



The Major Issues in the Maltese Industrial Relations Scenario

DURING 2015 AND 2016

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Between 2015 and 2016, the Maltese Industrial Relations scene was active on many fronts. Amongst the main disputes which were raised during this period, was the issue of the national airlines - Air Malta. Another issue that featured prominently was the push to increase the statutory minimum pay. A campaign, led by Caritas Malta and supported and sustained by a number of NGOs, intensified during this period. The reform of the industrial tribunal was another dominant issue. This issue, was raised after a court ruling stated that the provisions in the law related to the appointment of chairpersons of the tribunal, did not guarantee impartiality and independence as proclaimed in the Maltese constitution. What follows is an account of the events and debates related to these three issues.

TURBULENCE AT AIR MALTA

Industrial relations at Air Malta were rather tense as the Maltese government, under pressure from the EU Commission, was seeking to find a strategic partner to inject the necessary capital and make the national company economically viable. The government adopted a placatory tone by assuring the four unions representing various categories of the company workforce that the employees would not lose their job. The unions had to walk a very delicate line as they had to defend the plight of their members without appearing to be destructive forces that could derail the rescue plan of the government.

In one of its cost-cutting exercises to balance its books, Air Malta decided that, as from 1st January 2015, the in-flight meal to passengers would no longer be served. As passengers were to be served with a snack it introduced a trolley service against payment. Following this decision the cabin crew was denied a warm meal. In retaliation to this decision, the Union of Cabin Crew ordered its members not to offer the trolley service. Sensing an escalation of this partial industrial action, Air Malta officials held meeting with the union which resulted in an amicable solution and the cabin crew was offered a commission of the sales of the trolley service.

To the social analysts of industrial relations this dispute may seem to be just a quibble. And yet, in spite of its apparent insignificance, this dispute proved to be a fore shadow of the events that were to occur in the industrial relations scenario during 2015 and 2016. Indeed the issue about the restructuring exercise of Air Malta took centre stage in this scenario.

Since 2004, Air Malta has been facing a serious threat to its financial stability through its accumulated losses; it has been struggling to regain economic viability. Towards this end in 2004 a memorandum of understanding (MOU) was signed between the Air Malta Management and the four trade unions representing the different categories of the employees of the company. The austerity measures included in this MOU did not however help Air Malta to regain economic viability. In 2011 the EU Commission authorised a €52 million loan to enable the company overcome its cash flow problem on condition that a restructuring exercise was to be designed aimed at making the company economically viable within five years. At the end of 2016 the enterprise was still registering losses. Throughout the year 2016 the Tourism Minister, Edward Zammit

Lewis, together with the Air Malta management conducted negotiations with a strategic partner who would be willing to inject the necessary capital in the enterprise. While these negotiations were going on the four trade unions representing the different categories of employees, aware that some painful changes had to be made, started making vocal protests in which they asked to be given more information about the plight of their members.

The most vociferous of these four unions was the Airline Pilots Association – Malta (ALPA). As a sign of protest over the delays for the renewal of the collective agreement this association directed the pilots not to wear caps and jackets. This symbolic action was to be followed by industrial action which would cause flight delays and suspension of services. The Chairperson of Air Malta, Maria Micallef, stated that this threat of industrial action by ALPA was jeopardising the deal which could enable the company to become profitable and economically viable. She defined the threat of this industrial action during the peak tourist season as "callous behaviour that makes it difficult to stay silent at a time when the company is in the middle of the most sensitive talks with our potential strategic partner" (Micallef, 2016). The CEO of Air Malta, Philip Micallef, pointed out that the enterprise was "still in a loss making situation" and was striving to break even. The Tourism Minister, Edward Zammit Lewis, accused ALPA of holding Air Malta to ransom by threatening industrial action at the peak tourist season. The Malta Hotels and Restaurant Association (MHRA) expressed its approval to the appeal made by the minister to the union "to act with prudence and refrain from short-sighted actions or threats that cause damage to the tourism industry" (Sansone, 2016).

In view of this a plea to the civil court was filed by Air Malta to stop ALPA from taking industrial action. The court provisionally upheld a warrant of an injunction filed by the company. The Prime Minister endorsed this action taken by Air Malta as he said that the industrial action the pilots' union was contemplating was "disproportionate industrial action that could jeopardise the future of the airline" (Diacono, 2016).

The ALPA president, Domenic Azzopardi, lambasted this court ruling and defined it as a clear threat to the right of free association of workers, as well as to their entitlement to resort to industrial action. The union contested this ruling by filing an appeal in court. In its ruling the court of

appeal revoked the prohibition of injunction. Mr. Justice Meli sitting in the court of appeal stated that the airline had no right to stop a union from taking legitimate action in the best interest of its members, noting that this right was guaranteed by the Constitution. The judge said that the union's right to order industrial action, as guaranteed by the European Convention, could not in any way depend on the company's financial situations, especially since the precarious situation had not been brought about by the pilots. He agreed with the argument brought forward by the representatives of ALPA that the fundamental right to take industrial action could never be temporarily suspended pending talks. The two main trade union organisations in Malta, the General Workers Union (GWU) and the Union Haddiema Magħqudin (UHM) welcomed the ruling of the court of appeal as it unequivocally asserts and at the same time safeguards the absolute right to strike (Xuereb, 2016).

Dr Andrew Borg Cardona, a lawyer with particular interest in employment relations, referring to the first ruling of the court stated that the right to strike was not *per se* denied. The company was seeking protection in particular circumstances. The judge had to decide between two options: allowing an unfettered right to take industrial action even if this was likely to endanger the viability of the company as the management of Air Malta was asserting or restricting the right to strike when the company was facing crucial moments. The implication of this argument is that industrial action should, either explicitly or tacitly, pass the test of proportionality (Borg Cardona, 2016a). In this case proportionality would have been tested in the context of the vulnerability of the enterprise to changing forces and wholesale competitiveness, its precarious financial state and the pressure from the EU Commission. On the other hand, the lack of reconciliation among the social partners during the negotiation process, the lack of information about the plight of their members and the renewal of the collective agreement would also be part of this proportionality scenario.

Following the ruling of the appeal court the parties returned to the negotiation table. A peace deal was reached between the government and ALPA. The details that were given about this agreement were that the employment of pilots is guaranteed in return for higher productivity. This peace deal with pilots seemed to have solved only part of the problem as two days after this agreement, the Union of Cabin Crew (UCC) instructed its

members to work to rule by sticking to their roster and not accepting any flights that encroach on their leave day. The UCC president, Noel Mercieca, stated that his union had requested written assurances that all cabin crew members would keep their jobs and present salaries. In the meantime the GWU was in discussion with government over a proposal that the ground staff would be transferred to a newly set up public company that will be servicing the national airline. The airline company which will be formed following the merger between Air Malta and Alitalia would buy the ground floor service such as passenger handlers and loader from this newly set up public company.

As the drama was nearing its end there seemed to be bewilderment about the outcome that would be unfold once the final curtain would go down.

MINIMUM WAGE REVISITED

The minimum wage has been an ongoing topical issue since 2012 when the report published by Caritas pointed out that the standard of living of the minimum wage earners was below subsistence level. The same NGO in a report 'A Minimum Essential Budget for Decent Living' published in May 2016 noted that even though the number of families living below subsistence level has decreased there was still a substantial number of families whose earnings simply did not allow them to meet their basic needs. This publication by Caritas Malta re-ignited the issue of the minimum wage. On 29 October 2016, a number of social justice NGOs launched a joint campaign in which they called for a 3.5 % increase in minimum wage for three consecutive years (Ganado, 2016).

Low pay and in-work poverty have always been major policy challenges. Lately, these challenges have become more acute as there seem to be glaring signs that the gaps among the disadvantaged and advantaged groups have become wider. While minimum wage is intended to support low-wage workers, the cost of employing them can be at the heart of concerns that legal minimum wage might reduce employment, or damage the international competitiveness of labour intensive firms relying on low-skilled labour.

Rather than increasing the minimum wage, the Maltese government had opted to address this issue by giving in-work benefits and reduce

income tax burdens to low wage earners. This policy was being adopted as government feared that an increase in the minimum wage would cause a wage rise spiral that might have an adverse effect on the competitiveness of many firms. However, following this new pressure and overwhelming evidence of the widening gaps of inequalities, the Prime Minister has effectively decided that the minimum wage needs to rise. He called on the social partners to find consensus about how and when this should happen.

In response to this invitation, the Malta Council for Economic and Social Development (MCESD), Malta's tripartite national social dialogue institution, commissioned two economists to conduct a study on this issue. These two reports which were submitted to MCESD, recommended that the minimum pay should be pegged to a ratio related either to the basic average wage or the median wage. The employers' associations accused the government and NGOs of populism and warned the government of the damages this wage increase is likely to cause to industrial firms and the business community (Macdonald, 2016). The debate at MCESD is to continue in the first half of 2017.

THE INDUSTRIAL TRIBUNAL

The Employment and Industrial Relations Act (EIRA: Chapter 452 of Malta Law) which regulates employment and industrial relations in Malta, makes provisions for the setting up of an Industrial Tribunal. The parties involved in a trade dispute have the right to request the government minister to refer the dispute to this Tribunal for settlement. The Minister is obliged to refer any disputes to the tribunal within 21 days of the date of notification or request. The Tribunal's decision is binding on both parties. During the proceedings the tribunal has the same judicial powers as a civil court which means that it has the right to summon witnesses and ask those involved to take the oath.

A ruling by the Constitutional Court in the form of Civil Court (i.e. not in the appeal jurisdiction) related to a case filed by the General Workers' Union (GWU) against the Attorney General stated that the Industrial Tribunal is anti-constitutional since it does not guarantee independence and impartiality. Article 75(2) of EIRA gives power to the Minister to appoint a person representing the government to sit on the Industrial Tribunal.

According to EIRA, Article 73 (3c) one of the three members comprising this tribunal shall be

“a member representing the Government or other body or company involved in the trade dispute who shall be appointed *ad hoc* by the Minister”.

According to the provisions laid down in EIRA the minister in making appointments to the Industrial Tribunal has to consult MCESD. But there is no definition of consultation in the law. Indeed, MEA was not satisfied with this consultation and was very critical of the appointments of Industrial tribunal chairpersons made by the minister. The logic of the argument of this court ruling is that, even though being obliged to consult MCESD, this discretionary power of the Minister does not guarantee independence and impartiality as laid down in the Constitution of Malta which, in article 39(2), states that:

“Any court or other adjudicating authority prescribed by law for the determination of the existence of the extent of civil rights or obligations shall be independent and impartial; and where proceedings for such a determination are instituted by an any person before such a court or other adjudicating authority, the case shall be given a fair hearing within a reasonable time.”

The *ad hoc* appointment by the Minister according to the Judge impinges on the independence and impartiality of this tribunal. The court ruling also states that the lack of security of tenure of the persons sitting on the tribunal may undermine the impartiality and independence of the tribunal. The court ruling also rejected the provision in the law which imposes on the Tribunal to “take into consideration the social policies of the government based on the principle of social justice and the requirements of any national development plan” (Xuereb, 2016). The Court views this provision an imposition of outside pressure which may prejudice the decision of the Tribunal. The judge in one of key remarks said “Not only

does the law fail to guarantee the tribunal is not prejudiced by outside pressures, but it is the law itself that imposes such outside pressures"(ibid).

In order to address this issue of impartiality and independence of the Industrial tribunal raised by the judge, the Minister responsible for Social Dialogue, Dr Helena Dalli, published a set of amendments which included the following changes:

- Appointment of chairs to the tribunal is for five years instead of three.
- The chairperson can be removed by the Prime Minister while the simple members can be removed by the minister. In both cases of dismissal the Employment Relations Board (ERB) may be consulted.
- Both decisions or removal can be appealed on a point of law by being referred to the Court of Appeal
- The reappointment of a chairperson shall not be made if two thirds of the members of the ERB are against such appointment.
- The persons appointed by the trade unions and those appointed by the Employers' Associations need the approval of fifty per cent of the members of the ERB in order to be reappointed.

(Act No. XXXVIII of 2016 – Government Gazette 28 June 2016, A1028-1034).

Some of the actors involved in the field of industrial relations were not completely satisfied with these amendments. Andrew Borg Cardona, an advocate who has been practising in the proceedings of Industrial Tribunal since 1998 when advocates were given right of audience defined these changes as cosmetic. The Union Haddiema Magqħudin (UHM) through its CEO, Josef Vella, stated that the amendments did not give the chairperson security of tenure and it reconfirmed its stand that the chairperson should be a magistrate. The General Workers' Union (GWU) Secretary General, Josef Bugeja, stated that further changes which are due to be discussed at the ERB will eventually overhaul the system which governs the operations of the Industrial Tribunal. The Government did not seem

to be very favourable to the proposal about appointing a magistrate as a chairperson to the industrial tribunal. A correspondent in the Times of Malta, as if to affirm the stand taken by the minister, stated that "pushing the issues and problems upwards does not necessarily provide assurance of better decisions, improved efficiency, more practical handling of issues at their core levels"). Moreover, the overburdened courts in Malta may not guarantee swift action to remedy matters (Consiglio, 2016).

COMMENTARY

The Air Malta case bears some similarity with that of the Malta Shipyards (formerly Malta Drydocks). Over a prolonged period of time these two state owned enterprises had to depend on state subsidies in order to survive. In both cases the Maltese Government, bound to be in line with the EU Competition policy, was forced to conduct a restructuring exercise aimed at making the two enterprises economically viable. At the end of five year period granted to Malta Shipyards the enterprise failed to register profits and in 2008 was forced to close down.

When the final day of reckoning arrived for the Malta Shipyards, the then EU Commissioner responsible for the EU Competition policy, Neelie Kroes, stated that there was no way out for the enterprise and it had to be declared bankrupt. Judging by the lack of reaction to this statement by the Maltese government and social partners, it can be reasonably assumed that there was a tacit approval about the inevitable closure of Malta Shipyards.

In the case of Air Malta, such resignation to the inevitable was not manifest as the Maltese Government persisted in looking for a solution, even after the deadline set by the EU Commission had elapsed. As a national carrier, Air Malta is much more vital to the Maltese economy than the Malta Shipyards. One of the pillars of the Maltese economy is tourism – an industry which is highly nourished and sustained by the national airline. While the EU Commission is not expected to bend its rules, its sensitivity to the legacy of a national carrier in a small sovereign island state would presumably make it exercise more caution and be more flexible.

As regards the issue of the minimum wage the political considerations, economic constraints and public pressures that impinge on government's policy to adjust and moderate wages were very visible. To the government

minimum wage increases as an element of poverty-reduction packages entail lower direct budgetary cost than direct government intervention. Still in spite of this government may still opt to adopt alternative measures such as government transfers and lower tax burdens in order to refrain from adding extra cost to employers. The lowering of tax burden has implications for how well the minimum wage performs at supporting low wage workers and low-income families, while guarding against the possibility of job losses.

Taking measures aimed at reducing the gap between the amounts an employer pays and the take-home pay that the worker receives can be a viable alternative to employers. Measures aimed at ensuring a greater share of a given minimum wage and consequently adding to household income can be very effective in making work pay. However these balancing acts do not tally with the belief in the virtuous circle which correlates economic growth with higher productivity and hence higher wages. The absence of such correlation can result in more income inequality or its solidification. While acknowledging that the review of the minimum pay should be made in the context of the changing labour market conditions backed by valid and reliable data the decision by the Prime minister to raise minimum wage marks a departure from the neo-classical theory, according to which minimum wage adjustments have negative effects on employment.

In the case of the industrial tribunal, the different views and interests of the social partners came to the fore. Perhaps the 'root and branch' change which some actors were expecting did not materialise. What these amendments might have accomplished was the enhancement of the institutionalization of social dialogue by giving the power and control to the Employment Relations Board over the appointment of chairpersons to the Industrial Tribunal. The ERB, established according to the provisions laid down in EIRA, is tripartite institution at national level. The new role given to ERB by these amendments has given this tripartite institution a higher profile and at the same time enhanced the legitimacy of the process of social dialogue.

CONCLUSION

These three cases have tested the nerves of the trade unions. In the case of Air Malta, the trade unions were acting according to the principles of their foundation, by voicing the concerns of their members and defending their rights. They had however to be wary not to appear as being part of the destructive forces that could derail the strategy being followed by the company in order to survive. In the other two cases, they were asked to be part of the solution. Consensus about the outcome of these two issues was far from consensual. Nevertheless, in spite of this lack of consensus, the platform where the different interests of the actors are recognized still served as a source of integrative and collaborative spirit among the social partners.

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