugia was a customer and she confirmed that she went to the shop on a number of occasions during that time and was served by plaintiff. Mr Charles Asciak who works with the Gozo Business Chamber also confirmed that during the trade fair held in June 2006 he had seen plaintiff work on the stall which was erected by Mr Vandercastele as well as before the opening of the fair in preparation of the thereof.

Furthermore, Marie Georgette Farrugia also confirmed that she herself was regularly employed by Mr Vandercastele and in actual fact, before she commenced with her employment, plaintiff was already working in the shop. Farrugia also stated that there was a period of time when both she and plaintiff were both working together in the same shop.

On the other hand the defendant has stated that it is absolutely not true that plaintiff worked during the period in question. He denied that plaintiff worked during the trade fair and also stated that it did not make sense for him to have two (2) people employed at the same time particularly in view of the fact that in the warmer months of the year the sales of chocolate would be reduced.

Ideally this issue would have been resolved had the parties produced evidence from the employment and Training Corporation certifying plaintiff's period of employment. In default of such evidence the Tribunal will have to rely on the evidence submitted and as outlined above.

The Tribunal is of the opinion that if a person renders a service, that person is entitled to be compensated for the services so rendered in deference to the principle "*omnia labor optat praemium*".

The Tribunal is satisfied that in actual fact, between May and June 2006, plaintiff did actually render her services to the defendant. The Tribunal also examined the diary exhibited by plaintiff for the year 2006 wherein there is a

detailed statement of all the days and times which she alleges to have worked with the defendant until the 12th of June 2006.

Upon examination of the said diary it would appear that plaintiff is claiming that about one hundred and fifty (150) hours were worked during the period in question and this tally perfectly with the claim being submitted by plaintiff. Whereas until the 12th of June there are entries almost on a daily basis, sometimes on matters not related to this case, for the remaining six months there is only one single entry for a doctor's appointment later on in June. This itself might cast doubt on the veracity of the diary though on the other hand there is an equally plausible explanation in that plaintiff did not work after that since she was with child and when she stopped work her pregnancy was well advanced.

On a balance of probabilities the Tribunal is of the opinion that plaintiff's requests have been satisfactorily proven and therefore her claim should be granted in its entirety.

Consequently, the Tribunal hereby dismisses all the pleas raised by the defendant and hereby accepts the request made by plaintiff and therefore orders that the defendant pays the plaintiff the sum of seven hundred and two Euro and thirty-one cents (€702.31) - (Lm301.50c) with interests and costs as requested.

< Sentenza Finali >

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