MALTA

CIVIL COURT
FIRST HALL

THE HON. MR. JUSTICE
GIANNINO CARUANA DEMAJO

Sitting of the 30 th July, 2010

Citation Number. 1069/2009

James Stagno Navarra

Versus

British Airways p.l.c.

1. This case concerns the interpretation of a clause on terminal benefits in the collective agreement between defendant company and its employees. The relevant facts are as follows:
2. When defendant company decided to terminate its operations in Malta with effect from 31 March 1989, it entered into a collective agreement with its employees on 9 December 1988 by virtue of which the parties agreed *inter alia* that:

In view of the Company's decision to terminate on 31st March 1989 the scheduled services to Malta, it is hereby agreed:–

a) The Company will pay its employees a redundancy payment of one-eighth (1/8) of the employees' monthly salary as at 31.03.09 times the number of months service … … …

3. Notwithstanding the termination of its local operations, defendant company retained plaintiff in employment as sales manager with effect from 1 April 1989. The letter of appointment, dated 13 February 1989 states that "in future years should British Airways wish to cease your employment you will then be eligible for the same severance package as was given to staff at time of closure".

4. By letter of 14 September 2009 defendant company advised plaintiff that his employment was to be terminated with effect form 31 October 2009; it also advised that plaintiff's redundancy payment was to be calculated at one-eighth of his actual monthly salary multiplied by the number of months service, subject to a maximum multiplier of two hundred (200) months. Defendant company's representative explained in evidence that this offer is more generous than plaintiff's actual entitlement in terms of the collective agreement of 9 December 1988 because it was worked out on his "actual" or current salary rather than that at 31 March 1989. In fact, one-eighth of plaintiff's monthly salary at 31 October 2009 multiplied by two hundred (200) exceeds one-eighth of his monthly salary at 31 March 1989 multiplied by four hundred and twenty-five (425), which is the number of months in employment with defendant company.

5. Plaintiff refused this offer and by letter of 30 September 2009 claimed a redundancy payment of one-eighth of his monthly salary at 31 October 2009 multiplied by a full four hundred and twenty-five (425) months, equivalent to two hundred and twenty-two thousand, nine hundred and twenty-six euro and thirty-one cents (€222,926.31).

6. The parties did not reach agreement and on the 3 November 2009 plaintiff filed this present action asking that this court do order defendant company to pay him two hundred and twenty-two thousand, nine hundred and twenty-six euro and thirty-one cents (€222,926.31), with costs. Defendant company replied on 9 February 2010,

stating that plaintiff's entitlement in terms of the applicable collective agreement was to be calculated on the basis of his salary at 31 March 1989; its more generous offer as explained above was in effect made *ex gratia* and without prejudice.

7. On the 5 July 2010 the parties defined the issue as follows:

The parties agree that the point at issue is whether the reference to 31 March 1989 in paragraph (a) [of the collective agreement of 9 December 1988] is a fixed reference to that date or a floating reference to the actual date of termination of employment.

8. Since the collective agreement of 9 December 1988 is a Maltese contract, it is governed by the Civil Code, the relevant provisions of which "*on the Interpretation of Contracts*" state as follows:

1002. Where, by giving to the words of an agreement the meaning attached to them by usage at the time of the agreement, the terms of such agreement are clear, there shall be no room for interpretation.

1003. Where the literal meaning differs from the common intention of the parties as clearly evidenced by the whole of the agreement, preference shall be given to the intention of the parties.

… … …

1008. All the clauses of a contract shall be interpreted with reference to one another, giving to each clause the meaning resulting from the whole instrument.

1009. In case of doubt, the agreement shall be interpreted against the obligee and in favour of the obligor.

… … ...

1011. Where in a contract a case has been specified for the purpose of explaining an agreement, it shall not be presumed that the parties, by so doing, intended to exclude other cases not specified, if such other cases may reasonably be construed as being within the scope of the agreement.

9. Also relevant is the provision of art. 993, "*on the Effects of Contracts*", which states that "Contracts must be carried out in good faith".

10. The question, then, is whether the reference to "31.03.89" in the collective agreement is a reference to a fixed date or a reference to the date of termination, whenever that may be, the date of 31 March 1989 being specified only because, at the time of the collective agreement, that was the expected date of termination of all employees.

11. A superficial reading of the text of the agreement would support defendant company's interpretation: the meaning attached to "31.03.89" is clear, and therefore, in terms of art. 1002, there should be no room for interpretation; moreover, any doubt should go in favour of defendant company as the "obligor", in terms of art. 1009. However, this interpretation is compatible neither with the intention of the parties, as evidenced by the other clauses of the agreement, nor with the overriding consideration of the Civil Law, namely the principle of good faith.

12. The agreement itself states that the terms of paragraph (a) were being stipulated "In view of the Company's decision to terminate on 31st March 1989"; for this reason, the terms of the agreement are to be viewed and interpreted in the light of that fact. The relevance of the date, therefore, is not intrinsic to the date itself but to the fact that it happened to be the date of termination.

13. Moreover, the agreement must also be interpreted in the light of the terms of the letter of appointment of 13 February 1989, namely, that plaintiff will "be eligible for the same severance package as was given to staff at time of closure". In order to maintain equivalence, so that plaintiff will receive the "same" package as those other employees who received a redundancy payment related to their salary "at time of closure", plaintiff also ought to receive payment related to his salary at the time of termination of his employment.

14. These considerations lead the court to the conclusion that an interpretation of the agreement between the parties in good faith and in the light of the norms of interpretation – in particular, artt. 1003, 1008 and 1011 – requires that the reference to a date which coincided with the date of closure in 1989 be interpreted as a floating reference to the actual date of termination of plaintiff's employment with defendant company.

15. For this reason the court orders defendant company to pay plaintiff by way of redundancy benefit the sum of two hundred and twenty-two thousand, nine hundred and twenty-six euro and thirty-one cents (€222,926.31), with costs.

< Final Judgement >

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