Industrial Tribunal Newsletter

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Decision Number: 2340
Diana Spiteri vs Gafa Safeway Ltd
Chairperson: Mr Edmund Tabone

Complainant Ms Diana Spiteri was engaged with Clentec Ltd as a part time cleaner on an indefinite basis on the 15th September 2010. Appellant claimed that as a result of a 'transfer of business', she was engaged by Gafa Safeway Ltd which changed some conditions of employment. She alleged that she was now being exempted from working some hours so as to attend a training course. Complainant alleged that she refused this and was dismissed.

The company on the other hand claimed that it was the employee who resigned, so much so that the company sent her a letter to pay for notice not worked. The company alleged that there was no change in complainant's conditions of employment when the transfer was made.
The Tribunal said that from the documents provided and limited proof available, it noted a lack of professionalism on how the transfer was effected both vis-à-vis the company and also vis-à-vis the employees.

The Tribunal went on to say that in a 'transfer of business' communication between all parties concerned is imperative. It was evident that communication was lacking in this particular case and all parties suffered consequences.

The Tribunal further noted both the complainant's negative attitude and the fact that she found employment as a care worker soon after termination of employment with the company.

The tribunal decided that the termination was a result of resignation and not dismissal.

Decision Number: 2342
Anthony Cristina vs S8S Limited and Signal 8 Security Services Malta Limited
Chairperson: Mr Charles Cassar

Complainant started his employment as a security guard with S8S Ltd on a

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part time basis. Subsequently he shifted to full time employment and worked between 50 and 60 hours per week. On the 30th August 2013 he was assigned night duty at Fort St Angelo. The following morning his shift ended at 6am. Complainant left the site even though his replacement hadn't yet arrived. When complainant's replacement Mr James Aquilina arrived on site at 6.15am, he did not find complainant there. Complainant admitted that he did not inform his superiors that his replacement had not arrived, something he was duty bound to do and he just left the site. Complainant said that he did this because there were two instances when his replacement had not arrived by the end of his shift and not only was it was very difficult for him to contact his superiors but his replacement arrived much later than he should have.

On the 2nd September 2013, complainant was issued with a letter of charge for gross misconduct. After a disciplinary hearing, at which complainant was present with a union representative, management informed complainant that it lost trust in him and was terminating his employment with immediate effect.

The Industrial Tribunal noted that despite the various issues raised by the parties, the fact remains that complainant left the site unattended. The Tribunal said that it was true that the shift had ended, however the complainant was well aware that he was duty bound to inform his superiors that his replacement had not arrived and that he could not leave the site until he was replaced. He said that complainant's behaviour was not excusable. Tribunal observed that prior to the company terminating employment, a meeting was held between the complainant, at which his union representative was present, and Management. Complainant was given the opportunity to give his version of events.

Tribunal decided that after taking into account all the facts provided by the parties, the offence committed by the complainant, who as a security guard occupying a sensitive role, was a serious one. Therefore Tribunal decided that the termination was for good and sufficient cause.

Decision Number: 2369
Latha Shony vs Paragon Ltd
Chairperson: Mr Edmund Tabone

Complainant had been employed with the Company since January 2009. In January 2012 appellant took maternity leave. Appellant returned to work on the 23rd April 2012.

In May complainant informed the company that she bought tickets to go to India, her home country, with her family. Appellant was going to travel on the 28th June and was going to spend six weeks.

The company had a policy that stated clearly that employees have to request leave prior to booking flights, especially in the case of long leave. The company reminded employees periodically about this policy. The company still approved the complainant's request for leave.

Appellant travelled on the 28th June 2012 and should have returned to work on the 6th August 2012. On the 2nd August complainant informed the company that she was not returning on the 6th since her baby's passport was not ready. On the 3rd August 2012 the company sent complainant an email asking her when she was returning back to work. No reply was forthcoming and the company sent reminders on the 8th August 2012 and 21st August 2012.

The company received a reply on the 22nd August that complainant was trying to find a flight back to Malta and will probably return to work either on the 16th September or the 27th September and that she will give an exact date as soon as possible. The complainant did not get back to the company with a definitive date and there was no further correspondence between the parties except for a termination letter by the company dated 5th September, that is five weeks after she should have returned to work, giving abandonment of work as a reason for termination.

During Tribunal proceedings complainant said that the baby's passport was ready and arrived in India on the 20th August. She added that she did everything in her power to return back to Malta as soon as possible and did so on the 7th of October 2015.

The Tribunal in its considerations said that abandonment of work occurs when an employee has no intention of returning, but in this case the complainant did her utmost to return back to work. Tribunal went on to say that the company should have warned the complainant that if she wasn't going to return to work by a specific date, there were going to be consequences. The Tribunal added that the termination letter closed every chance of communication including justification. Complainant never had the intention of abandoning her employment, therefore the company's decision to terminate on grounds of abandonment of work was unjust.

Complainant was granted €8000 in compensation which had to be paid within a month from the date of the Tribunal's decision.

Decision Number: 2379
Antoinette Vella vs CareMalta Limited
Chairperson: Dr Leslie Cuschieri

This case had originally been decided by another Industrial Tribunal, it was appealed and the case was referred back to the company to initiate afresh disciplinary proceedings. These led to the employee being dismissed for a second time and the employee sought recourse through a newly setup Industrial Tribunal to hear the case. This whole process stretched between 2005 – 2015.

Complainant raised several legal points. On the 6th December 2011 a partial decision was given regarding these points raised and it was decided:

1 That this tribunal cannot take cognisance of the dismissal which had occurred back in September 2005;

2 The disciplinary procedure adopted by the company in 2010 (subsequent to the tribunal decision and appeal case) had nothing which rendered it null or invalid;

3 The dismissal of the 2nd November 2010 was procedurally correct and therefore the case could be continued.

Complainant was a home manager at Zejtun Old people's home. The Tribunal said that complainant was very capable as home manager of Zejtun Old People's home, so much so that the service at the home improved. This was certified by the Chairman of Caremalta Ltd. However, Tribunal went on to say, with the passage of time complainant started abusing of her position as Home Manager and started doing things which could have been done better. Both preferential treatment and leniency among staff was mentioned by the Tribunal. A number of complaints were received at Head office regarding complainant's behaviour and performance. Warnings were given to complainant regarding her absence from the home on separate occasions, the length of her breaks as well as invoices which took too long to reach head office.

Tribunal said that since complainant brought proof that there were occasions where she stayed at the home till 10 and 11 in the evening, and this was uncontested by the company, this shows selfishness and ungratefulness on the part of the company when it complained about lengthy breaks. Among other things complainant was charged with selling items belonging to deceased residents and Tribunal said that the procedure adopted by complainant was not clean and transparent.

Tribunal commented that complainant should have, as a minimum, kept a file of how much money was earned when she sold items and how much money was spent when she bought items belonging to deceased clients.

Tribunal acknowledged that complainant had accepted fifty Maltese Liri from a resident for transferring him from a sharing room to a single room but emphasized the fact that the company never divulged the identity of the resident even though mean while he passed away. This meant that complainant could not defend herself properly when the company issued charges against her.

Tribunal decided that whilst complainant was given warnings for trivial matters such as selling items belonging to deceased residents, permitting employees who were off duty to eat at the home and accepting fifty Maltese Liri from an employee of the Home, merited a formal warning which would have meant that if she persists with her behaviour she will be dismissed.

Moreover had these warnings been issued at different times prior to complainant's dismissal, Tribunal would have been more tolerant that the dismissal was justified but the Tribunal cannot not comment about the fact that shortcomings came to light after complainant was dismissed back in 2005.

Tribunal commented that first the company dismissed complainant and subsequently conducted an exercise to justify the dismissal. Despite this, Tribunal went on to say that subsequent to the dismissal there were things which came to light which had complainant been retained in employment a bit longer, could have led her dismissal just the same. Tribunal stated that it therefore had to arrive at an amount of compensation which took into account facts which were in favour and against complainant.

Tribunal commented that despite the considerable amount of proof that complainant presented to Tribunal, she failed to provide it with proof of her earnings in this employment, something which Tribunal deemed essential.

Tribunal decided that complainant was dismissed for reasons not justified at law and therefore merited compensation but declared that subsequently facts came to light which in part merit dismissal, and in this context, ordered the company to pay complainant a global sum of 14,000 Euros within 40 days from date of judgment.

This judgment is on the same lines as that decided by the Tribunal first time round.