Qorti tal-Appell
(Kompetenza Inferjuri)

Imhallef Anthony Ellul

Appell numru: 12/2018

Joseph G. Pace (appellant)

Vs

Ving Insurance Brokers Ltd u DAN Europe Foundation (appellati)

25 ta' Frar, 2019.

1. B'rikors prezentat fit-28 ta' Settembru, 2016 ir-rikorrent ilmenta li fit-30 ta' Mejju, 2016 tkecca minn Ving Insurance Brokers Ltd wara li kien hemm transfer of business.

2. B'decizjoni tal-31 ta' Jannar, 2018 it-Tribunal Industrijali cahad it-talba tar-rikorrent wara li kkonkluda li:-

> *"(1) Ir-rikorrent Joseph G. Pace ma kienx impjegat ma' Dan Europe Foundation meta gie licenzjat fit-30 ta' Mejju, 2016 u ghaldaqstant din is-socjeta ma hiex il-legittimu kkontradittur u konsegwentement ghandha tigi liberata mill-osservanza tal-gudizzju, u*
>
> *(2) L-istess rikorrent kien licenzjat minn Ving Insurance Brokers Ltd fit-30 ta' Mejju, 2016 waqt perjodu ta' probation u ghaldaqstant din is-socjeta ma kellhiex bzonn taghti raguni ghal dan il-licenzjament".*

3. It-Tribunal irraguna:

> *"It-Tribunal Industrijali ghandu quddiemu l-fatt li kienu x'kienu r-ragunijiet ghall-impieg tar-Rikorrent bil-problemi burokratici li riedu jittiehdu in konsiderazzjoni kien hemm fil-fatt zewg kuntratti tax-xoghol u mhux wiehed. Dawn kienu formalizzati bil-proceduri normali kif titlob il-ligi. Kienu zewg kuntratti li taw lok ghal zewg vinkoli kuntrattwali differenti da parti tar-Rikorrent ma' zewg principali distinti u separati. Iz-zewg dikjarazzjonijiet lill-ETC, wiehed ta' terminazzjoni tal-ewwel kuntratt (Dok. A2 man-Nota Kongunta tal-Intimati) u l-ohra tal-Bidu tal-Impieg (Dok A5) maghmulin a tempo vergine huma indikazzjoni li kien hemm zewg kuntratti separati".*

4. Fid-9 ta' Frar, 2018 ir-rikorrent appella mid-decizjoni fejn qieghed isostni li t-Tribunal kellu jikkunsidra l-effett ta' kontinwazzjoni ta' impjieg, l-effett dwar trasferiment ta' impjieg wara li jkun hemm 'transfer of business' u l-effett tal-

principju illi impjegat ma jistax jikkuntratta illi d-drittijiet bazici tieghu jigu evitat. L-impjieg tal-appellant mal-ewwel kumpannija (Dan Europe Foundation) kien wiehed kontinwu u ghalhekk ma seta qatt tigi applikata kontra tieghu l-effetti tal-probation. Kompla li t-Tribunal naqas milli jaghti l-importanza ghall-fatt li ma kienx hemm tibdil materjali fix-xoghol tieghu. It-Tribunal accetta l-ftehim ta' transazzjoni minghajr ma approfondixxa l-kaz. Ir-rikorrent isostni li hu car li dak li sar ma kien xejn ghajr manuvra tal-appellati biex l-obbligi taghhom fil-konfront tal-MFSA u l-appellant jigu evitati.

5. Fit-28 ta' Frar, 2018 l-appellati wiegbu u taw ir-ragunijiet ghalfejn l-appell ghandu jkun michud.

6. Mill-provi rrizulta li:

   i. Ving Insurance Brokers Ltd (li l-qorti ser tkun qeghda tirreferi ghaliha bhala **'Ving'**) u Dan European Foundation (li fis-sentenza l-qorti ser tirreferi ghaliha bhala **'Dan'**) huma zewg persuni differenti.

   ii. B'ittra datata 15 ta' Settembru, 2014 mibghuta minn Dr Ramiro Cali-Corleo (Dan Europe Group), ir-rikorrent kien infurmat li kien gie ngaggat bhala *"**general manager of DAN Europe Insurance Brokers for a period of 2 years commencing from 1/10/14 and at a base salary of €80,000** as well as profit share and an annual bonus as will be specified in the employment contract to be signed at a later agreed date.... Please confirm your acceptance of this appointment by signing the copy of this letter at your earliest convenience"*. Ghalkemm fl-ittra jinghad li l-partijiet ser jiffirmaw kuntratt ta' impieg, qatt ma gie ffirmat.

   iii. B'kuntratt tal-10 ta' Ottubru, 2014 Dan impjegat lir-rikorrent fil-kariga ta' Senior Executive, *"... with the task of preparing and executing the transition from the management of DAN Europe Insurance Brokers by*

First United Insurance Managers to an in-house management setup based at the Foundation premises in Ta' Xbiex". Fil-kuntratt jinghad li dak l-impieg jittermina hekk kif, *"Mr Pace will be engaged as General Manager and appointed as Director of DEIB once the required clearance is obtained from MFSA, it being understood and agreed by the parties that all the provisions of this agreement shall survive said termination"*.

iv. B'ittra datata 25 ta' Awissu, 2015 l-Malta Financial Services Authority infurmat lid-diretturi ta' Ving li:

> *".... the Authority has no objection to the proposed appointment of Mr Joseph Pace as General Manager and Executive Director of the Company"*.

v. Fil-31 ta' Awissu, 2015 l-istess Dr Ramiro Cali-Corleo baghat ittra lil MFSA fejn infurmaha li Joseph Pace kien General Manager ta' DAN Europe Insurance Brokers Limited (illum Ving) **b'effett mill-1 ta' Settembru, 2015**.

vi. B'ittra tat-22 ta' Jannar, 2016 Dan infurmat lir-rikorrent li peress li kien lesta x-xoghol li kellu jaghmel skont il-kuntratt tal-10 ta' Ottubru, 2014 u peress li kien inghata l-approvazzjoni mill-MFSA sabiex ikun General Manager ta' Ving, l-impieg tieghu kien qieghed jigi tterminat minhabba *redundancy*. F'ittra ohra bl-istess data Ving offrietlu l-posizzjoni ta' General Manager b'salarju ta' €80,000 fis-sena. Mal-ittra intbaghat abbozz ta' kuntratt ta' impieg, fejn gie propost impieg indefinit u b'perjodu ta' prova ta' sena.

vii. B'ittra datata 27 ta' Jannar, 2016 li r-rikorrent baghat lil Dr Cali-Corleo infurmah li kien ilu mill-25 ta' Awissu, 2015 jaghti s-servizzi tieghu bhala General Manager u broker ta' DAN Europe Insurance Brokers Limited, u fl-istess hin jokkupa l-kariga ta' DAN Europe Foundation. Kompla li ghalhekk, *"I believe you will agree that any new employment*

agreement would of necessity require back dating to the 25th August 2015 in order to safeguard the company's self-management license from the MFSA, respect the Board of Directors' decisions and resolutions and fairly compensate me for the DAN Europe Insurance Brokers portion of the dual roles that I occupied so far. Based on your propose base annual salary of €80,000 the arrears due would amount to cirka €35,385 plus adjustments".

viii. B'kuntratt tat-8 ta' Frar, 2016 li r-rikorrent iffirma ma' Dan, gie tterminat l-impjieg tieghu. Fuq il-kuntratt ir-rikorrent ircieva s-somma ta' €7,529 *"... which Sum is paid by way of compromise and in full and final settlement for all/any remuneration and/or claims that the Executive may have had against the Foundation (and/or against the Foundation's partners, officers, directors, representatives and employees) and/or against any related entity (included but not limited to DAN Europe Insurance Brokers Limtied) including but not limited to any claims for wages, remuneration, accrued but unused vacation leave and notice money and any claims arising out of any past understanding or misunderstanding"*.

ix. Fi klawzola 5 tal-istess kuntratt jinghad li l-partijiet huma sodisfatti bih u dak pattwit kien, *".... in full and final settlement of any and all claims that they may have against each other in relation to the employment relationship and termination thereof and hereby irrevocably release and discharge each other for any and all other claims and irrevocably renounce to any other right of action that they may have against each other in relation to the employment relationship and the termination thereof, thus reciprocally granting their full and final acquaintance (recte, quittance) in favour of each other"*.

x. B'kuntratt ta' impieg bl-istess data bejn ir-rikorrent u Ving, ir-rikorrent kien impjegat b'mod indefinit fil-kariga ta', *".... Executive in a full time*

position as the General Manager of the Company". **Il-kuntratt jistipula li l-ewwel sitt xhur huma perjodu ta' probation**.

xi. B'avviz datata 30 ta' Mejju, 2016, Laura Marroni (Managing Director ta' Ving) infurmat lir-rikorrent li l-impieg tieghu kien qieghed jigi terminat fiz-zmien tal-probation u kien qieghed jinghata pre-avviz ta' erba' gimghat skont klawzola 12(d) tal-kuntratt ta' impieg.

7. Ighid x'ighid ir-rikorrent, m'hemmx prova li sar *transfer of business* minn Dan ghal ghand Ving.

8. Hu car daqs il-kristall li b'kuntratt tat-8 ta' Frar 2016 gie tterminat l-impieg tar-rikorrent ma' Dan. Ghaldaqstant, ir-relazzjoni guridika li kien hemm bejn ir-rikorrent u Dan Europe Foundation spiccat. Ghal finijiet ta' din il-kawza m'hemmx dubju li minhabba dak il-kuntratt, Dan ma kinitx legittimu kontradittur tal-kawza ghat-tkeccija ingusta. Meta l-impieg tar-rikorrent kien terminat u li dwaru titratta din il-kawza, kien impjegat ma' Ving u mhux ma' Dan. Ghalhekk dik il-kumpannija biss kienet il-legittimu kontradittur.

9. Fin-nota ta' sottomissjonijiet, ir-rikorrent argumenta li l-impieg tieghu ma' Ving kien beda fl-1 ta' Ottubru, 2014, u *"qatt ma gie mitmum, la formalment u lanqas de facto"*. Pero' mill-kuntratti ffirmati li gew prezentati, ma jirrizultax li r-rikorrent kien impjegat ma' Ving mill-1 ta' Ottubru, 2014. Il-kuntratt ta' impieg ma' Ving kien iffirmat fit-8 ta' Frar, 2016 u fih jinghad car u tond li l-impieg beda mid-data tal-iffirmar tal-kuntratt.

10. Min-naha l-ohra hemm bizzejjed provi li juru li l-appellant kien qieghed jaghmel xoghol ta' General Manager ghall-kumpannija Ving. L-avviz li ta Dr Cali Corleo lil MFSA hi l-aqwa prova (datata 25 ta' Awissu, 2015). Pero' mill-ittra datata 27 ta' Jannar, 2016 li r-rikorrent stess baghat lil Dr Cali Corleo, hu evidenti li meta kien qieghed jaghmel dak ix-xoghol ma kienx impjegat ta' Ving. Fil-fatt minn dik l-ittra jirrizulta li ippretenda li l-ingagg tieghu bhala General Manager ta' Ving ikun *back dated* ghall-25 ta' Awissu, 2015 u li

jithallas l-arretrati ghas-servizz li kien ta. Pretensjoni li llikwida fis-somma ta' €35,385. Kliem li juru li r-rikorrent stess kien jaccetta li f'dak l-istadju kien ghad m'hemmx relazzjoni ta' principal u impjegat bejnu u Ving.

11. Hu veru li hemm l-ittra tal-15 ta' Settembru 2014 li fuqha l-appellant ghamel hafna enfazi. Madankollu minn dak id-dokument hu evidenti li kellu jkun iffirmat kuntratt ta' impieg bejn ir-rikorrent u Ving. Minn dak l-istess dokument jirrizulta wkoll li kien ghad irid jigu pattwiti l-kondizzjonijiet, tant hu hekk li fiha ntqal:

> *"Full details of your terms of appointment will be included in the aforementioned employment contract which should be concluded between us in the coming days"*.

12. Kuntratt li qatt ma gie ffirmat u minflok fl-10 ta' Ottubru, 2014 ir-rikorrent iffirma kuntratt li sar impjegat ta' Dan. F'dak l-istess kuntratt jissemma li kien ghad irid jigi ffirmat il-kuntratt ta' impieg bejn Ving u r-rikorrent u li:

> *"This employment will terminate* ***once Mr Pace will be engaged as General Manager and appointed as Director of DEIB*** *once the required clearance is obtained from MFSA"*.

13. Fil-fatt ftit wara li fil-25 ta' Awissu, 2015 inharget l-awtorizazzjoni mill-Malta Financial Services Authority, Ving baghtet abbozz ta' kuntratt ta' impieg lir-rikorrent. Mid-dokumenti stess li pprezenta r-rikorrent ma jirrizultax li f'dak l-istadju kien qieghed jippretendi li kien diga' impjegat ta' Ving.

14. Irrispettivament jekk fl-impieg li kellu ma' Dan kienx qieghed ukoll jaghti servizz ta' General Manager lil Ving, jibqa' l-fatt li r-rikorrent kien u baqa' impjegat ta' Dan. Kien biss bil-kuntratt tat-8 ta' Frar, 2016 li sar impjegat ta' Ving. Dawn huma l-fatti u m'hijiex kwistjoni li t-Tribunal ta preferenza lill-forma fuq is-sustanza tal-kaz. Il-qorti zzid li ma taqbilx mal-argument tar-rikorrent li fl-ittri tat-22 ta' Jannar, 2016 kien qiegħed jinghata x'jifhem li ghandu zewg impjiegi (ara fol. 21 tal-affidavit), wiehed ma' Dan u l-iehor ma' Ving. Dawk l-ittri juru bic-car li filwaqt li kien ser jigi tterminat l-impieg ma' Dan, ir-rikorrent kien ser jinghata impieg ma' Ving.

15. Rilevanti wkoll hu li fil-kuntratt transazzjoni tat-8 ta' Frar, 2016, li r-rikorrent stess iffirma, jinghad espressament li Dan hallsitu is-somma ta' €7,529 bhala hlas ghas-saldu:

> *"…. for **all/any remuneration and/or claims** that the Executive may have had against the Foundation (and/or against the Foundation's partners, officers, directors, representatives and employees) **and/or against any related entity (including but not limited to DAN Europe Insurance Brokers Limited)**".*

16. Dikjarazzjoni li ma thalli l-ebda dubju li f'dak l-istadju r-rikorrent ma kellu l-ebda *claim* kontra Ving. Jekk ir-rikorrent kien ghadu jippretendi li kien impjegat ta' Ving, seta jirrifjuta li jiffirma l-kuntratt ta' transazzjoni u l-ftehim ta' impieg ma' Ving. Pero' ovvjament kien jaqbillu jiffirma l-kuntratt ta' impieg tat-8 ta' Frar, 2016 ghaliex kien qieghed jikkontempla impieg indefinit u mhux impieg ghal sentejn kif jissemma fl-ittra tal-15 ta' Settembru, 2014 u fil-kuntratt tal-10 ta' Ottubru, 2014.

17. Il-qorti zzid ukoll li fl-ittra tas-27 ta' Jannar, 2016 ir-rikorrent kiteb li kien ilu mill-25 ta' Awissu, 2015 jaghti servizz ta' General Manager lil Ving;

> *"You will appreciate that **as from the 25th August 2015**, following MFSA and Board of Directors' approval and resolutions, **I have been providing my service relative to the work of General Manager and Registered Broker of DAN Europe Insurance Brokers Limited**, while at the same time occupying the post of Senior Executive of the DAN Europe Foundation".*

Posizzjoni li tikkontradici dak li qieghed isostni fil-kawza li kien ilu impjegat ta' Ving sa minn Ottubru, 2014.

18. Minn dak li qrat il-qorti fehmet li r-rikorrent ma setax ikun impjegat ma' Ving qabel ikollu awtorizazzjoni minghand Malta Financial Services Authority, u din kienet wahda mir-ragunijiet ghalfejn f'Ottubru 2014 impjegatu Dan. Fatti li jirrizultaw mill-kuntratt ta' impieg li r-rikorrent iffirma ma' Dan fl-Ottubru, 2014.

19. Inoltre, jekk ghall-grazzja tal-argument biss ir-rikorrent kellu jitqies li sar impjegat ta' Ving mill-25 ta' Awissu, 2015 u tigi skartata l-klawzola dwar *probation* fil-kuntratt tat-8 ta' Frar, 2016, ikun ifisser li l-probation kien ta' sena (artikolu 36(1) tal-Kap. 452). Perjodu li kien ghadu ma skadiex fid-data li r-rikorrent kien avzat li l-impieg ma' Ving kien terminat (Mejju, 2016). Ovvjament jekk dak hu l-kaz ir-rikorrent ma jistax jargumenta li japplikaw is-sitt xhur li jissemmew fil-kuntratt tat-8 ta' Frar, 2016 stante li f'Awissu 2015 ma gie ffirmat l-ebda kuntratt li jikkontempa perjodu ta' *probation* ta' sitt xhur.

20. Maghmula dawn il-konsiderazzjonijiet il-qorti tikkonkludi li m'hemmx bazi ghall-appell tar-rikorrent.

Ghal dawn il-motivi tichad l-appell bl-ispejjez kontra l-appellant.

Anthony Ellul.