



MALTA

**COURT OF MAGISTRATES (MALTA)  
AS A COURT OF CRIMINAL JUDICATURE**

**MAGISTRATE DR.  
SAVIOUR DEMICOLI**

Sitting of the 21 st November, 2005

Number 685/2004

**The Police  
(Inspector Mario Haber)**

**vs.**

**Joseph Martin Borg  
- Omissis -**

The Court,

Seen the charges brought against Joseph Martin Borg, 41 years s.o. of Alfred and Adalgiza nee Fenech born Attard on the 11 th Novembru 1962, and reside at Camelia, Valletta Road Mosta. ID card number 724262M.

And

- omissis –

accused with having on the 10th of August 2004 and on the previous dates at The Wing Wah restaurant, St. Anthony street, Bugibba and in other parts of Malta taken in his employment, or gave work to, any person who was not an exempt person and was not in possession of a licence granted to him for the purpose of such employment or work under the provisions of Chapter 217 of the Laws of Malta.

And also with having in the same circumstances as an employer, who employs another person whole-time, part-time or otherwise under a definite or indefinite contract or on probation, failed to notify the Employment and Training Corporation of such employment as stipulated in Legal Notice 110 of the year 1993 (Art 3 A to 10).

Seen the acts of the case and the exhibited documents.

Seen the Attorney General's Consent (CSH2) at folio 18 of the acts of the proceedings and noted that in his Examination (folio 23 of the acts of the proceedings) accused Joseph Martin Borg to the question whether he objects to his case being dealt with summarily, after he was given a reasonable time to reply, replied no he does not object.

Seen the written submissions of the Prosecution and that of the accused.

Noted that in the Sitting held on the 19<sup>th</sup> October, 2005 Prosecution and Defence declared that they agree that the proceedings in this case be conducted in the English Language.

Noted also that in the same Sitting held on the 19<sup>th</sup> October, 2005 the accused, for all intents and purposes, declared that he understands the English Language.

Furthermore noted that in the same Sitting (19<sup>th</sup> October, 2005) Prosecution and Defence declared that they exempt the Court from re-hearing the witnesses already heard in the proceedings. Moreover, Prosecution and

Defence declared that they do not need to make any further submissions to the Court and therefore requested the Court to adjourn the case for judgement.

As regards the fact whether Wei Hong had a work permit in order to work on the 10<sup>th</sup> August 2004 at the Wing Wah Restaurant, St Anthony Street, Bugibba, the Court declares that the Prosecution managed to prove that on the date in question said Wei Hong had no such permit.

In this regard the Court makes reference to the deposition given in the Sitting held on the 11<sup>th</sup> October, 2004 by Alexander Fenech, Principal in the Department for Citizenship and Expatriates Affairs. From this deposition it emerges that on the 10<sup>th</sup> August 2004, Wei Hong had only a pending application which application was approved on the 11<sup>th</sup> August by the board but the police had sent an objection to the issuing of a working permit and consequently her application was refused.

The Court makes also reference to the deposition of Inspector Mario Haber given in the Sitting held on the 1<sup>st</sup> September, 2004 where, under cross-examination, said witness, inter alia, stated: "I confirm that Joseph Martin Borg informed me that he applied on behalf of Wei Hong for a permit but his was still pending. It is true there was an application which was in actual fact still pending." (Underlining by the Court).

As to who was the person responsible for the Wing Wah Restaurant, the Court is of the opinion that from the deposition of the accused Joseph Martin Borg given in the Sitting held on the 24<sup>th</sup> January, 2005 it emerges that same accused was the person responsible for said restaurant. In this regard the Court makes reference to the deposition given by accused Joseph Martin Borg (Sitting of the 24<sup>th</sup> January, 2005) where said accused, inter alia, stated: "I am the director of the restaurant Wing Wang Restaurant in St. Anthony Street in B'Bugia. The restaurant opened 3 or 4 weeks prior to the incident in question in July 2004. Asked how many people were employed with me prior to the incident in question I say I

had two. The co-accused known as Jimmy and another person selling the ... .”

Reference is also made to the deposition of Wei Hong given in the Sitting of the 24<sup>th</sup> August, 2004 where said witness, inter alia, stated: “Asked if I know the accused present in Court, I say yes I do. I know them because they are my boss. Joseph Martin Borg is my boss. Asked if I know Wao Wong Fang I say, he runs the restaurant in question.” “... .” “The accused Joseph Martin Borg is applying for me to get a work permit to work in the restaurant. Joseph Martin Borg however never gave me any money. In all I’ve met Joseph Martin Borg a few times. Asked if my work permit have been issued, I say I do not know.”

The Court will now examine the issue as to the nature of the presence of Wei Hong at the Wing Wah Restaurant. Reference is here made to the deposition of Wei Hong given in the Sitting held on the 24<sup>th</sup> August, 2004 where said witness, inter alia, stated: “Asked if I worked in the restaurant in question, I say no, I helped my friend Suni. My friend Suni is a waitress. I go to the restaurant in question once a week to help Suni. At times Suni leaves early and I help her to close the door. Sometimes I help Jimmy too. The accused Wao Wong Fang is known in Malta as Jimmy and sometimes I helped Jimmy. I helped him in the kitchen, however Jimmy does not pay me because I am his friend. Jimmy never pays me, sometimes he gives me a tip because of our friendship.” (Underlining by the Court).

In the Sitting held on the 27<sup>th</sup> August, 2004 said witness Wei Hong, inter alia, stated: “I confirm that when I was asked by the police, he never asked me if the accused gave me any money for my services. I confirm the version I gave to the Court on the previous Sitting on the 24<sup>th</sup> August that both accused never gave me any money for services rendered. I confirm on oath that I never worked in the restaurant. Sometimes the accused Wao Gao Peng gave me a little money in the sense of tips like

Lm1.50 and I considered that this money which the accused gave me because of our friendship.”

“ . . . ”

“The Police when they came into the restaurant asked me if I had a work permit and I said that I had applied and then he said how could you work here without a working permit and I did not reply to that question. Asked by the prosecuting officer when if the police asked me if I worked there what I said, I say that I remember that I was very nervous on that night and I do not recall the answer I gave him. Asked whether it is true what the sergeant in other proceedings that he asked me if I worked there and I replied yes, I say I do not know. Sometimes there used to be tips on the table and I turn to the accused Wao Goa Peng and I tell him is it okay if I take the tips and he says yes. Asked why I did this, I say because we were very friends. When the police came into the restaurant I was there alone, no chef, the restaurant was closed and no clients. It was Tuesday. When the police came there were also no bookings in the restaurant. I used to go to the restaurant once a week and this when I used to talk with Jimmy. At times there would be clients in the restaurant. Usually I do not help out however when it is very busy and I am there, I give a helping hand. However the clients never actually paid me. I used to take the tips when the clients leave when I used to be alone with Jimmy. Sometimes actually Jimmy complained. I was never asked by Joseph Martin Borg what restaurant I went on my own accord as of yet I do not work for Joseph Martin Borg. I do not receive any salary from Joseph Martin Borg since I did not work and I did not expect to either.

When the police entered the restaurant I was doing nothing, just standing due to the fact that I have a work permit application. I applied to work as an assistant chef. There were a very few occasions when I actually served customers.” (Underlining by the Court).

Reference is now being made to the deposition of Inspector Mario Haber given in the Sitting held on the 1<sup>st</sup> September, 2004, where said witness, inter alia, stated: “I spoke to Wao where she stated that she used to go to this

restaurant for the last month twice a week for only two hours. She stated that the owner of the restaurant is Joseph Martin Borg but Wong known as Jimmy used to give her some of the tips because she used to help him. I spoke to Joseph Martin Borg. When he was asked if he was responsible for Wae when she was there, he stated that yes he was responsible but he also stated that he never gave her any payment but Jimmy used to give her some of the tips. When I spoke to Jimmy, he stated that he used to give her some of the tips because she used to help him.” (Underlining by the Court).

The Court here makes reference to para. 4.1 of the written submissions by Joseph Martin Borg – I.D. Card No. 724262(M) (fol. 116 to fol. 118 of the acts of the case at fol.117, last paragraph) which states: “Since the accused Joseph Martin Borg wanted to employ Wei Hong in terms of the law he specifically requested her not to attend the Wing Wah Restaurant and perform tasks over there until such time when she would be validly covered by a working permit.” (Underlining by the Court).

From the underlined part of the quotation from the deposition of Inspector Mario Haber (Sitting 1<sup>st</sup> September, 2004) the Court is of the opinion that the submission made in para. 4.1 of the written submissions of accused Joseph Martin Borg is contradicted.

The Court will now refer to the deposition of Inspector Mario Haber given in the Sitting held on the 1<sup>st</sup> December, 2004 where, said witness, inter alia, said: “Asked if the kitchen was being used, I say that there was food ready to be cooked which food was raw. The cooker was switched on, the lights of the kitchen was also on. There was cut meat but not cooked. It was placed in bowls. I did not inquire to see whether the food was going to be cooked and prepared for that night.”

The Court here notes that witness PS 1460 George Farrugia in his depositions given in the sitting of the 1<sup>st</sup> September, 2004 refers to the date of inspections at the said restaurant as being the 20<sup>th</sup> August, 2004 and in his

deposition given in the Sitting of the 1<sup>st</sup> December, 2004 said witness refers to the date of the inspection as 20<sup>th</sup> August, however the Court is satisfied that in view of other evidence produced in this case the correct date of the inspection was the 10<sup>th</sup> August, 2004.

In this regard the Court makes reference to the Objection to issue a work permit (fol.42) dated 20<sup>th</sup> August, 2004 where it is stated that: “Reference to work permit application CEA/EXP/2341/2003 in the name of Wei Hong please note that she was found working illegally in Wing Wah Restaurant, St. Anthony Street, Bugibba, on the 10<sup>th</sup> August, 2004. Following this breach of her condition of stay we are objecting that the work permit be issued.”

Reference is also made to the Application of Wei Hong dated 26<sup>th</sup> August, 2004 made with reference to this case (fol. 9 et seq) where, inter alia, there is stated: “Illi l-esponenti ilha mizmuma taht il-kustodja tal-pulizija fil-Kwartieri Generali tal-Pulizija mill-10 ta’ Awissu 2004 ... .” (Underlining by the Court).

The Court also makes reference to the deposition of Inspector Mario Haber (Sitting of the 1<sup>st</sup> September, 2004) where said witness, inter alia, stated: “On the 10<sup>th</sup> August of this year at about 10.15 in the evening I was called to go Wing Wah Restaurant because there was a problem with a Chinese lady. I arrived at this restaurant at about 10.40 or 10.35, there was a Chinese woman in Wing Wah Restaurant in St Anthony Street, Bugibba and she had a paper with a file number.” (Underlining by the Court).

Moreover the Court refers to the copy of a decision of the Board of Appeal on Immigration dated 18<sup>th</sup> August, 2004 (fol. 38 et seq.) in the names: “Ufficjal Principali ta’ l-Immigrazzjoni (Spettur Mario Haber) vs Wej Hong” “Sema’ lill-Ispettur Mario Haber ghall-Ufficjal Principali ta’ l-Immigrazzjoni u lis-Surgent PS 1460 George Farrugia.” “... .”

“Mix-xhieda ta’ PS 1460 George Farrugia u kif ukoll ta’ l-Ispettur Mario Haber irrizulta illi fl-10 ta’ Awissu 2004 ghal xi l-ghaxra u kwart ta’ fil-ghaxija l-appellanti kienet fir-

restaurant f'Bugibba fejn pero' la kien hemm impjegati ohrajn u lanqas klijenti.

L-appellanti ammettiet mas-Surgent George Farrugia meta, giet hekk minnu mistoqsija li hi kienet tahdem hemm hekk, li kienet applikat ghall-work permit u li kienet qed tistenna li tircevih fil-futur immedjat. Hi urietu numru ta' file li wara d-debiti verifiki mill-istess xhud irrizulta li kien il-file taghha fid-Dipartiment tac-Cittadinanza u ta' l-*Expatriates*." (Underlining by the Court).

The Court notes that from the above it clearly emerges that it was impossible that the inspection took place on the 20<sup>th</sup> August, 2004 when the decision by the said Board of Appeal on Immigration was given on the 18<sup>th</sup> August, 2004! Moreover the Court is also satisfied from the above references on this issue that the date of the inspection was the 10<sup>th</sup> August, 2004.

The Court now refers to the deposition of Wei Hong (Sitting of the 27<sup>th</sup> August, 2004) where said witness, inter alia, stated: "When the police came into the restaurant I was there alone, no chef, the restaurant was closed and no clients."

The Court here refers to the deposition of Inspector Mario Haber, (Sitting of the 1<sup>st</sup> December, 2004), where, said witness, inter alia, stated: "Asked if the kitchen was being used, I say that there was food ready to be cooked which food was raw. The cooker was switched on, the lights of the kitchen was also on. There was cut meat but not cooked. It was placed in bowls."

The Court here asks if the restaurant was closed as stated by witness Wei Hong, how come in the kitchen there was food ready to be cooked which food was raw, the cooker was switched on, the lights of the kitchen was also on and there was cut meat but not cooked placed in bowls?



It is also significant to note that said Wei Hong (Sitting 27<sup>th</sup> August, 2004) stated that: “I applied to work as an assistant chef”!

Thus in the date of the inspection Wei Hong was capable of cooking the ready to cook food found in the kitchen!

The Court in the light of the above and considering all the circumstances of the case, having examined the evidence produced by all the parties and seen all the acts of the case, of the exhibited documents and the Written Submissions of the Prosecution and of the accused, is of the opinion that the Prosecution has successfully proven the charges brought against accused Joseph Martin Borg.

Therefore the Court, seen article 32(1) of Chapter 217 of the Laws of Malta and regulations 3A to 10 of Legal Notice 110/1993, declares accused Joseph Martin Borg guilty of the charges brought against him and condemns him to a fine (multa) of five hundred Maltese Liri (Lm500).

**< Final Judgement >**

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