IT-TRIBUNAL TAL-BINI U L-KOSTRUZZJONI

Illum is-6 ta' Awwissu, 2024

Rikors numru: BCT/24/2024 CV

Membri:

Avukat Christopher L. Vella L.L.B., Dip. Not., LL.D.(Melit.)

Perit Samuel Formosa B.E.&A.(Hons), M.Sc. Arch.(Lond), M.Sc.(Env.Pln.& Mgt.), A.&C.E.

Inġ. Johan A. Psaila B. Eng. (Hons.), Pg. Dipl. (Brunel)

Patrick Borg Caruana

vs

L-Awtorita' tal-Bini u l-Kostruzzjoni

Ra r-rikors tal-appell ippreżentat mill-appellant fejn huwa premetta u talab is-segwenti:

> *Dear Sirs,*
> *Please find the below details in line with Chapter 623 – 44 "form of appeal".*
> *Point A*
> *This appeal is with reference to the BCA Leter sent on the 21st March 2024 which states that the Site Manager has*
> *broken rule 623.08 (Use of a drill outside of permissible hours) – kindly refer to the atached leter.*
> *Point B*
> *We wish to contest the appeal with respect to the use of a drill outside of permissible hours. This is being contested*
> *on the basis that the Site Manager could not be present at the me the workers were there. We understand that*
> *this is in breach of rule 623.08 and will do our utmost to avoid this from happening again.*
> *We apologize for any inconvenience caused to the neighbours who felt disturbed, however, kindly note that my*

father, Mr Patrick Borg Caruana, to who this cita□on was issued and is also the permit holder, was not physically
able to be present to stop them. This was due to the fact that he was admited to hospital and recovering from ITU
(Mater Dei) due to Sep□c Shock and other serious illnesses. We understand that this is no form of excuse, however,
his rela□ves were not mentally able to deal with such maters at the □me this cita□on was issued. Please consider
this as our apology for allowing this to happen and our assurance that it will not happen again. Please also consider
the fact that we were aware that they would be working however, we did not know that they would be using a
drill to conduct their work at later hours than 4pm.
Kindly refer to the atached medical documenta□on in response to the above. It is worth no□ng that since this
occurred, we have put in strong measures to ensure that workers are not using a drill a□er 4pm. My father is s□ll
slowly recovering however, we have stepped in, in his absence from the working site.
Point C
We are asking the authority to kindly understand our health-related maters outlined above, and excuse us on the
above instance. As stated above, we have put in strong measures to ensure that workers are not using a drill a□er
4pm and are not disturbing the neighbours in line with the rules and regula□ons.
In this effect, we hope that the authority, revokes their decision on the EUR 500 fine due to these unforeseeable
circumstances.
Point D
Documenta□on atached to this leter.
Point E
We were advised that no fee shall apply for this appeal via email.
Please do not hesitate to reach out to the undersigned should you have any ques□ons.
Stephanie Borg Caruana
Obo/Patrick Borg Caruana

Ra r-risposta tal-Awtorita' li permezz tagħha wieġbet u eċċepiet is-segwenti:

1. Illi l-Awtorità appellata qegħda umilment tissottometti li kwalunkwe deċiżjoni meħuda kienet in konformita' ma dak rikjest mil-liġi, u kwindi korretta f'kull aspett;

2. Illi ex admissis l-appellanti qiegħed jikkonferma li sar il-ksur, u jkompli billi jindika li tali nuqqas ma kienx deliberat imma minħabba ċirkostanzi partikolari mediċi;

3. Illi l-esponenti filwaqt li jirribadixxi li tali ksur sar, jikkondividi wkoll iċ-ċirkostanzi partikolari li jdur miegħu l-ksur, u kwindi dwar l-ammont impost tirrimetti ruħa għad-deċiżjoni tal-Onor. Tribunal;

4. Għaldaqstant fuq dak suindikat, l-Awtorita' appellata qiegħda umilment titlob lil dan l-Onor. Tribunal sabiex tiċħad l-appell odjern;

5. Salv eċċezzjonijiet ulterjuri.

Ra l-atti u d-dokumenti kollha.

Ra l-verbali tas-seduti kollha li seħħew quddiem it-Tribunal.

Ra d-deposizzjonijiet tax-xhieda kollha li tressqu quddiem it-Tribunal.

Ra li l-partijiet iddikjaraw l-istadju tal-provi tagħhom magħluq.

Semgħa it-trattazzjonijiet finali tal-partijiet.

Ra li l-kawża tħalliet għall-llum għas-sentenza.

Ikkunsidra:

Illi l-penali amministrattiva in kwistjoni inħarġet minħabba l-użu ta' drill pnewmatiku barra mill-ħin permissibli.

It-Tribunal jinnota li kemm fir-rikors tiegħu u anke fix-xhieda mogħtija minn bintu Stephanie Borg Caruana, l-appellant qiegħed jammetti dan il-ksur iżda qed jippreżenta bħala ġustifikazzjoni ta' dan in-nuqqas ċertifikati mediċi li jindikaw li ftit jiem qabel huwa kien rikoverat l-isptar. It-tifla tiegħu tgħid li minħabba dawn ir-raġunijiet, matul dawk iż-żminijiet li inħarġet il-multa kienu traskruaw l-involviment tagħhom fuq is-sit in kwistjoni u għaldaqstant ma kellhom ebda kontroll fuq dak li kienu qiegħdin jagħmlu l-ħaddiema li huma ngaġġaw.

It-Tribunal jinnota li l-Awtorita' filwaqt li tinsisti li hemm ammissjoni u ksur ċar, kemm fir-risposta tagħha u kif ukoll fit-trattazzjoni magħmula mill-abbli konsulent legali tagħha, irremmettew ruħhom għad-deċiżjoni ta' dan it-Tribunal għar-rigward tal-ammont li għandu jiġi impost u dan in vista' taċ-ċirkostanzi eċċezzjonali.

It-Tribunal huwa marbut bil-liġi u fid-dawl ta' ammissjoni ċara min naħa tal-appellant nnifsu ma jistax jagħlaq għajn għal kwalunkwe abbuż jew illegalita'. Iżda mill-banda l-oħra jifhem li ċ-ċirkostanzi f'dan il-każ huma pjuttost eċċezzjonali u jimmeritaw li t-Tribunal ikun konsiderevoli tagħhom. Għaldaqstant filwaqt li ser ikun qed jikkonferma l-ħtija tal-appellant fl-aġir tiegħu kif deskritt fl-avviż tal-penali amministrattiva, ser jgħaddi sabiex inaqqas il-multa għal ammont li jirrapreżenta aħjar il-fatti speċie tal-każ.

It-Tribunal jifhem li l-ammont impost, u ċioe dak ta' ħames mitt Ewro (€500) huwa l-ammont li l-Awtorita' timponi għal aġir ta' din in-natura. Minkejja dan, it-Tribunal iqis li fid-dawl tal-fatti kif preżentati lilu, dan l-ammont huwa kemmxejn eċċessiv. It-Tribunal fela bir-reqqa id-Disa' Skeda tal-Avviż Legali 340 tal-2022 liema skeda ma timponi ebda minimu jew massimu għal penali amministrattiva ta' din in-natura. Għaldaqstant it-Tribunal ser jgħaddi sabiex juża d-diskrezzjoni mogħtija lilu mil-liġi u minflok jimponi l-ammont ta' mitt euro (€100) bħala penali amministrattiva għal dak li seħħ nhar l-20 ta' Marzu, 2024. It-Tribunal qed jagħmilha ċara li dan qed jagħmlu biss in vista' li ċ-ċirkostanzi preżentati lilu huma tali li jimmeritaw riduzzjoni tal-penali amministrattiva.

Decide

Għaldaqstant għal dawn ir-raġunijiet kollha msemmija hawn fuq, it-Tribunal qiegħed jilqa' parzjalment l-appell tal-appellant u filwaqt li jikkonferma li l-appellant huwa responsabbli ta' ksur tal-Avviż Legali 340 tal-2022, qiegħed inaqqas l-penali amministrattiva għall-amont ta' mitt Ewro (€100).

********** VERA KOPJA TAL-ORIĠINAL**********

Dr Christopher L. Vella	**Perit Samuel Formosa**	**Inġ. Johan A. Psaila**
Chairperson	Membru	Membru