

# Employment Case Studies

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# Discrimination, Equal Pay and Constructive Dismissal

**1. Daniel Bilocca vs HSBC Bank Malta plc – Industrial Tribunal – 05/07/2023 – confirmed by the Court of Appeal – 18/09/2024**

# Key Takeaways

- When claiming discrimination and breach of equal pay, the chosen comparator must be in an analogous situation.
- The Industrial Tribunal's jurisdiction is limited and does not include demands for the payment of a performance bonus.
- For a claim of constructive dismissal to succeed, the applicant must prove the following:
  - ✓ The employer committed a breach of contract of fundamental importance;
  - ✓ The employee left as a direct result of this breach and;
  - ✓ The employee acted promptly in deciding to leave employment.

# Equal Pay for Work of Equal Value – How is Equal Value Determined?

2. Case C-314/23, Sindicato de Tripulantes Auxiliares de Vuelo de Líneas Aéreas (STAVLA), Ministerio Fiscal v Air Nostrum and Others – Court of Justice of the EU – 04/10/2024

# Key Takeaways

- The notion of 'pay' under EU law includes not only wages or salary, but also any other form of consideration, whether monetary or in kind.
- Employers must be able to justify any differences in pay between employees with objective reasons. This process begins by assessing the elements (e.g. training and responsibilities) that contribute to the value of each position.

# Mental Health Awareness in the Workplace

**3. Muhammed Abdulkadir Altinok vs CX FORT LTD – Industrial Tribunal – 25/11/2024**

# Key Takeaways

- **Employers must be more aware and mindful of mental health issues and treat such issues like any other medical condition in terms of occupational health and safety.**
- **Whilst employers are required to make every reasonable effort to support and accommodate employees, there are limits beyond which they are not expected to go. Important – acting reasonably.**



# Disability Rights and Employer's Duty to Provide Reasonable Accommodation

4. Case C-631/22, J.M.A.R. v Ca Na Negreta – Court of Justice of the EU – 18/01/2024



# Key Takeaway

- Individuals with a disability must be able to access, participate in, and advance in employment or training, unless these measures impose a disproportionate burden on the employer.



# Insubordination Amounting to Gross Misconduct

**5. Jennifer Tonna vs IDEA Advisory Ltd – Industrial Tribunal – 14/11/2023**

# Key Takeaway

- Regardless of the level of trust and respect between an employee and an employer, there are boundaries that cannot be crossed. Ultimately, the employer holds authority, and the employee is obliged to respect decisions made in the best interests of the entire company.



# Remote Work – A Right for Employees or a Matter of Employer Discretion?

**6. Wilson vs Financial Conduct Authority - UK Employment Tribunal – 20/10/2023**



# Key Takeaway

- Employees cannot force the employer to allow them to work entirely from home.



# Challenging the Legitimacy of Redundancy

**7. Peter Kriznar vs Eden Hospitality Limited et – Industrial Tribunal – 25/01/2024**

# Key Takeaways

- For a role to be considered abolished in a real, genuine and fair manner, the role must no longer exist in an absolute way for at least the subsequent twelve-months.
- A mere change in name or title does not fulfil the requirements of a redundancy as long as the particular role and work remain factually present.

# A Case of Fake Redundancy and Discrimination

**8. Alessandro Francesco Cutuli vs Asfaltar Construction Limited-  
Industrial Tribunal – 08/03/2023 – confirmed by the Court of Appeal  
on 12/06/2024**



# Key Takeaways

- **Once an employer classifies an employee's termination as redundancy, the burden rests on the employer to prove that the redundancy is genuine.**
- **Employers must treat both Maltese and foreign employees equally, including in the application of disciplinary measures.**

# Leave Approval

**9. Lindsey Sant vs AE Malta Holdings Limited – Industrial Tribunal –  
21/02/2024**

# Key Takeaway

- Leave approval processes should be clearly defined and applied consistently in the workplace.

# Automatic Renewal of Fixed-Term Contracts

**11. Brian Schembri vs. National Orchestra Limited – First Hall Civil Court – 30/09/2024**

# Key Takeaway

- Where a fixed-term contract expires and is automatically renewed, the employer has a duty to abide by the original terms of the original employment contract and may not impose less favourable conditions.

# How Important are Disciplinary Procedures?

**12. James Buhagiar vs Jani Limited – Court of Appeal – 26/01/2018**

**13. Giulio Antonio Spampinato vs Enetsport Limited – Court of Appeal – 26/03/2019**

# Key Takeaways

- Focus should not be on procedure but on the merits of the case.
- However, beware of proceedings set out in writing, especially in collective agreements.



# How Important are Disciplinary Procedures?

**14. Ivan Camilleri vs Allied Newspapers Limited – Court of Appeal –  
12/02/2025**



# Disciplinary Proceedings Apply Equally to All Employees, Irrespective of Position

**15. Reuben Fenech vs L-Awtorità għas-Servizzi Finanzjarji ta' Malta – Court of Appeal – 06/06/2025**

# Key Takeaways

- Whilst it may be appropriate and reasonable to apply increased scrutiny to an employee in an executive position, this does not curtail their right to disciplinary proceedings that are fair, impartial, and transparent, on par with those of other employees.
- The disciplinary procedure established in a Staff Handbook must be adhered to by the employer.

# Breach of Employment Conditions by Employer

**16. TCB Services Ltd vs Muhammed Zohaib – Industrial Tribunal – 08/11/2023**

# Key Takeaway

- **Unilaterally altering an employee's working conditions constitutes a breach by the employer.**

# Thank You!

