THE LEGAL RELATIONSHIP IN EMPLOYMENT

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PROTECTION of workers' wages and the security of their employment are two main aspects of the legal relationship between employer and employee regulated by the Conditions of Employment (Regulations) Act 1952. Prior to this date, there was no specific legal recognition of wage protection and the few provisions relating to the termination of employment found in the Civil Code had long proved insufficient in the light of the development of universal industrial law.

Social legislation coupled with the trade union movement has had a short history in Malta. Trade Unions, which had been legalised in the United Kingdom in 1871, were not given a statutory object in Malta until the 1937 Trade Unions Ordinance.[1] Section 2 of the Ordinance states that the statutory object of a trade union is:

'the adjustment of wages and the regulation of the relations between workmen and workmen or between workmen and employer and the conditions of employment generally...'

Trade Unions first sprang up among the employees of the British Admiralty at the Drydocks and it was not until the growth of local private industry that pressure was brought to bear on the legislature to supplement the political remedies afforded by unionism with legal regulation independent of the continuous battle of bargaining power between capital and labour.

PROTECTION OF WAGES

The 1952 Act and consequent amendments recognised the special right of the worker to the fruits of his labour. By law his wages are due to be paid to him at regulated periods, on a working day, and in the form of cash unless it is customary to be paid by cheque. The integrity of his earnings is maintained in so far as up to the amount of £M50 an employee has a privileged claim in respect of wages due against his employer above all the latter's creditors. This protection is extended in regard to the worker's own creditors in the sense that they cannot issue a garnishee order on the first £M100 of monthly wages.

Although an employer cannot withhold a worker's wages by claiming a set-off for the debts that the latter may owe him, there are two wage deductions allowed by law. Fines levied by the employer on his employees are permitted only with the concurrence of three conditions:

'(a) the terms of any written contract of service signed by the *employees* specify in detail the fine or fines to which the employee may become liable...

(b) the terms of any such contract are set out in a notice kept constantly affixed conspicuously in a place or places open to the employees...

(c) the terms of any such contract have been previously approved by the Director.'[2]

The legal phraseology, namely the plural use of 'employees' in (a) above seems to indicate the necessity of a collective agreement between workers and employer before fines can be levied, simultaneously ruling out the possibility of fines in an individual contract of employment, which interpretation is more in workers' interests.

The second case contemplates a worker who without just cause has failed to give his employer the total number of hours of work. The employer may not inflict a fine, but deduct from wages the proportion of the work lost.

[1] Chapter 146 (Laws of Malta 1942)

[2] Director of Labour and Emigration

PROBATIONARY EMPLOYMENT

The main legal difficulty which is confronted in the 1952 Act is the provisions relating to the termination of employment, the reason being, primarily the vagueness of the law and secondly judicial interpretation of the law. In the two decisions of our Courts referred to below there has been a rift between the spirit of the Act as a piece of industrial legislation and that of juridical application. It would be wrong to say that the sole purpose of the Act was the interest of the employee, but it was the main aim to better his conditions of employment.

For example, the law in s. 25(1) contemplates a probationary employment for contracts of service for a definite and an indefinite period;

'The first one month of any employment under a contract of service *shall be deemed* to be probationary employment and may be terminated at will by either party without notice;

Provided that where the employment is governed by an industrial agreement, such agreement *may* provide for a probationary employment up to a period of six months.'

On reading this provision, it is quite clear that the law, in the interests of the employee, has limited the time in which his employer may dismiss him at will and without notice to the maximum of one month, saving the case of an 'industrial agreement' of which the meaning is not clear.[3] This is the line of argument taken up by the prosecution in Police v. Gatt (decided 5.11.72).

The editor of a daily newspaper was bound by a written contract which his employer claimed included a probationary period of 12 months, while the prosecution claimed that the editor had been fired after the initial month without notice or just cause since the long probationary clause was illegal. However the Court of Appeal held that worker and employer may make a valid clause shortening or lenghtening the legal probationary employment of one month, on the basis that s. 25(1) is a presumption 'jure tantum' in the absence of agreement to the contrary.

Therefore, an employer in times of surplus unemployment may exploit the situation and force new employees into a written contract in which for a long period of years they are subject to dismissal without notice.

GOOD CAUSE FOR TERMINATION

Existing law in the Act on the question of good or just cause for dismissal by employer or abandonment by employee reads as follows:

'A contract of service for an indefinite time may be terminated by *giving notice*... by the employee without assigning any reason, and by the employer, saving the provision of subsection (10) of this section, only on grounds of redundancy:'

(s. 25(2))

'Notwithstanding the foregoing provisions of this section an employer may dismiss the employee, and the employee may abandon the service of the employer, *without giving notice* and without any liability to make payment as there is good and sufficient cause for such dismissal or abandonment.'

(s. 25(10))

In simple language, a worker bound by a contract of an *indefinite* time may leave either by giving notice or assigning to his employer a good and sufficient reason. A worker bound by a contract for a *definite* time, on the other hand, must either pay to his employer half the amount of the full wages which would be due to him up to the expiry date of the contract, or provide

[3] According to s. 2 of the Conditions of Employment (Regulations) Act 'industrial agreement' means –

'an agreement entered into between an employer or organisations of employers and employees or organisations of employees regarding conditions of employment in accordance with provisions of any law in force in Malta.'

a good and sufficient reason for abandoning the contract.

As regards an employer, he may dismiss workers bound by an *indefinite* time of employment on good and sufficient cause, OR *by giving notice and only on the ground of redundancy.* Under the Act before 1969, an employer was free to terminate such contracts by merely giving notice and was not obliged to prove any redundancy. In contracts of a *definite* period an employer can dismiss a worker either by paying to him half the amount of the full wages which would be due up to the expiry date of the contract OR by showing good and sufficient cause for the dismissal.

However, the law declined to state whether redundancy would be justifiable grounds for the termination of a contract for a definite time, and it left us with the question that arose in 1972 in the case Police v. Degiorgio. A firm of architects laid off workers who had been employed under a contract for a definite time before their contract had expired on the grounds of redundancy. The Magistrates Court held that redundancy in itself constitutes a 'good and sufficient cause' mentioned in s. 25(10), quoted above, and that the firm was not bound to pay the workers half wages for the remaining portion of the aborted contract.

Legally, the interpretation was correct but as a result it left an unenviable discord between the worker who binds himself to an employer for a definite number of years in a sense of security and the worker who is indefinitely employed. Oddly enough, in times of company redundancy it is the latter who gets notice pay while the former is dismissed without any form of indemnity. The situation is calling out for more logical terminology in the law.

RIGHT OF RE-INSTATEMENT

The main concern in legal circles in regard to the Condition of Employment Act is the absence of provisions dealing with the legal remedies offered to a party who has suffered an unjust termination of employment. As to the compensatory form of damages the law clearly establishes the quantum, but as we have seen it is not clear as to when and in what circumstances it is due. The other remedy, that of re-instatement (restituo in integrum), is an action not normally given in contracts of a personal nature under which we include the contract of service. However, in Act XXI of 1969 amending the 1952 Act, the right of re-instatement was made available by virtue of s. 25(2);

'any employee whose employment is terminated on the grounds of redundancy shall be entitled to re-employment if the post formerly occupied by him is again available within a period of one year from the date of termination of employment.'

This right of re-instatement pertains only to a worker who has been dismissed on grounds of redundancy and is limited by a duration of one year. A further point is that according to the wording of the law this remedy would be available only to cases where the redundant worker was bound by an indefinite time contract. It seems that once again the distinction between definite and indefinite time contracts has been made to the prejudice of what one would call the more secure employment.

In this brief inroad into the application of local industrial legislation it is hoped that the inadequacies of the present laws have been brought to light. Any government which seeks an advanced level of industrialisation with the attainment of economic independence concurrently with social justice in mind must first provide for proper and comprehensive regulation of the conditions of employment.