

# EMPLOYMENT CASE STUDIES

## IDENTIFYING CAUSES AND SOLUTIONS

**Webinar Cases**

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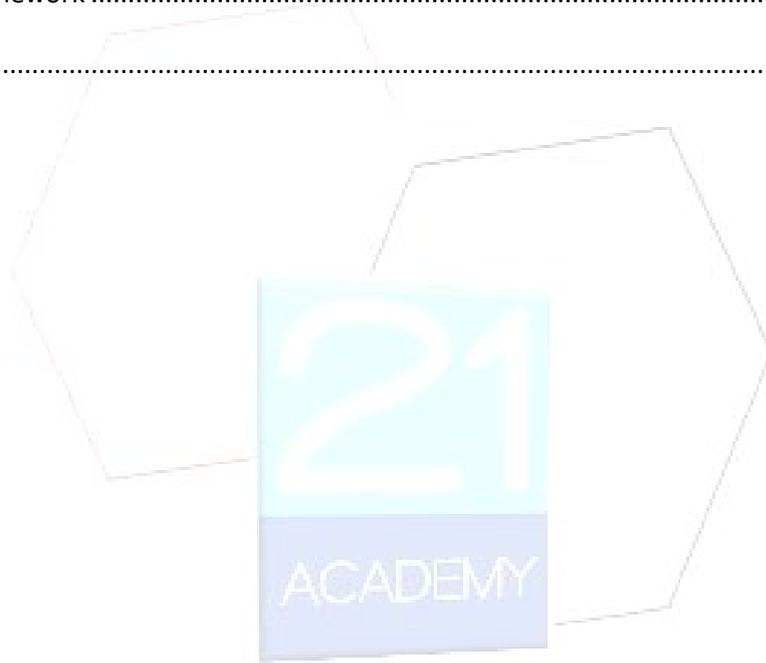
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### At the Eleventh Hour

Tania began working at Eleganza Boutique on 1<sup>st</sup> June 2019 as Assistant Warehouse Manager. Her contract of employment indicated a six-month probationary period.

Tania gained extensive experience working in warehousing at a large department store in the UK, and this was considered one of her best traits by Andy, the owner of Eleganza Boutique. Andy envisaged that she would be crucial in helping the Warehouse Manager overhaul the stocking and storage systems for the store. Quite a difference was felt at the warehouse, following two years without an Assistant Warehouse Manager. The system overhaul was going well, and the warehouse itself was being managed better with Tania's help.

However, Andy had begun to notice a slight issue. Between June and November 2019, Tania had taken 8 separate periods of sick leave, with each period lasting between 2 to 6 days at a time. Whilst he had really appreciated her work ethic, Andy saw that these erratic absences were making her rather unreliable, and also foresaw the state of panic he would be in if she would be absent during the annual sale periods, and was also panicking in view of the upcoming Christmas rush.

He consulted Kristina, the Warehouse Manager, who already had another suitable candidate in mind, if Andy fires Tania. The candidate would also be available to start working by the anticipated Christmas shopping madness which regularly hits the boutique on the 8<sup>th</sup> and 13<sup>th</sup> December holidays.

Andy decided to terminate Tania's employment on 26<sup>th</sup> November 2019, some time before the termination of her probation period. He dated the termination letter, printed it and went to give it to her but found Kristina alone in the warehouse, who informed him that Tania was sick again. Feeling utterly upset, Andy slammed the letter on Tania's desk, and concluded that she would find it on her return.

Tania remained on sick leave until 30<sup>th</sup> November 2019, and was not working on 1<sup>st</sup> December, which was a Sunday. Upon her return on the 2<sup>nd</sup> December, she found the letter on her desk and immediately went to Andy's office to ask what it was about. Following a slight verbal altercation, Tanya huffed out of the office, telling Andy that she knew her employment rights and that she would make him regret his decision. Andy, suddenly panicking, called up his lawyer and asked for advice.

What did the lawyer tell Andy?

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## Baby Bump

Alexia started working with Acqua Marketing Ltd on 10<sup>th</sup> January 2019. Acqua Marketing Ltd forwarded Alexia her employment contract wherein it was stated that her probation period was of 6 months.

At the start of her employment, Alexia was very motivated in her work and her managers, George and Charles, often acknowledged her good work. Nevertheless, towards the end of February 2019, Alexia's work started lacking in quality.

George and Charles felt that it was necessary to conduct a meeting with her to address the situation, held on 23<sup>rd</sup> March 2019. During the meeting, George, Charles and Olivia (HR Manager) were present and informed her that the company required better quality-standard of work by their employees. Olivia asked Alexia whether she had any comments to make in this regard, whether she was enjoying working with the company, whether there were any problems that were affecting her work and so on. Alexia however, assured HR and her superiors that there were no issues and that her work will improve. George expressed that this meeting should serve the purpose of a verbal warning and that in the future, it is expected that her quality of work will improve to the expected quality-standard of the company.

After this meeting, her quality of work began to improve, yet her efforts did not last long. By May 2019, her colleagues complained with George and Charles, specifically about her performance negatively affecting team projects because they would need to re-do most of her work or send her regular reminders to meet deadlines. George consulted with Olivia as to the way forward in this regard, who advised George to issue a warning. George explained to Alexia that it was of paramount importance that her work improves or else she could risk losing her job and issued her a warning. Alexia assured him that her work quality would not be an issue in the future.

By June 2019, Alexia's work quality started lacking again. For this reason, on 14<sup>th</sup> June 2019, she was called for another meeting with George, Charles and Olivia, who informed her that her employment was being terminated. Alexia was distraught by this decision and confided with one of her close colleagues, Marisa.

Marisa told Alexia that she was probably fired because she was showing that she was pregnant. Alexia agreed as well and accused the company of wrongfully terminating her employment because of discrimination since she was showing that she was 20 weeks pregnant. Marisa also informed her that when one time their colleague Sarah had pointed out Alexia's showing baby bump and the whole team present in the office began congratulating Alexia and cheering for her, she noticed George passing by in the hallway. He had stopped to stare at the scene, seeming rather stunned. He did not enter the office to congratulate Alexia and appeared to hurry off to his office. Marisa lives for intrigue, and also despises George (an ex of hers) and claimed she would be willing to testify for Alexia if she sues.

### Proper Guidance Required

Janice had been working as a full-time tour guide with Anglo Tours Ltd for 8 years. She was one of the first tour guides to be employed with the company when it first came into existence. She loved her job, enjoyed meeting people, was responsible and she was always left positive reviews about her excursions, which generally covered regular tours in historical venues, but also included trips to the beach or treks in the countryside.

Janice's employer Anglo Tours Ltd was a subsidiary of Anglo Group Holdings Ltd, parent to a number of other companies including Anglo Language School Ltd. Anglo Language School Ltd had an agreement with Anglo Tours Ltd to obtain tour guides from the latter to take language students on excursions around Malta.

For some reason, 2018 was a rather slow year for Anglo Language School Ltd. Even Janice noticed a reduction in groups and group sizes on her tours, however she was paid a monthly wage and so this did not really affect her directly. However, a number of her colleagues were complaining that the wage was too low anyway and regularly spoke to Anglo Tours Ltd.'s manager about this, but to no avail. A few had already resigned by the end of 2018.

At the end of 2018, the directors of Anglo Group Holdings Ltd began taking into account the group's financial situation. Raising language course fees had only had marginal positive effects, and clearly more needed to be done. One of the directors issued a plan wherein it was decided to shut Anglo Tours Ltd down, seeing how it was already losing employees, and ask teachers employed with Anglo Language School Ltd whether they would be interested in working as "Group Leaders" over and above their teaching duties. Most teachers were young and rather strapped for cash, and easily accepted to start the short course offered to them by the school.

Upon the teachers completing the tour guide course in February 2019, Anglo Tours Ltd was to be shut down. The remaining tour guides received a notice that they were being made redundant. They were to be paid their notice period and an ex gratia severance package of one month's salary.

Most of the remaining guides were glad to go. Two were heavily pregnant and wanted to take care of their baby. Others already had other jobs lined up, whilst a few of the younger ones wanted to continue to study anyway. Janice was rather upset, but began looking for other tour guide jobs, which didn't come easily in the winter.

In March 2019, Janice, still unemployed, ran into Michelle in the street. Michelle, P.A. to the Director of Studies at Anglo Language School Ltd. Informed Janice that the teachers at the school were acting as tour guides for students now. Janice was furious. She immediately booked an appointment with her lawyer and is currently challenging her redundancy in the Industrial Tribunal.

What will the Tribunal decide?

## Food Poisoning

Emma had been working as a waitress at a café in San Gwann for three and a half years. In general, she was a good worker, brought in loads of tips, and had never received any form of warning or reprimand from her boss.

Nina, the café's owner, was rather generous – since her staff worked long days during the winter months, she allowed them regular rostered breaks and provided them with some nibbles to snack on, such as sandwiches, crackers and biscuits. However, Emma suffered from several medically certified food intolerances and was rather limited in her choice of food. Not one to complain, Emma would simply bring in her own mini protein brownies which her mother would prepare for her with specific ingredients which were safe for her to eat, and snack on them during her allocated breaks.

The brownies were best kept cool, and so Emma usually kept them in a Tupperware box in the small fridge in the staff kitchenette. However, throughout the past weeks, Emma began noticing that she'd often find missing brownies from the box whenever she'd go have one. Yet, since the café was always quite busy throughout the day, she could never stalk the kitchenette and catch whoever was taking her food. She became rather distressed about this not only since her mother took lots of time to prepare the brownies for her, buying specific (and comparatively pricey) ingredients specific to her intolerances, but also because of the risk of cross-contamination from other foodstuffs by whoever was opening the box.

Feeling rather upset, Emma spoke with Nina about the situation, who then informed all her staff about it, giving them the benefit of the doubt in case any of them thought the brownies were also being provided by Nina for all the staff. However, throughout the following days, Emma noticed some of her brownies going missing again. Complaining to Nina again seemed to reap no results as the brownie burglar regularly kept at it.

One day, in a bout of internalised rage, Emma opened a kitchenette cabinet and snatched the first bottle she laid her hand on - kitchen floor disinfectant. She poured some of it into her box of brownies, shut the lid, shook it well, and drained the disinfectant out into the sink.

An hour later, Charlotte, another waitress, was heard screaming from the kitchenette and dropping something on the ground. Causing quite a scene in front of the few customers in the café at the time, Charlotte began yelling at Emma, accusing her of trying to kill her. As the story unfolded, it seemed Charlotte had been about to snatch a brownie, but smelt the strange chemical stench reeking out of it just as she was about to place it in her mouth, a smell which she immediately recognised to be that of the kitchen floor disinfectant, which contained highly toxic chemicals. Emma broke down crying and admitted to what she had done, trying to explain that she had absolutely had it with Charlotte and whoever else may have been taking her food.

Nina was utterly appalled and was at a loss as to what action to take. She felt crushed thinking how Emma must have been feeling over the past months, but at the same time could not stomach the consequences of what could have happened to Charlotte had she swallowed the brownie. Weighing everything out, Nina dismissed Emma on the spot and sent her home (with her box of brownies, of course).

Emma's mother, who had never liked Charlotte anyway, was furious, and convinced Emma to sue Nina for unfair dismissal.

Was Nina right to dismiss Emma? What do you think the Tribunal decided?

## Too Much Homework

### (Cherry Ltd case)

Joseph was employed full-time with Star Labs Limited for 10 years. Five years before his employment with Star Labs Limited, Joseph had been involved in a car accident and ended up partially disabled. Joseph has to undergo periodical treatments to this day. These treatments often leave Joseph feeling very weak and helpless. Despite these difficulties, Joseph was very committed to his work and would always produce quality-standard work.

The company however did note that working full-time in the office seemed to worsen the side-effects of Joseph's treatment. In January 2019, Joseph had to undergo a series of daily treatments each morning at a hospital in Birkirkara, a corner away from his house. Joseph still wished to continue working to the best of his abilities, and so the company's HR Manager, Stefania, suggested that he spends those months teleworking to avoid the stress of traffic whilst getting to the office in Żejtun. The company and Joseph agreed that he would telework for January and February 2019 and see how he would get on. By avoiding the stress of getting to work so far from home and the hospital, and avoiding the fast-paced and often tense office environment, Joseph was more focused on his work, could take care of himself better and produced work that was on par with and occasionally even beyond his regular standards.

Towards the end of February 2019, Joseph asked Stefania whether it would be possible to continue teleworking since it seemed to have positive consequences on both him and his work, and furthermore since he was still often feeling exhausted following the incessant treatment and felt better working from his bed or sofa. Stefania agreed and Joseph continued teleworking.

Back at the office, Roberta (Administrative Assistant) asked for periodical telework to take care of her mother during her chemo sessions. Karl (Payroll Officer) asked to telework because of severe back pain after he fell off an elephant when holidaying in Thailand, stating he felt better working lying down in bed. Yvonne (Compliance Officer) asked to telework after her mother passed away, to be with her father who had ended up at home alone.

By May 2019, Star Labs' director, Henry, had gotten fed up with all these requests. He asked Stefania to inform Joseph (via email) that he had ordered that he returns to work at the office.

Joseph was confused with the email and became very anxious. In view of this, Joseph spoke with his private doctor, Dr Pace. Joseph told Dr Pace that he felt that he was not fit to return to work. Dr Pace advised Joseph to forward his fears with the company. Stefania simply informed Joseph that if he does not return to work, then it would imply that he would have abandoned his employment.

Joseph felt that his disability made it more difficult for him to reach an agreement with the company so that he could work more comfortably. Joseph confided with his workmates about how he was treated by the company and many of his colleagues attested that Joseph was working well even during the teleworking period. Nevertheless, Star Labs Company Limited argued that Joseph could no longer telework because the company was moving to newly built premises at SmartCity (Xgħajra) and needed everybody on board before and during the move, and moreover, teleworking would cause serious prejudicial effects to the company.

Failing to return to the office as instructed, Joseph was dismissed. Does he have a case?

## Tread Lightly

### (umbrella case)

Diane worked as a cleaner at Buckingham English Language School, an exclusive language schools for foreign professionals who paid scores of cash to learn English, mostly for professional purposes, from highly qualified teachers specialised in teaching business English. Due to the stellar reputation the school held in Europe and even beyond, many affluent businesspersons also sent their children to the school in Malta to prepare them for their envisaged careers in specialised adolescent business English courses.

Diane had been working at the school for over eight years. One time, in November 2018, she received a written warning from the school director after having forgotten to put up the 'wet floor' sign after cleaning the administration offices, resulting in the payroll manager slipping, but luckily holding onto a nearby chair and remaining upright. The box of leftover curry which he was carrying over to the fridge had not been so lucky.

In June 2019, the school had been fully booked with several groups of MBA students hailing from a prominent Swiss university, who were staying for varying periods of time. Later that same month, Diane was cleaning the teens' classrooms after lessons has ended for the day and the students had ran off to the beach. When cleaning under one of the desks, she found a paper bag with a pair of designer flip-flops inside, which she immediately delivered to the storeroom in the school basement, where lost items were kept, and also informed Marie, Head of Cleaning & Maintenance, at the same time remarking what a splendid pair of flip-flops they were (and how she had fallen in love with – she had always wanted to own Fendi footwear).

One day in mid-July, Diane was cleaning the staff kitchen when her old slip-on shoe's sole completely came apart, effectively leaving her shoes without a sole. In the storeroom, she tried to tape it back together, but it was a rather shoddy and temporary job. Out of the corner of her eye, Diane spotted the bag containing the flip-flops she had found and quickly resolved to change into them for the rest of the day, and went on with her duties until it was time to leave. She had decided that she would go home in them and return them the following morning.

When the school was about to close and the cleaners were leaving the storeroom altogether, Marie asked Diane to join her at the Director's office, where she was asked to remove the flip-flops and wash them thoroughly, after which she could leave the school and not return as she was being dismissed for theft of student property.

What would a tribunal decide in this case?