



**Fil-Qorti tal-Magistrati (Malta)**  
**Bhala Qorti ta' Ġudikatura Kriminali**

**Magistrat Dr. Donatella Frendo Dimech LL.D., Mag. Jur. (Int. Law)**

**Seduta D.I.E.R.**

**Illum: 9 t'Ottubru, 2018**

**Il-Pulizija**  
**(Spettur Sylvana Zrinzo Azzopardi)**

**-vs-**

**Siegfried Borg Cole**

Il-Qorti,

Rat l-akkuża bl-ingliz migjuba fil-konfront tal-imputat Siegfried Borg Cole u cioè talli:

In his capacity as Director and/or judicial representative and/or company secretaries of the company 'Global Settlements (C56881)' having its registered address at 292/10, Republic Street, Valletta, Malta, and/or being the person responsible and appointed by the said company to pay outstanding wages, he failed to pay the **Wages** due for the period commencing on the 2<sup>nd</sup> February, 2015 and ending on the 27<sup>th</sup> November, 2015, amounting to €46, 276.06, he failed to pay the **March Weekly Allowance** due for the period commencing on the 2<sup>nd</sup> February, 2015 and ending on the 31<sup>st</sup> March, 2015 and for the period commencing on the 1<sup>st</sup>

October, 2015 and ending on the 27<sup>th</sup> November, 2015, amounting to €376.42, he failed to pay the September Weekly Allowance due for the period commencing on 1<sup>st</sup> April, 2015 and ending on the 30<sup>th</sup> September, 2015 amounting to €121.16, he failed to pay the June Bonus due for the period commencing on the 2<sup>nd</sup> February, 2015 and ending on the 30<sup>th</sup> June, 2015 amounting to €110.26, he failed to pay the December Bonus due for the period commencing on 1<sup>st</sup> July, 2015 and ending on 27<sup>th</sup> November, 2015 amounting to €111.00, globally amounting to forty six thousand, nine hundred and ninety four Euros and sixty nine cents (€46,994.69) where a payment of fifteen thousand, seven hundred and seventy five Euros and twenty two cents (€15, 775.22), the remaining amount due is thirty thousand, nine hundred and nineteen Euros and sixty-eight cents (€30,919.68) including tax and national insurance, owed to your ex-employee Jani Harshandrai Narbeshanker (British Passport No. 308105077).

The Court is respectfully being asked, in accordance with Article 45(1) of Chapter 452 of the Laws of Malta, to order the accused to pay the penalties established by law, and, in accordance with Article 45(2) of Chapter 452 and of Regulation 22 of the Legal Notice 247 of 2003 as amended by Legal Notice 427 of 2007 and 259 of 2012 of the Laws of Malta to order the accused to pay Jani Harshandrai Narbeshanker (British Passport No. 308105077) the amount of thirty thousand, nine hundred and nineteen Euros and sixty-eight cents (€30,919.68) for the reasons specified above.

Rat id-dokumenti;

Semghet ix-xhieda;

Semghet it-trattazzjoni tal-partijiet;

Ikkunsidrat-

Illi ghalkemm ma tqajmet l-ebda eccezzjoni fir-rigward mill-imputat, fl-ewwel lok ghandu jigi rilevat li c-citazzjoni saret bil-lingwa Ingliza meta l-imputat hu Malti u jifhem il-lingwa Maltija. Ic-citazzjoni isservi l-funzjoni wahdieni ta' *'avviso da comparire'*. Illi fis-sentenza taghha l-Qorti tal-Appell Kriminali qalet dan dwar ic-citazzjoni w l-funzjoni taghha:<sup>1</sup>

Illi kif gie stabbilit b'mod kopjuz fil-gurisprudenza c-citazzjoni mahruqa fil-konfront tal-persuna akkuzata ghandha l-funzjoni ta' avviz ghad-dehra ta' dik il-persuna imsejha biex twiegeb ghal xi fatt inkriminati. Illi meta allura l-appellanti laqa' dik in-notifika u wiegeb ghas-sejha lilu maghmula, il-funzjoni tal-avviso da

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<sup>1</sup> *Il-Pulizija vs Gaetan Gatt*, Appell Nru: 538/2015; Deciza per Onor. Imhalled Dr. Edwina Grima 26.05.2016

*comparire* gie ezawriet anke fil-kazijiet fejn tali avviz ma ikunx ghal kollox korrett fid-dettalji imfissra fih. Galadarba l-imputat ikun wiegeb ghas-sejha ta' dik ic-citazzjoni, kif inghad il-funzjoni principali ta' l-istess citazzjoni tkun intlahqet. Fil-kaz ta' **Il-Pulizija v. Benny Zaffarese u Anna Zaffarese** (13/01/1995) inghad in partikolari hekk:

**“Anke li kieku dawn id-dettalji jew xi whud minnhom kienu zbaljati, wahda mill-funzjonijiet primarji tac-citazzjoni, u cioe` li sservi ta' ‘avviso a comparire’, twettqet u giet ezawrita meta l-appellant, allura imputat, deher quddiem l-ewwel qorti.....” .....**

Issa bil-fatt illi l-appellanti deher il-Qorti sahsitra fl-ewwel jum iffissat ghas-smigh tal-kaz u rega deher ghat-tieni seduta xahrejn wara minghajr qatt ma ilmenta mill-fatt illi huwa kien injar ta' l-akkuza li kien qieghed jiffaccja, ifisser illi huwa kien qed jaccetta n-notifika tieghu bhala wahda regolari u li allura kien ben konsapevoli tal-akkuza migjuba kontra tieghu u hejja id-difiza ghalha. Ghaldaqstant dan l-aggravju qed jigi rigettat.

Ghalhekk fuq dan l-insenjament il-Qorti ma ssib ebda irregolarita` li timpingi fuq l-validita` ta' dawn il-proceduri w ser tghaddi biex tevalwa il-provi migjuba quddiemha.

Illi l-impjegat **Jani Harshandrai Narbeshander** (Jani Hasu) xehed kif hu inghata kuntratt t'impjieg bhala Director of Business Development ma Global Settlements Holdings Ltd. b'paga annwali ta' £84,000, u cioe` £7,000 fix-xahar.<sup>2</sup> Sa Lulju, 2015, hu baqa' jircevi paga regolarment izda wara Lulju sa Novembru, 2015, il-paga kien qed jirceviha ftit ftit kif jidher id-dokument esebit minnu li jirrigwarda l-kont bankarju li fih kien jircevi l-paga.<sup>3</sup> Gew esebiti l-*payslips* ghax-xhur bejn Frar u Lulju, 2015,<sup>4</sup> kif ukoll l-kuntratt t'impjieg.<sup>5</sup>

Narbeshander jispjega li *“I continuously e-mailed and requested an update on the outstanding amount owed to me.... They said they will be coming soon, no payments were given on the intermittent payment recieved in my bank account.”*. Il-kommunikazzjonijiet tieghu kienu jsiru ma Ryan Porter li baqa jghidlu l-istess sakemm f'Novembru 2015, *“I was told that I am no longer employed with the company formally.”*<sup>6</sup> Sakemm gie nfurmat li kien qed jintemm l-impjieg tieghu *“They were saying that payment will be due soon”*<sup>7</sup>. Ikompli li hu kien jithallas min Emex ghal xoghol li kien jaghmel ma kumpanija bl-isem Direct Spade, parti mill-group of

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<sup>2</sup> Fol.4-5

<sup>3</sup> Dok. JHN1 a fol. 23 tergo

<sup>4</sup> Dok. JHN2 a fol. 24-29

<sup>5</sup> Dok. JHN a fol.13

<sup>6</sup> Fol.8-9

<sup>7</sup> Fol.9

companies ta' Global Settlements Holdings Ltd.<sup>8</sup> Jichad li qatt irceva ittra dwar temm t'impjeg *"No I haven't"*<sup>9</sup> jew li Porter kien infurmah li ma kienx lahaq il-*performance* rikjesta.<sup>10</sup>

Mid-dokument li jirrigwarda l-hlasijiet fil-kont bankarju tieghu, jidher cjar li bejn Lulju, 2015, sa 17 ta' Novembru, 2015, l-impjegat irceva numru ta' pagamenti minghand Emex Consult Ltd. Dawn il-pagamenti jidru elenakti b'mod aktar cjar fid-dokument JHN3.<sup>11</sup> **Dan ifisser li wara Lulju, 2015, meta rcieva l-ahhar salarju shih (€7,000) hu baqa' jircevi hlasijiet akkont u ghaldaqstant qed tigi kkoroborata l-verzjoni tieghu li hu qatt ma gie mgharraf li l-impjeg tieghu kien ser jintemm qabel Novembru, 2015.** Jirrizulta wkoll li l-hlasijiet kien qed jircevihom minghand Emex High Risk Limited u rcieva s-salarju tieghu shih ghax-xhur ta' Frar sa Lulju, 2015.<sup>12</sup>

Kif intqal gie esebit l-kuntratt t'impjeg li nbeda fit-2 ta' Frar, 2015, bejn Narbeshander u Global Settlements Holdings Ltd. li gie ffirmat minnu u minn Robert Ryan Porter.

Fil-para.3 tieghu jinghad li l-ewwel sitt (6) xhur tal-impjeg kienu l-*probationary period* fejn l-impjeg seta' jigi terminat minghajr obbligu li l-kumpanija taghti raguni ghad-decizjoni taghha.<sup>13</sup> Jirrizulta li s-salarju hu dak ta' *"£84,000 per annum payable monthly in arrears"*.<sup>14</sup> Fil-klawzola dwar terminazzjoni tal-impjeg, Para.8., jinghad *"where the employee has been in the continuous employment of the Company for a period in excess of one (1) calendar month the notice period shall be of one (1) week"*.<sup>15</sup>

Izda aktar importanti tenut kont dak li ser jigi allegat aktar il-quddiem dwar meta gie mitmum l-kuntratt t'impjeg, fil-Para.14.1 jinsab is-segwenti *"Any notice required to be given hereunder shall be delivered by hand or sent by first class post or by telex or fax to the address of the other party....and any such notice shall be deemed to have been served: if delivered by hand - at the*

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<sup>8</sup> Fol.8

<sup>9</sup> Fol.10

<sup>10</sup> Fol.11

<sup>11</sup> Fol.30-32

<sup>12</sup> **Dok. JHN2** a fol. 24-29

<sup>13</sup> Fol.14

<sup>14</sup> Fol.15

<sup>15</sup> Fol.16

*time of the delivery; If sent by post – upon the expiration of 48 hours after posting; and if sent by telex or fax – at the time of dispatch.*<sup>16</sup>

Illi **Quentin Tanti** in rappreżentanza tal-Registry of Companies kkonferma li fl-2015 l-imputat kien direttur, legal and judicial representative u segretarju tal-kumpanija bin-numru ta' registrazzjoni C56881 – l-istess kumpanija li ghamlet il-kuntratt t'impjieg ma Hasu Jani u li ffirma ghalha is-CEO taghha Robert Porter.<sup>17</sup>

Illi **Jonathan Caruana** ghad-Dipartiment tal-Impjieg u Relazzjonijiet Industrijali spjega li l-paga dovuta nhaddmet billi l-ammont fil-lira sterlina inqaleb ghall-ewro bir-rata tal-kambju vigenti fl-2015. *“Bhala claim ikklajmjajna l-weekly allowance tat-2015, June bonus tal-15, September weekly allowance tal-15, imbaghad basic wage minn Frar sa Novembru, December bonus 2015, March weekly allowance 2016 less 15,775.22 li dawn kienu diga' gew settljati.”*<sup>18</sup> Gie esebit dokument bil-kalkoli maghmula mid-dipartiment abbazi tal-payslips u l-kuntratt t'impjieg mghoddi lid-dipartiment mill-impjegat.<sup>19</sup>

Gew esebiti ukoll ghadd ta' *emails* mibghuta lil Porter minn Jani Hasu li ma jhallu l-ebda dubbju li sat-23 ta' Novembru, 2015, meta l-impjegat kien ghadu jsus wara Porter sabiex ihallsu s-salarju tieghu ghax-xhur t'Awissu sa Novembru, 2015, minn imkien ma jirrizulta li dan b'xi mod jidher li tterminalu l-impjieg anzi kollox jindika l-kuntrarju *“...I assume by the time we go to Manchester on Thursday we will have a grasp on things and we can get some time together then to go through historical and future plans financially and with regards to key achievable targets”*.<sup>20</sup> Tant hu hekk li *email* mibghuta lil Jani minghand Porter fl-20 t'Ottubru, 2015, tghid hekk *“Once we get to end of November there will be no further delays in funds as we should be liquid by then”*.<sup>21</sup> B'email ohra tat-13 t'Ottubru, 2015 Porter infurmah “My hope is to catch all up by end of November (subject to payments received, but I think we are ok there). Ryan”.<sup>22</sup>

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<sup>16</sup> Fol.21

<sup>17</sup> Fol.22

<sup>18</sup> Fol.36

<sup>19</sup> **Dok. JC1** a fol. 42; Fol.213

<sup>20</sup> **Dok. JC4** a fol.61 et seq

<sup>21</sup> Fol.122

<sup>22</sup> Fol.160

Ghadd kbir ta' *emails* ohra juru sa Novembru, 2015,<sup>23</sup> l-impjegat kien qed jintbghatulu b'*emails* dwar xoghol pendent;<sup>24</sup> senjatament l-*emails* tas-16 t'Ottubru, 2015,<sup>25</sup> u tas-26 t'Ottubru, 2015<sup>26</sup>. Jirrizulta wkoll li kemm Jani kif ukoll Porter kienu juzaw l-*email address* fuq l-istess domain *emexpay.com.*; meta Emex Pay (payment platform) ghandha l-indirizz ufficjali fl-istess indirizz li fuqha registrat Global Settlements Holdings Ltd. u cioe` 292/10 Republic Street, Valletta<sup>27</sup> - indirizz indikat bhala dak tal-ufficju legali tal-imputat kif tixhed l-letter head ffirmata minnu.<sup>28</sup>Ma jridx jintnesa li l-*payslips* ghas-salarju tal-impjegat mal-kumpanija Global kienu qed jinhargu minn Emex High Risk Limited.<sup>29</sup> Ma gie esebit ebda kuntratt t'impjeg bejn l-impjegat u Emex Pay jew Emex High Risk ghax dawn effettivament isservu ta' azjendi li rwol taghhom huwa inter alia l-*cross-border payments* b'modalitajiet siguri.

**Ghalhekk ma jifdal ebda dubbju li sa Novembru, 2015, Narbeshander kien ghadu jizvolgi l-irwol tieghu in ottemperanza mal-kuntratt t'impjeg tieghu ma Global Settlements Holdings Ltd.. Jigi sottolinejat li l-imputat kien ukoll kkupjat b'ghadd ta' *emails* li juru bic-cjar li kien konsapevoli tax-xoghol li Hasu Jani kien qed jaghmel (*emails* bejn 10-12 t'Awissu, 2015).**<sup>30</sup>

Illi b'ittra mibghuta mill-imputat nhar it-8 ta' Jannar, 2016, jinghad "*(a) Mr Jani was officially notified by letter sent to his home address on Friday 27th November 2015 explaining the reasons for his termination.*"<sup>31</sup> Ergo sas-27 ta' Novembru, 2015, Jani Hasu kien baqa impjegat ma' dik il-kumpanija ghax ma jaghmel ebda sens li tintbghat tali ittra kieku l-impjeg ma kienx jezisti qabel kif jixhed l-imputat.

Illi stranament **Siegfried Borg Cole** jixhed li l-kuntratt ma' Jani Hasi qatt ma kien beda ghaliex mill-ewwel Jani beda jahdem ma kumpanija ohra Emax Pay, "qatt ma rrenda ebda servizz lil Global. Dan gie ffirmat barra u qatt ma beda u qatt ma kellu l-ebda relazzjoni mal-kumpanija Global.... L-ebda

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<sup>23</sup> Vide email a fol. 153 et seq.

<sup>24</sup> Fol.66 et seq.

<sup>25</sup> Fol.123

<sup>26</sup> Fol.105

<sup>27</sup> Vide

<sup>28</sup> Fol.221

<sup>29</sup> **Dok. JHN2** a fol. 24-29

<sup>30</sup> Fol.69-70; 72

<sup>31</sup> Fol.221

*pagament u l-ebda servizz ma gie rez lil Global u l-ebda pagament ma sar lill-Global.*"<sup>32</sup> In kontro-ezami jipprova jghid li l-ittra mibghuta minnu saret fuq struzzjonijiet ta' Porter ghalkemm jirrizulta li giet indirizzata lilu bhala direttur ta' Global u ma joffri ebda spjegazzjoni li l-Qorti tqis valida u li ghandha mis-sewwa dwar kif f'dik l-istess ittra jibqa' ma jsemmi xejn dwar il-fatt li Jani ma kienx impjegat ma Global izda ma Emex"!

Il-Qorti tosserva wkoll li ma jirrizulta minn imkien li l-kuntratt t'impjieg gie terminat galadarba, kif jixhed Borg Cole, din il-kumpanija rieqda kienet u rieqda baqghet u li Hanu qatt ma kien impjegat maghha! Anzi fl-ittra tieghu l-istess imputat jaghmel riferenza kontinwa ghall-kuntratt mifthiem u ghall-paga hemm indikata!! Certament jirrizulta li tali kuntratt baqa' vigenti sad-data tas-27 ta' Novembru, 2015, bil-kundizzjonijiet u obbligi li dahhlu ghalihom il-partijiet.

Illi [recte:] **Graeme Paton**, li jidher ikkupjat f'bosta *emails* bejn Porter u Hasu Jani, xehed li Jasu Hanu kien impjegat ma Emax Pay u li kien jaf li kien hemm kuntratt bejn Hanu u Global.<sup>33</sup> Ma kien hemm ebda relazzjoni bejn Emax Pay u Global. Dan ix-xhud ukoll issib diffikulta jispjega kif, hekk kif jixhed, Hasu ghalkemm kien *freelancer*, kien jircevi salarju ta' £7,000 fix-xahar.<sup>34</sup> Xehed kif Porter kien direttur ma Emax Pay u ma kienx jaf bil-konnessjonijiet ta' Porter ma Global.<sup>35</sup>

Issa ghalkemm Paton jistghageb li Hanu kellu paga daqshekk gholja meta ma kienx qed jirrendi "*Honestly I could not believe that he was getting paid seven and a half thousand pounds a month and unfortunately Hasu didn't bring any business in, maybe he has tried but there was no business at all*"<sup>36</sup> **jikkoncedi li ma kien hemm ebda kuntratt bejn Emex Pay u Hanu.** Ghalhekk diffiqli ghal qorti tifhem x'seta wassal li kumpanija li ma kellha ebda obbligu legali ma persuna li ma kienitx qed tilhaq il-miri stabbiliti minnha, tibqa tithallas salarju ta' £7,000 ghal 6 xhur shah, jekk mhux ghax kien hemm kuntratt vigenti - dak ma Global - li kien jobbliga li Hanu jithallas l-ammont ta £7,000 stipulat fil-kuntratt pattwit!

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<sup>32</sup> Fol.230-231

<sup>33</sup> Fol.235

<sup>34</sup> Fol.236

<sup>35</sup> Fol.238

<sup>36</sup> Fol.236

Illi **Ryan Porter** jixhed li Hani ma kienx hadem ma Global izda ma Emex Pay.com<sup>37</sup>, ghalkemm kien iffirma kuntratt mieghu f' isem Global. Muri l-kuntratt jaccetta l-awtenticita` tieghu;<sup>38</sup> *"I was like the manager of the business but the business at the time wasn't making any money"* u ghalhekk jghid li halla dak il-business u beda iehor fejn jghid li Hani mar jahdem mieghu.<sup>39</sup> Isemmi li kien lahaq qbil (bil-fomm) ma' Jani li dan jithallas £4,500. Mistoqsi x'gara mill-kuntratt ffirmat f'isem Global ma' Hani jikkonferma li ma ghamel xejn biex jirrexxindi l-kuntratt *"No I had no obligation to do so. He came to work for me. He was being paid by me. And only be me."*<sup>40</sup> Porter jammetti wkoll li l-kuntratt kien ghadu fis-sehh:

*"Court: However my question is this. You represented Global Settlement in entering into a contract of employment relationship?*

*Witness: Yes.*

*Court: Who would have been responsible to rescind therefore that contract with Mr Jani once he started working for you?*

*Witness: I suppose the Director state. I was not a Director. The Director Steve McKenna would have been the only party.*

*Court: So once this document, this contract of employment was still in force.*

*Witness: Yes.*

*Court: So up to you it was still in force, in so far as you know.*

*Witness: No I mean he never, he never worked for that company whatsoever. The company.*

*Court: Then why, then why if you knew that, why didn't you rescind that contract?*

*Witness: So I believe we did. We gave him a different agreement on the MX pay in the UK.....*

*Court: But have you got a copy of this to see whether this is rescinded by that contract?*

*Witness: I don't know if it was rescinded by that contract I'm sorry."*<sup>41</sup>

**Illi dak li xehed l-imputat kif ukoll Porter u Paton jigi kontradett minn diversi emails mibghuta bejn Jani Hasu, Ryan Porter u Graeme Paton fejn kjarament fihom jidher stampat il-kliem "Hasu Jani Director of**

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<sup>37</sup> Fol.245

<sup>38</sup> Fol.247

<sup>39</sup> Fol.248

<sup>40</sup> Fol.249

<sup>41</sup> Fol.249-250



**Business Development**<sup>42</sup> - kariga li giet krejata bil-kuntratt li sar ma **Global u ma ebda kumpanija ohra!** Interessanti ukoll li l-kumplament tad-dettalji jirreferu ghal Emexpay, bin-numru tat-telephone ikun dak +356 2122 2892, l-istess numru telefoniku li jidher fil-letter head ta' "*Borg Cole Libreri & Associates*".<sup>43</sup> Dik il-letter head tindika bhala l-indirizz tal-ufficju legali 292/10 Republic Street, Valletta, l-indirizz ta' **Global Settlements Holding Ltd.**<sup>44</sup> kif ukoll ta' **Emexpay u Emex High Risk** (vide emails fol.73-77, 157, 159 180).

Gie osservat ukoll mill-Qorti li ghalkemm l-imputat, Porter u Paton jaghmlu minn kollox biex jaghtu l-impressjoni li Emexpay, Emex High Risk u Global Settlements Holding Ltd. kienu separati u distinti u maqtughin minn xulxin, kemm Porter kif ukoll Paton f'*emails* mibghuta minnhom f'isem Emexpay juzaw l-istess indirizz u numru telefoniku ta' **Global Settlements Holding** kif ukoll tal-ufficju legali tal-imputat.<sup>45</sup> **Altru li l-attivitajiet ta' Emex Pay, Emex High Risk u Global baqghu relatati kif isostni Jani Hasu!**

Fid-dawl tal-provi migjuba jirrizulta soddisfacentement ppruvat li l-kuntratt mal-impjegat Jani kien wiehed validu u baqa' vigenti sas-27 ta' Novembru, 2015, data meta skond il-kuntratt tat-2 ta' Frar, 2015, kienet valida notifika ta' terminazzjoni ta' impjieg. Jirrizulta anke kif ammess mill-imputat innifsu fl-ittra mibghuta w kkonfermata minnu (fol.221) li l-impjegat gie notifikat b'terminazzjoni t'impjieg fil-27 ta' Novembru, 2015; ghalhekk dan ifisser li **biex intemm impjieg, dak l-istess impjieg kellu bidu!**

Allura kif qatt jista' jreggi l-argument li d-difiza tittenta taghmel li dan il-kuntratt qatt ma nbeda? Fl-ittra tieghu l-imputat Borg Cole jaghmel riferenza ghall-terminazzjoni t'impjieg bil-miktub - precizament kif stipulat bil-para.8 moqri flimkien ma para.14 tal-kuntratt ma Global; jaghmel riferenza ghall-*probationary period* - precizament kif stipulat fil-para 3 tal-kuntratt ma Global. Riferenzi esklussivi minn persuna - li hi ukoll avukat fil-kamp kummercjali u civili u ghaldaqstant ben struwita fuq is-suggett - ghall-kuntratt li suppost qatt ma dahal fis-sehh!

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<sup>42</sup> Vide emails a fol.115-123 u 153-156

<sup>43</sup> Fol.221

<sup>44</sup> Fol.13

<sup>45</sup> Fol.73, 75-77, 80-82 et seq

Il-Qorti tkompli tistaqsi: Jekk Jani qatt ma kien impjegat ma Global ghaliex Borg Cole ma wegibx b'dan il-mod?<sup>46</sup> Ghaliex jishaq li dik l-ittra ntbgħatet fuq struzzjonijiet ta' Porter meta l-istess Porter xehed li ma kien baqalu ebda kuntatt u rwol ma Global ffit wara li sar il-kuntratt?

Illi fuq dawn ir-rizultanzi processwali l-Qorti tqis li l-prosekuzzjoni rnexxielha tipprova l-kaz tagħha sal-grad rikjest. Il-verzjoni tal-impjegat hija wahda li l-qorti tqis li hi *safe and satisfactory*. Hi wahda kkorborata b'ghadd kbir ta' provi.

Minn naha l-ohra d-difiza kienet wahda konfuza u mifnija b'kontradizzjonijiet li gja saret ampja riferenza għalihom, partikolarment meta jingħad iswed fuq l-abjad li l-kuntratt t'impjegat gie terminat fis-27 ta' Novembru, 2015 u li "*Mr. Jani has been paid in full*". Izda minflok ma tingieb prova f'dan ir-rigward mid-difiza u dan sal-grad mistenni minnha, Porter jghid li l-kuntratt qatt ma dahal fis-sehh!

Tqum il-mistqosija : Għal liema kundizzjonijiet fejn jissemma probation u paga ta' £7,000 kien qed jirreferi Borg Cole jekk Porter jghid li Jani kien beda jithallas £4,500 u l-ftehim kien biss bil-fomm? Kontradizzjoni ohra hi li meta kiteb l-ittra fit-8 ta' Jannar, 2016, Borg Cole jibqa' jirreferi għal "*Mr Ryan Porter, the Company's CEO*"! CEO ta' kumpanija li fi kliem l-imputat baqgħet *dormant* u dwar liema l-istess Porter jixhed li ma kienx baqalu rwol u konnessjoni magħha "*Well at that time I worked for Global Settlements here in Malta and Hasi was a sales executive and shortly after we met him I changed jobs all together. I became a Director of a UK Company. I moved the business to the UK .....Well I was no longer working for the company*".<sup>47</sup>

Il-Qorti ser tagħzel li tkun ferm kawta fil-kummenti tagħha dwar ix-xhieda mogħtija mill-imputat Borg Cole. Tghid biss li ma tistax tistrieħ fuq din ix-xhieda kif lanqas ma tqis bhala kredibbli u veritjeri dawk ta' Paton u Porter. Għall-kuntrarju x-xhieda u l-verzjoni mogħtija ta' Jani Hasu hi mill-aktar kredibbli u kkorborata b'abbundanza ta' provi kif intqal qabel.

Illi l-artikolu 13 tal-Att dwar l-Interpretazzjoni, Kapitolu 249 tal-Ligijiet ta' Malta jipprovdi:

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<sup>46</sup> Fol.221

<sup>47</sup> Fol.245

Meta xi reat taht jew kontra xi dispożizzjoni li tinsab f'xi Att, li jkun għadda sew qabel jew wara dan l-Att, isir minn korp jew għaqda ta' persuni, sew jekk tkun persuna ġuridika jew le, kull persuna li, fil-hin tal-għemil tar-reat, kienet direttur, *manager*, segretarju jew uffiċjal ieħor simili tal-korp jew għaqda, jew kienet tidher li qed taġixxi f'dik il-kariga, tkun haġja ta' dak ir-reat kemm il-darba ma tippruvax li r-reat ikun sar mingħajr it-taġħrif tagħha u li tkun eżerċitat id-diligenza kollha xierqa biex tevita l-għemil tar-reat:

Illi gie pruvat li l-imputat fiz-zmien li fih twettaq ir-reat addebitat lilu kien jikkupa kariga t'uffiċjal kif hekk deskritt fil-kumpanija Global Settlements Holdings Limited. Kif gja ntqal *emails* juru li l-imputat kien qed ikun kkupjat b'kommunikazzjonijiet bejn Porter u Jasu Hani,<sup>48</sup> filwaqt li ma zammx lura milli jirrispondi ittra mibguta lilu f'isem l-istess kumpanija.

Li kieku verament kien qed jikteb fuq struzzjonijiet ta' xi terz (u cioe` f'isem Porter li, fi kliemu stess, kien spiccalu l-interess fil-kumpanija), l-ittra mibguta minn Borg Cole kienet tkun tirrifletti dan. Wara kollox l-imputat hu avukat u tenut kont tas-snin twal fil-professjoni legali jaf bejn tajjeb kif ghandu jiddistingwi bejn sitwazzjonijiet fejn ghandu jwiegeb u jindirizza persuna fil-vesti tieghu personali jew fil-kapacita` tieghu professjonali!

Ghal dawn il-mottivi wara li rat l-artikoli 5, 22, 23, 36, 45, 46 u 47(2) tal-Att dwar l-Impiegi u r-Relazzjonijiet Industrijali, Kapitlu 452 tal-Ligijiet ta' Malta, ir-regolamenti 8 u 22 tar-Regolamenti dwar l-Organizzazzjoni tal-Hin tax-Xoghol, Avviz Legali 247 tal-2003, tar-regolament 3 tal-Ordni ta' Standard Nazzjonali dwar Allowance fil-Gimgha (Avviz Legali 112 tal-1988), issib lill-imputat hati tal-akkuza migjuba fil-konfront tieghu u tikkundannah multa ta' €500.

F'kaz li tali ammont ma jithallasx hekk kif ordnat, ghandu jigi konvertit fi prigunerija ai termini tal-ligi.

Inoltre` wara li rat l-artikolu 45(2) tal-Att dwar l-Impiegi u r-Relazzjonijiet Industrijali, tordna lil hati jhallas lil Jani Harshandrai Narbeshanker (detentur tal-Passaport Brittaniku Nru. 308105077) l-ammont ta' tletin elf disa mija u dsatax l-Ewro u tmienja u sittin centezmu (€30,919.68)

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<sup>48</sup> *Emails* bejn 10-12 t'Awissu, 2015 - Fol.69-70; 72

Ai termini tal-istess sub-artikolu din l-ordni ghandha l-istess forza u effett u hija esegwibbli bl-istess mod daqslikieku inghatat f'kawza ċivili bejn l-impjegat u l-prinċipal.

**Dr. Donatella M. Frendo Dimech LL.D., Mag. Jur. (Int. Law)**

**Magistrat**