

A Step-by-Step Guide to the Industrial Tribunal



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1

The Industrial Tribunal

The Courts of Justice



The Inferior Courts

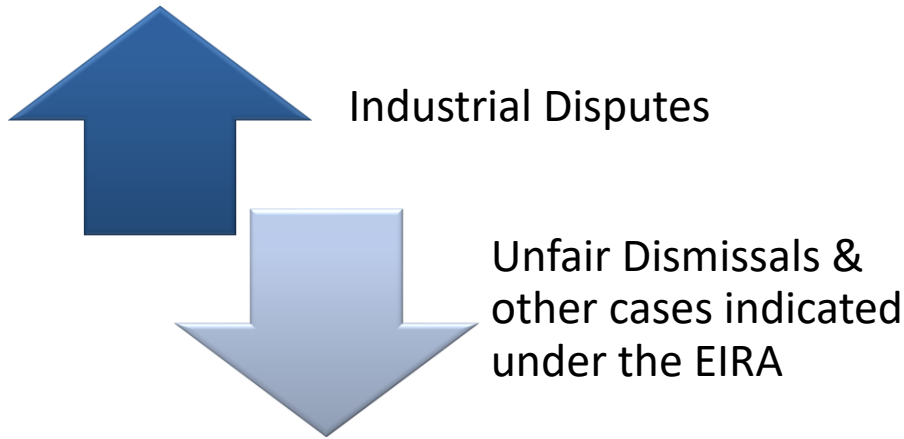


The Industrial Tribunal



2

The Tribunal's Functions



3

Composition

- A panel of **15 persons** are appointed as Tribunal chairpersons
- At least **3 of these persons** must be lawyers
- Chairpersons are appointed for **5 years**, and their tenure may be renewed for another 5 years after that



4

Composition

- The Tribunal will consist of:
 - 1 chairperson, 1 trade union representative and 1 employer representative; or
 - 1 chairperson only



5

Jurisdiction of the Tribunal

Article 30 EIRA & Article 10 Equal Treatment in Employment Regulations:

- Discrimination
- Harassment

Article 30 EIRA:

- Victimisation
- Action for equal pay for equal work



6

Jurisdiction of the Tribunal

Article 73 EIRA:

- Trade disputes which are not amicably settled

Article 75 EIRA:

- Cases of alleged unfair dismissals
- Cases falling within the jurisdiction of the Tribunal as per the provisions of the EIRA



7

Trade Disputes

Step 1: amicable settlement

Step 2: referral of case to the Industrial Tribunal



8

Unfair Dismissal

The EIRA defines unfair dismissal as the termination of **employment of an indefinite time** by the employer:

- Not based on a good & sufficient cause
- Not only based on grounds of redundancy
- Is discriminatory
- For reasons in furtherance to a trade dispute



9

Initiating a Claim

Employees can submit a claim by:

- A simple application
- A detailed declaration of facts within 7 days before the first hearing

Claims must be made within 4 months from the date of the alleged breach



10

The Declaration

The Declaration of Facts should contain:

- Details of the claimant and the employer
- Facts of the case
- Documentation to be presented as evidence
- List of witnesses (witnesses not listed cannot be produced unless the party did not know of the witness before or the need to produce the witness arose after the claim was submitted)



11

The Employer

- As the defendant party, the employer has a right of reply to the worker's declaration
- The employer must also follow the rules of submission of evidence before hearings commence as established vis-a-vis the worker



12

Procedure

- The Tribunal shall operate in the same way as the Civil Courts, albeit with a few exceptions and flexibility
- The Tribunal may also summon witnesses and compel them to testify
- Witnesses may be brought by either party, and may be examined and cross-examined
- The Chairperson may also question witnesses



13

Decisions - Unfair Dismissal

Reinstatement or Re-engagement:

- Only if requested by the worker

Compensation:

- Real losses
- Worker's age
- Effect on potential re-employment



14

Decisions - Discrimination

- Cancellation of any contract of employment or collective agreement or any clause therein which is discriminatory
- Payment of compensation



15

Compensation

The Tribunal considers, amongst other things:

- The employee's salary and length of service
- The time spent unemployed (if applicable)
- The employee's general behaviour during employment
- The severity of the breach
- The company's financial and operational capabilities



16

Appeals

- Tribunal decisions may be appealed **on point of law**, not of fact
- The case is heard by the Court of Appeal, Inferior Jurisdiction
- An appeal must be lodged **within 12 days from the Tribunal decision**



17

Lara Boffa vs. PTL (15/10/2014)

In this redundancy case, the Tribunal gave a detailed list of what it would consider to assess whether redundancies would have been effected lawfully and transparently, such as:

- Lack of business
- Change in the nature of work
- Existence of a restructuring plan
- Consultations



18

Dorianne Bartolo Vella vs. Web International Service Ltd (12/06/2020)

- Bartolo Vella was a housekeeper responsible for various tasks within the company
- She was made redundant after 1.5 years in employment
- Her tasks were absorbed by other employees and third party entities



19

Dorianne Bartolo Vella vs. Web International Service Ltd (12/06/2020)

What did the Tribunal consider?

- The company was doing well
- Bartolo Vella's role did not disappear at all
- There had been no exploration of alternatives with the employee
- The employer accused the employee of poor performance

The Tribunal awarded €14,400 as compensation



20

Fiona Spiteri vs. Oxford House Ltd (22/01/2015)

- Spiteri filed a discrimination claim alleging she was dismissed because she had been pregnant
- Employer claimed that she had miscarried and was dismissed after that, and so maternity protection did not cover her dismissal
- The Tribunal agreed with the employer – there was no discrimination in this regard



21

Fiona Spiteri vs. Oxford House Ltd (22/01/2015)

- Throughout the case, Spiteri also alleged that the dismissal was unfair since she had not been given any other warnings before
- The Tribunal noted that since the case was opened only on the allegation of discriminatory treatment, no conclusion on unfair dismissal could be reached



22

Pauline Basile Pace vs. MFA (01/10/2019)

- The applicant claimed her arbitrary dismissal was unfair and coincided with several issues following the election of the new MFA President and after she had given birth
- The applicant hadn't received one warning in 20 years of employment
- The Tribunal found the dismissal to have been unjust and ordered the applicant's reinstatement



23

Pauline Basile Pace vs. MFA (01/10/2019)

- The plaintiff appealed, requesting compensation during the years within which she remained unemployed
- The appellate court concluded that the Tribunal had failed to consider compensation along with reinstatement (for which the law provides) and sent the case back to the Tribunal



24

Pauline Basile Pace vs. MFA (01/10/2019)

- Back at the Tribunal, it resulted that the applicant did not wish to return to work anymore
- The Tribunal therefore revoked its decision to reinstate and awarded the applicant €46,800 as compensation



25

Mark Trapani vs. Sara Grech Ltd (24/09/2019)

- The applicant's salary had been cut by €13,000 for alleged lack of leadership and other negative feedback about him
- He felt he had no other option but to resign, after which the company retracted the decision
- However the applicant felt that he could not trust the employer again



26

Mark Trapani vs. Sara Grech Ltd (24/09/2019)

- The Tribunal considered that the employer did not allow the applicant to defend himself in light of the alleged negative feedback
- In analysing whether this was a case of constructive dismissal, the Tribunal made reference to English law and decisions, since the matter is not catered for in Maltese law
- The applicant was awarded €7,500



27

Angele Attard Chetcuti noe vs. Lufthansa Technik Malta (24/04/2019)

- The applicant had taken a year's leave from LT Malta to work with LT Philippines and was replaced for this period
- She chose to extend her leave and her replacement remained permanently (she had been warned of this upon renewing her leave)
- Back in Malta, she began working a similar job on a project in Malaysia, and was told to begin planning to move there



28

Angele Attard Chetcuti noe vs. Lufthansa Technik Malta (24/04/2019)

- The Malaysia project was stalled for a few months and she resigned, and filed a case for constructive unfair dismissal
- The Tribunal rejected the claim as there was no evidence of an intention to abandon the Malaysia project at the time, none of the applicants' colleagues had lost their job in the meantime, and it appeared that she had been too rash in her decision to resign



29

Publius Davison vs. De La Rue Currency and Security Print Ltd (27/04/2016)

- A security guard placed a tube of glue (company property) in his pocket to fix a broken power plug he had brought from home when he had some free time
- His superiors saw the tube in his shirt pocket and dismissed him on grounds of theft (an act which he was meant to prevent!), although he tried to explain himself



30

Publius Davison vs. De La Rue Currency and Security Print Ltd (27/04/2016)

- The applicant filed a claim, and the Tribunal concluded that the dismissal was fair and just
- The applicant appealed, claiming that the evidence presented was insufficient to justify his termination



31

Publius Davison vs. De La Rue Currency and Security Print Ltd (27/04/2016)

- The Court of Appeal reversed the decision, basing itself on the employee's loyalty and good behaviour, the reason for the applicant's actions and the low value of the object
- The Court considered the dismissal disproportionate and referred the case back to the Tribunal to award compensation



32

Publius Davison vs. De La Rue Currency and Security Print Ltd (27/04/2016)

- The Tribunal first awarded €18,000 but the applicant appealed since the Tribunal had provided no reasoning for this
- The Tribunal then adjusted the award to €93,374.43 (loss of salary until the applicant found another job, wage discrepancy in the new job and lost benefits)
- The employer appealed the compensation but the Court of Appeal rejected the appeal



33



Question Time

34

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35

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36