



**QORTI TA' L-APPELL**

**ONOR. IMHALLEF  
PHILIP SCIBERRAS**

Seduta tas-6 ta' Ottubru, 2010

Appell Civili Numru. 29/2010

**Michael Spiteri**

**vs**

**Valletta Gateway Terminals Limited**

**Il-Qorti,**

Fil-25 ta' Gunju, 2010, it-Tribunal Industrijali ppronunzja s-segwenti decizjoni fl-ismijiet premissi:-

**“Introduzzjoni**

Illi r-rikorrent talab lil dan it-Tribunal jiddikjara li t-terminazzjoni mill-impjieg tieghu minn mas-socjeta` intimata ma saritx ghal raguni gusta skond il-ligi.

Da parti taghha, is-socjeta` intimata rribattiet din il-pretensjoni billi allegat li kien l-istess rikorrent li

rizenja mill-impjeg tieghu billi baghat ittra ta' rizenja li giet accettata minnha.

### Fatti

Illi r-rikorrent kien gie promos ghal kariga ta' Health and Safety Supervisor. Kien jaqdi dmiru skont il-ligi u bl-ahjar abbilta tieghu, oltre l-interess li kien jiehu fih, oltre dak akkademiku. Kien qed jara pero' li x-xoghol ma kienx qed jigi apprezzat billi r-rakkomandazzjonijiet tieghu ma kinux qed jigu attwati. Kien jaghmel diversi rapporti fl-interess tas-sahha u s-sigurta` tal-haddiema li pero` l-kumpanija ghazlet li ma tiehux konjizzjoni taghhom. Meta ma setax jissaporti aktar s-sitwazzjoni, baghat ittra datata tnejn u ghoxrin (22) ta' Frar 2008 li testwalment tghid:

"This letter is to serve as my intention resign my position as a Health and Safety Supervision effective as from Mon 25, 2008.

Thank you for the opportunity and I wish you great success in the future endeavours in Health and Safety".

Da parti taghha, Weone Keong Lai, Ricky Yong u Claire Sevasta xehdu fuq ix-xoghol u attegjament tar-rikorrenti. Kien hemm divergenzi fuq l-attwazzjoni tal-konkluzjonijiet li kien jippretendi li hu kien l-uniku espert fil-materja u dak li jghid hu kellu jigi segwit. Kumpanija ma tahdimx hekk. Meta giet rinfaccjata bl-ittra ta' rizenja s-socjeta` intimata accettata minghajr rizerva.

### Konsiderazzjonijiet

Illi l-crux originali tal-pendenza kienet cirkoskrittta minn din il-famuza ittra. Ir-rikorrent jallega li kien qed jirrizenja unikament mill-kariga u mhux mill-impjeg.

Awtomatikament, kellu jmur lura ghal kariga li kellu precedentement. Pero' ma saret l-ebda rizerva f'dan is-sens f'dik l-istess ittra. Ancorche' kieku saret, stava ghal principal li ma jaccettax tali kwalifika. Jispetta unikament lil principal biex iqassam id-dmirijiet fuq il-post tax-xoghol. Il-haddiem ma jistax jaqbad u jiddeciedi huwa fejn u kif ser jahdem. Una volta li r-rizenja giet accettata allura hemm terminazzjoni fir-relazzjoni lavorattiva bejn il-partijiet (vide Claire Demanuele u Grech & Co Ltd - 5/5/95/Trib Ind).

'En passant' mat-trattazzjoni tal-kaz giet sollevata l-kwistjoni tal-possibilita' ta' 'constructive dismissal'.

L-awtorita' Ingliza f'dan il-kamp, Norman Selwyn fl- 'opus magnius' tieghu 'Law on Employment' pagna 406, tistipula li "himself terminates the contract with or without notice in circumstances where he is entitled to terminate it without notice by reason of the employer's conduct, this is known, as 'constructive dismissal'. Although he resigns it is employer's conduct which contributes a repudiation of the contract, and the employee accepts that repudiation by resigning. The employee must clearly indicate he is treating the contract as having been repudiated by the employer. If he fails to do so, by word or by conduct he is not entitled to claim that he has been constructively dismissal."

Il-Qrati nostrali fil-kawza fl-ismijiet 'Carmel sive Lino Farrugia vs Alexandra Palace Hotel Ltd' (P/A - GCD - 07/07/03) taghat id-definizzjoni bhala "ir-rizenja minn impjeg ghal ragunijiet li ghalihom jahti dak li jaghti x-xoghol titqies b'interpretazzjoni bhal li kieku kienet tkeccija" (vide ukoll Cavendish Hotel Ltd vs Jesmond Beck (App Inf 23/11/05) "William Saliba vs Avv Louis Cassar Pullicino noe (App Inf - 09/05/97/ Jacqueline Higgins et noe vs Joseph Galea CP/A - 13/6/97", "Joseph Sammut

vs MIA -P/A 28/5/03, Sun Route Company Ltd vs Claire Zammit Cordina (P/A 25/1/02)", Genevieve Zerafa vs Phone Direct Ltd Hel- Trib Indus - 27/7/07).

Illi l-gurisprudenza nostrali segwiet id-dottrina AngloSassona anke fit-trapass mill-principju ta' unreasonable conduct da parti tal-principal ghal 'significant breach going to the root of the contract. There must be a breach of contract by the employer not simply a failure to act reasonably (Cop. Cit. pp 407). Jispicca biex jikkontendi li "although a constructive dismissal may amount dismissal in law, whether the dismissal is fair or unfair has still to be determined by the facts the case, and whether or not the employers has acted reasonably".

Illi fil-kaz in-ezami t-Tribunal ma jsibx xejn xi jiccensura fl-operat tal-principal. Anzi pjuttost huwa l-kaz illi kien l-istess rikorrent li naqas li jadopera ruhu mar-rekwiziti kif suespost biex jinvoka l-'constructive dismissal.' L-istess rikorrent ma invoka l-ebda ksur allegament kommess mill-principal tieghu fil-kuntratt u/jew kondizzjonijiet tax-xoghol. Lanqas ma allega xi repressjoni fil-kondotta tieghu b' tali mod li ma kenitx ragjonevoli.

Sempliciment peress li ma kienx qed jattwa fedelment is-suggerimenti/opinjonijiet tieghu anke kif kontenuti fir-rapporti minnu esibiti tieghu. Seta' ha passi remedjali ohra, pero' zgur mhux dik minnu invokata. Ghandu jassumi r-responsabbilita' tal-ghazla li ghamel.

### Konkluzjoni

It-Tribunal jiddeciedi illi ma kien l-ebda tkeccija tar-rikorrent mill-impjeg tieghu da parti tal-principal, izda rizenja tieghu mix-xoghol tieghu u lanqas ma jezizti r-rekwiziti ghal dikjarazzjoni ta' 'constructive dismissal'.

Bhala tassazzjoni tad-drittijiet qed tigi ffissata s-somma ta' tmenin Euro (€80).”

Bl-appell tieghu minn din is-sentenza r-rikorrenti impjegat jobbjetta illi hu kien kostrett ma jissoktax fil-kariga li kellu ta' Health and Safety Officer minhabba l-agir tal-principal tieghu u, konsegwentement, ir-rizenja tieghu minn din il-kariga kellha tigi kostruwita bhala wahda ta' *constructive dismissal*;

Jirrizulta mill-atti illi b'ittra tat-22 ta' Frar, 2008 (fol. 17) l-appellant informa lis-superjur dirett tieghu fil-kumpanija illi kien qiegħed jirrizenja mill-kariga li kellu b'effett mill-25 ta' Frar, 2008. Din ir-rizenja giet accettata mill-kumpanija, kif muri mill-ittra responsiva tal-Administrative Officer tal-25 ta' Frar, 2008 (fol. 18) u mic-Certifikat ta' Temm ta' Impjeg (fol. 19);

Indubbjament, ir-rizenja ta' impjegat tirrapprezenta att ta' ezercizzju ta' dritt potestativ fil-poter ta' l-impjegat, individwabbli fl-estinzjoni tar-rapport tax-xogħol u tal-qagħda guridika inerenti għalih. Wisq ragonevolment, meta tqum il-kwestjoni dwar in-natura vera tagħha, dik l-istess rizenja *ut sic* ma teskludix illi tigi mistharrga u accertata l-volonta reali tal-partijiet u jekk dak li avvera ruhu kienx fil-verita xi simulazzjoni jew licenzjament forzat taht il-parvenza ta' rizenja jew, invece, att univoku tal-volonta inkondizzjonata da parti ta' l-impjegat. Ara “**Terranet Limited -vs- Andrew Grech**”, Appell Inferjuri, 4 ta' Ottubru, 2006. S'intendi, opportunement, ta' min jissottolineja illi “*whether an employee has resigned or was dismissed is a question of fact for the employment tribunal to determine, and their findings cannot be challenged unless their conclusions were such that no reasonable employment tribunal could have reached them*” (“**Martin -vs- Glynwed Distribution Ltd**“, 1983, ICR 511);

Din il-Qorti, kif presjeduta, dan kienet diga irrilevatu fid-decizjoni taghha fl-ismijiet “**Anne Bharwani -vs- MIM Training & Development Services Limited**”, 28 ta' Jannar, 2008:-

“Ma jistax ikun disputat illi l-accertament u l-valutazzjoni tal-fatti ghall-iskop li jkun stabbilit jekk ic-cirkostanzi singolari tal-kaz jintegrawx, o meno, qaghda ta' *constructive dismissal* huma materja rimessa eskluzivament lit-Tribunal, u mhux ukoll lil din il-Qorti ta' revizjoni, hekk gurdizzjonalment limitata ghas-sindikar 'fuq put ta' ligi' [Artikolu 82 (3) ta' l-Att XXII ta' l-2002]. Biex ikun xort'ohra u din il-Qorti tkun tista' tirrevedi dik il-valutazzjoni tal-fatti jrid jirrizultalha illi din l-istess valutazzjoni giet maghmula in bazi ghall-ipotesi skorretta tal-ligi (ara **Kollez Vol. XXXVII P I p 126**)”;

Dan premiss, kif osservat dejjem minn din l-istess Qorti (ara “**Joan Zammit -vs- S. Borg & Sons Ltd**”, 19 ta' Ottubru 2005, il-ligi Maltija ma tipprovdi definizzjoni ta' *constructive dismissal*. Inghad, b'danakollu, f'dik l-istess sentenza illi, ciononostante, fil-hsieb ta' din il-Qorti, anke fin-nuqqas ta' definizzjoni aktar specifika da parti tal-legislatur Malti, ma hemm xejn x'josta lit-Tribunal milli fir-ricerka tieghu jasal ghall-kwalifika ta' din l-espressjoni in bazi ghall-fatti u dak tar-rapport kontrattwali bejn il-partijiet;

Jokkorri li jigi konsegwentement ezaminat jekk it-Tribunal fil-kaz in ispecje enuncjahx u applikax skorrettament il-kuncett ta' *constructive dismissal*, kif hekk qed jigi kontez mill-appellanti, b'dan li hu dejjem utli li jigi mfakkar illi kull kaz irid jigi konsiderat fil-fattispeci tieghu partikolari in bazi ghall-provi, u l-aktar is-sussistenza tar-raguni u tac-cirkostanzi li wasslu lill-impjegat biex jiddimetti mill-kariga tieghu. Gudizzju dan rigoruz in kwantu hu l-impjegat li jehtiegli jipprova illi dik ir-rienza tieghu kienet tassew ir-riultat ta' trattament avvers li hu jallega li rceva minghand il-principal tieghu;

Utilment, id-dottrina u l-kazistika Ingliza in tema ta' constructive dismissal toffri dawn is-senjalazzjonijet l-aktar sinjifikattivi, kif ahjar rakkolti mill-opra omonima ta' **Selwyn "Law of Employment"**, Oxford University Press, 15<sup>th</sup> Edition, pagna 406 *et sequitur*):-

(1) *"The employee must clearly indicate that he is treating the contract as having been repudiated by the employer ("**Logobox Ltd -vs- Titherley**", 1977, ICR 369) and if he fails to do so, by word or by conduct, he is not entitled to claim that he has been constructively dismissed ("**Holland -vs- Glendale Industries Ltd**", 1998, ICR 493)" – para. 17.22;*

(2) *"The test for constructive dismissal was to be determined by the contract test, i.e. did the employer's conduct amount to a breach of contract which entitled the employee to resign. The 'unreasonable conduct' theory was dismissed as leading to a finding of constructive dismissal on the most whimsical grounds. Since there had been no breach of contract by the employers there was no dismissal, constructive or otherwise ("**Western Excavating (ECC) Ltd -vs- Sharp**", Court of Appeal, 1978, QB 761)" – Para 17.23;*

(3) *"It follows therefore that only in those cases where the employer's conduct amounts to a significant breach, going to the root of the contract, can now be regarded as being authoritative. There must be a breach of contract, not merely a failure to act reasonably ("**Wodham Stringle Cimmericals (London) Ltd -vs- Brown**", 1983, IRLR 43)" – Para 17.24;*

(4) *"It must be borne in mind that although a constructive dismissal may amount to a dismissal in law, whether the dismissal is fair or unfair has still to be determined by the facts of the case, and whether or not the employer had acted reasonably ("**Industrial Rubber Products -vs- Gillon**", 1977, IRLR 389)" – Para 17.25*

(5) *“It must be stressed that the fact that there is constructive dismissal does not necessary mean that the dismissal is unfair (“Ford -vs- Milthorn Toleman Ltd”, 1980, IRLR 30)”* – para 17.42;

(6) Fundamentalment, *“whether an employer’s conduct amounts to constructive dismissal is a question of fact for the employment tribunal to determine. (“Woods -vs- WM Car Services (Peterborough) Ltd”, 1981, ICT 666)”* – Para 17.42;

Applikati dawn il-principji għall-kaz taht konsiderazzjoni, hi l-fehma ponderata ta' din il-Qorti illi l-fatti ezaminati jikkonfiguraw qagħda ta' rizenja semplici, li ma saretx għal xi “kawza gusta” dovuta għal xi kondotta negattiva ta' min ihaddem influwenti fuq il-kuntratt ta' impjeg jew bhala kwalifika ta' telf ta' fiducja. Dan qieghed jigi rilevat għaliex fuq l-istregwa tal-provi lil Qorti ma jirrizultalhiex illi l-appellanti rceva xi trattament avvers jew dizattenzjoni għas-suggerimenti li, minn zmien għal zmien, huwa ppropona lill-kumpanija għat-titjeb ta' l-iskansar mid-dizgrazzji fuq il-post tax-xogħol. Huwa veru li f'xi okkazonijiet ma kienx hemm qbil għal kollox ma' kull proposta li ressaq izda daqstant iehor huwa veru wkoll illi *“we have accepted Michael’s views and his work on health and safety on many other points”*. Ara xhieda ta' Wye Keong Li, fol. 146 *et sequitur*. L-appellanti għandu jirrikonoxxi illi d-divergenzi ta' opinjonijiet mhux necessarjament u bilfors jitraducu ruhhom f'mankanza ta' fiducja. Tant dan hu hekk li hu gie offert promozzjoni għal Health and Safety Supervisor li huwa ddeklina;

Sinjifikanti li jigi notat illi meta l-appellanti bagħat l-ittra ta' rizenja huwa minn imkien ma indika illi dik ir-rizenja giet hekk forzata fuqu minhabba xi atteggiament negattiv da parti tal-kumpanija li gab konstringiment tali fuqu li hu kien qieghed jitratta r-rapport ta' impjeg tieghu bhala vjolattiv mill-principal. Jista' jkun, u anzi hu ferm probabbli illi l-appellanti hass it-toqol tar-responsabilitajiet li kienet iggor il-kariga tieghu, u li dan ikkawzalu “stress”. Ma' dan il-



Kopja Informali ta' Sentenza

Qorti tissimpatizza, konsiderat li l-appellanti kien ghal bosta snin qabel, mal-kumpanija Cargo Handling, jezegwixxi l-mansjoni ta' 'clerk'. Dan pero` ma jgibx u ma jammontax, ghall-addebitu ta' agir irresponsabbli fil-kumpanija jew ghall-imminar tal-fiducja. L-apprezzament tal-fatti fil-kumpless taghhom u c-cirkostanzi generali tal-kaz ma jwasslux ghall-accettazzjoni u approvazzjoni ta' addebitu bhal dak li jintitola lill-appellanti ghar-rizarciment tal-kumpens. Mhemmx raguni allura biex din il-Qorti tiddissententi mill-konkluzjoni raggunta mit-Tribunal.

Ghal dawn il-motivi din il-Qorti qeghda tirrespingi l-appell u tikkonferma s-sentenza appellata, bl-ispejjez kontra l-appellanti.

**< Sentenza Finali >**

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