SUMMARY

2015/11 Traineeship agreement is separate from employment agreement (MA)

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Facts

In July 2006, the defendant company issued a public call for applications for trainee pilots. The plaintiffs applied for those positions. In mid- January 2007, after the candidates had been selected, a meeting was held at the airline's headquarters where the successful applicants were notified that they would have to pay approximately ¤ 34,950 each for the training that the defendant company would be providing at its expense.

In order to make sure the training course was paid for, the airline had asked the plaintiffs to sign a public deed. This had the effect of securing all their property, present and future, against an amount of approximately ¤ 46,600 each. Some of the applicants initially complained about some of the clauses in their training contract, but they were told that the training contract could not be altered in any way. The defendant company told the plaintiffs they were free to refuse to sign and leave their employment if they wished.

The trainee pilots eventually signed their training contracts and later signed their employment contracts and started working with the defendant company. At that point, the sum agreed upon in the training contract was deducted from their salary. The deduction was made in

consideration of the ¤ 34,950 which the plaintiffs owed the defendant company for their training. Their training commenced at the end of January of the same year.

In December 2008, the plaintiffs filed a claim against the defendant airline, arguing that Clauses 6, 9 and 10 of their training agreements were invalid. The content of these clauses is summarised as follows:

Clause 6 said that upon successful completion of training, the cadets were bound to work with the employer for ten years and if they did not finish the training course, they would be liable to pay back all expenses incurred, the amount of this being secured on their property;
Clause 9 said that in addition to the ten years of work with the airline, a sum would be deducted from their monthly salary and the total amount to be deduced was fixed at ¤ 34,941;
Clause 10 said that cadets would have to pay back all the money spent by the airline if for any reason they did not successfully complete their training, or if they did not work with the company for ten years.

The plaintiffs argued that these clauses were a restriction on free trade and the free movement of workers.

Judgment

The court first examined the training contract and found that it was merely an accessory to the employment contract and not part of it and was therefore not subject to any collective bargaining agreement. The training contract and the employment contract were considered by the court to be autonomous and independent.

The court noted that in accordance with Chapter 343 of the Laws of Malta, a trainee is a person other than an apprentice, who is not of compulsory school age and who is receiving training under an agreement made in writing in a vocation, otherwise than at a recognised educational establishment. The court established that during the training period, the plaintiffs were not considered to be employees, but trainees who in future aimed to become employees. In addition, the court established that it was reasonable for the defendant company, which had incurred expenses to train its employees, to expect a return on its investment.

The court then analysed Clauses 6 and 9 of the training contract and found that they are different in nature and produced different legal effects. The court classified Clause 6 as a “post-employment restraint”. Covenants of this kind can limit the activities of employees where the employer needs to protect its commercial interests, but must not infringe the employee’s right to engage in paid work. The court found that such clauses are a restriction on

competition.

The court further noted that Article 982(1) of the Maltese Civil Code, which is to be found in Chapter 16 of the Laws of Malta, provides that a contract may involve one of the parties promising to refrain from engaging in a particular activity, but the court found that it was necessary to examine whether the clause was reasonable and not in the exclusive interests of one party. In addition, the court noted that the Employment and Industrial Relations Act, Chapter 452 of the Laws of Malta, gives the employee the right to terminate his or her employment without giving any reason.

On this basis, the court found that Clause 6 of the training contract was not part of the employment contract, but an ad hoc and autonomous clause. The court also found that the Clause was different from a noncompete clause, in which an employee is prohibited from seeking employment in the same field for a specific period of time.

The court concluded that Clause 6 was not contrary to Maltese law and did not serve to cancel the security on the amount the company said it was owed.

With respect to Clause 9, the court found this was different from Clause 6. The plaintiff's main argument with regards to Clause 9 was that, by deducting a sum from their salary, the employer was effectively imposing a penalty and this was subject to the appropriate sections of the law. The court however disagreed with this statement and held that nothing in the law suggested that this form of payment was tantamount to a penalty. Further, the law did not preclude an employer from claiming training expenses back from his employees and so Clause 9 was also valid.

The court held that since Clause 10 was, in effect, an amalgamation of Clauses 6 and 9, it too was valid. The court concluded by stating that the plaintiffs knew what they were signing and ought to have known the consequences.

Commentary

This case is very interesting because it is the first case which clearly distinguishes between a contract of employment and other agreements connected to that contract and also because it clarifies that training agreements are binding and enforceable.

In practice, what the court did was to interpret the clauses in the training contract independently of the general principles of Maltese labour law. The danger of this is that the judgment may convey the understanding that parties may contract separately with respect to matters ancillary to labour law and this will allow them to circumvent Maltese Labour law -

the only restriction being that what they decide must be reasonable.

In our view, the court should have weighed up the employees' freedom to move from one job to another with the benefit for the employer of having them stay for a number of years. We think that a reduction on a sliding scale of the amount to be repaid by the employee based on length of service after becoming qualified, should have been considered.

Comments from other jurisdictions

The Netherlands (Peter Vas Nunes): There are two aspects to this case:

(i) the trainees were considered not to have the status of employees, hence the laws governing employment did not apply, and (ii) the Maltese court accepted that Clauses 6, 9 and 10 were valid and enforceable.

Re (i): the Dutch courts accept that the relationship between a company and a trainee or apprentice may not be one of employment, but only if the work performed by the trainee has no or only very little commercial value to the company. The primary purpose of the work must be the professional development of the trainee. A complication is that the ratio between professional developments and commercially useful work tends to shift over time. In the first few months of a traineeship, the trainee may be of no commercial value at all, in fact costing the company more (in others' time) than the value of the work. However, after a certain initial period, the learning curve becomes less steep and the work becomes gradually more valuable.

Re (ii): where the relationship does qualify as one of employment, Dutch courts accept that the contract of employment may provide for an obligation to repay reasonable training costs made for the benefit of the employee's professional development, provided the amount to be repaid diminishes in proportion to the duration of the contract. A contract such as that at issue in the case reported above (if it had qualified as one of employment) would not be considered valid by a Dutch court, if only for this reason. My reading of that contract is that if the employee works for the defendant company for nine years following the completion of his training, he would still need to repay 100% of the ¤ 34,941. This would not be considered acceptable. Moreover, the accumulation of the (unconditional) payment obligation and the (conditional) obligation to repay training costs would seem to be a "double penalty", which a Dutch court would not accept.

Subject: Miscellaneous, employment status

Parties: Ramon Portelli et – v – Air Malta p.l.c.

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