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Employment Case Studies

Identifying causes & solutions

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- Establish the facts
- Identify the issue
- Contextualise the case
- Who are the key players?
- Identify aggravating factors
- Find the root of the cause
- What alternatives are available to the decision-maker?
- What are the legal implications?



Case Study Analysis

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At the Eleventh Hour



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- Probationary periods commence at the start of employment, and may last for periods of:
 - 6 months; or
 - 12 months in case of technical, executive, administrative or managerial posts and whose wages are at least double the minimum wage
- Shorter (but not longer) periods may be agreed to by both parties
- During probation, either party may terminate without giving a reason, with 1 week's notice if the employment would have lasted for over 1 month



Probation

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Baby Bump



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*“In the case of a pregnant employee on probation, if the employer decides to dismiss a **pregnant employee during the probationary period**, the employer shall be bound to **give the reason or reasons** for the employee’s dismissal in writing at the time of dismissal to justify that the dismissal is unrelated to the employee’s condition.”*

Protection of Maternity (Employment) Regulations (SL 452.93)



Probation & Maternity

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*“**pregnant employee**” means an employee who **informs her employer in writing of her pregnancy** and who subsequently, within fifteen days, formally informs her employer of her pregnancy and of the expected date of confinement by means of a **certificate issued by a registered medical practitioner or midwife;**”*

Protection of Maternity (Employment) Regulations (SL 452.93)



Probation & Maternity

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*“In the case of a pregnant employee who is in her probationary period, if the probationary period has not been exhausted on the date when the pregnant employee is to start her maternity leave, the probationary period shall be deemed to have been **automatically suspended**”*

Protection of Maternity (Employment) Regulations (SL 452.93)



Probation & Maternity

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*“It shall be the **duty of the employer**...to use appropriate means to bring the provisions of these regulations as well as of any measure taken to further the aim of these regulations **to the attention of his employees**”*

*“**discriminatory treatment**” means...any less favourable treatment of a woman related to pregnancy or maternity leave”*

Equal Treatment in Employment Regulations (SL 452.95)



Probation & Maternity

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Proper Guidance Required



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Notice Period

Last-In First-Out
(LIFO) Rule

*The Employment
& Industrial
Relations Act*

Possibility of Re-
Employment

Representative
Consultation



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- SL Shipping was one company within a large group of companies.
- Vanessa, the claimant, was informed that she is being made redundant **due to a decline in work, thus abolishing the necessity to keep her in employment**, on the basis of the LIFO rule.
- She was told that her remaining responsibilities would be passed on to one of her colleagues.



Vanessa Fenech vs. SL Shipping Management Company Ltd (Court of Appeal, 31/10/16)

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- Throughout her employment, her responsibilities had only increased, and therefore there was no proof of a reduction in work.
- The Court of Appeal therefore found that the redundancy was not genuine, as her role had effectively not been abolished but was transferred to another company.
- In reality, her role was taken on by an employee of another company under the same group of companies.



Vanessa Fenech vs. SL Shipping Management Company Ltd (Court of Appeal, 31/10/16)

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- The Court of Appeal noted that **the Tribunal was not obliged to find a reason for the dismissal** if it finds that the redundancy was not genuine.
- What factors did the Court consider to have weakened the company's case?
 - The employee was not notified of the **possibility** of her being made redundant
 - The employee was **the only employee** from the entire company who had been made redundant at the time, in a period when there was no significant reduction in work.



Vanessa Fenech vs. SL Shipping Management Company Ltd (Court of Appeal, 31/10/16)

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“Meta socjeta tittermina impjieg fuq bażi ta’ redundancy, jeżistu prassi li s-socjetà għandha timxi magħhom sabiex it-tmiem ta’ dal-impjieg iseħħ f’sistema u bi proċeduri ġusti, ekwi u trasparenti, apparti l-osservazzjoni tal-liġi li għandha x’taqsam mar-redundancy.”

When a company terminates employment on the basis of redundancy, there are **practices which the company must follow for such termination to occur justly, equitably and transparently**, apart from the observation of the law dealing with redundancies.



Lara Boffa vs. Philip Toledo Ltd (Industrial Tribunal, 15/10/14)

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What are the practices to be followed?

1. A **lack of work/business** in the company, resulting in reduced income, putting employment at risk;
2. Changes (general or specific) requiring **new skills and competences**;
3. Change in the **nature of work** requiring a restructuring for the better operation of the company;
4. The compilation of a **restructuring plan** to show the necessity of the redundancies envisaged.



Lara Boffa vs. Philip Toledo Ltd (Industrial Tribunal, 15/10/14)

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What did the Tribunal note in this case? (1)

- No **restructuring plan** had been made to ultimately justify the redundancy;
- No **consultations** or opportunity to **appeal**;
- It appeared suspicious that in such a wide restructuring process, the claimant was **the only manager who was made redundant**.



Lara Boffa vs. Philip Toledo Ltd (Industrial Tribunal, 15/10/14)

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What did the Tribunal note in this case? (2)

- The Tribunal noted that the redundancy was clearly a ‘clean’ way to solve the issues which arose between the claimant and another employee.
- The claimant’s ‘alternative’ carried a much **lower salary** and put her at an ambiguous position with regard to other employees of whom she was the superior.
- Although the ‘role’ was abolished, all responsibilities thereof **had been transferred to others.**



Lara Boffa vs. Philip Toledo Ltd (Industrial Tribunal, 15/10/14)

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What did the Tribunal note in this case? (3)

- Although the ‘role’ was abolished, all responsibilities thereof **had been transferred to others.**
- Employer did not prove that the redundancy was the **only** reason why it terminated employment;
- The employer’s opinion cannot be regarded as the gospel truth if it is challenged by the employee;



Lara Boffa vs. Philip Toledo Ltd (Industrial Tribunal, 15/10/14)

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Food Poisoning



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Too Much Homework



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- Teleworking has become a widely recognised phenomenon in many businesses in Malta & around the world during the COVID pandemic
- You may choose to put in place:
 - A Teleworking Policy
 - Individual Teleworking Agreements
- What are the benefits?
 - Increased flexibility and motivation
 - Reduced operational/infrastructural costs



Teleworking

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Tread Lightly



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- A disciplinary procedure is one of the most important and essential sections of an employee handbook, as it outlines the manner in which employee misconduct is to be handled.
- Disciplinary procedures should aim to establish and provide:
 - Procedural uniformity
 - Fairness
 - The opportunity to defend oneself
 - Reasonable potential outcomes



Disciplinary Procedures

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Question Time

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UK Employment Law

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