

1979 May 8

[A. LOIZOU, DEMETRIADES AND SAVVIDES, JJ.]

EUREKA LTD., AND ANOTHER,

Appellants,

v.

THE POLICE,

Respondents.

(*Criminal Appeals Nos. 3979–3980.*)

5 *Emoluments (Temporary Reduction) Law, 1976, (Law 14/76)—Reductions provided by section 3 of the Law—Calculation—Reduction in the emoluments of Managing Director and Member of Board of Directors of Company (the employer)—Who were residing abroad and devoting only part of their time to affairs of Company—Does not amount to termination of their employment and the commencement of a new employment—Calculation of said reduction rightly found to come within provisions of section 3(2)(a) of the Law—Which is not unconstitutional as offending Articles 24, 26*

10 *and 28. 1 of the Constitution.*

Constitutional Law—Constitutionality of legislation—Section 3(2)(a) of the Emoluments (Temporary Reduction) Law, 1976 (Law 14/76) not contrary to Articles 24, 26 and 28. 1 of the Constitution.

15 The appellant Company and its Managing Director were found guilty of the offence of omitting to pay to the Fund for the Relief of Displaced and Stricken Persons the sum of £ 836. 545 mils, contrary to sections 3(1)(2), 4(1), 7(b) and 9 of the Emoluments (Temporary Reduction) Law, 1976 (Law 14/76).

20 The appellant Company had its installations and 90 % of its property in Famagusta town, which is inaccessible to it since the Turkish occupation of the area in August 1974. In October, 1975 the remuneration of its Managing Director and that of his wife, who was employed by the Company as member of the Board

25 of Directors, was reduced because of the financial difficulties in

which the Company found itself. They both moved to Athens and were visiting Cyprus and devoting only a limited part of their time to the affairs of the Company as compared with their full time engagement prior to 1974. They continued so working at a reduced salary until the end of 1976.

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The said sum of £ 836. 545 represented the amount which the appellant Company had to pay under the above Law in respect of the emoluments of the Managing Director and his wife for the year 1976.

The trial Judge came to the conclusion, on the basis of the evidence adduced, that the employment of the said two persons, which started before the 20th July, 1974, continued after the coming into operation of the above Law with the same employer, namely the appellant Company; and it rejected the argument of the appellants that because of the reduction of their emoluments, their residing abroad and their devoting only a percentage of their time to the appellant Company, the conclusion to be drawn was that the original employment had been terminated and that a new employment started after the 20th July.

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Section 3(2)(a) and (b) of Law 14/76 (*supra*) provides as follows:

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“3(2) For the purpose of calculating the reductions provided by this section –

(a) in the case of employment which commenced before the 20th July, 1974 and continues after the coming into force of this Law with the same employer, the reduction is calculated on the basis of the level of remuneration which existed on the 20th July, 1974, increased by the amount of any increases which may have been given after the 20th July, 1974;

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(b) in the case of a new employment which commenced after the 20th July, 1974, the reduction is calculated on the basis of the agreed and actually paid to the employee remuneration”.

Upon appeal against conviction Counsel for the appellant contended:

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(a) That there had been a termination of the old employ-

ment and a commencement of a new one as from October, 1975.

- (b) That section 3(2)(a) of Law 14/76 is unconstitutional as offending Articles 24, 26 and 28 of the Constitution.

5 *Held*, (1) that on the material before the trial Judge the conclusion that there was no termination of employment and a commencement of a new one was duly warranted by the evidence before him; and that he rightly found that this case comes within the provisions of section 3(2)(a) of Law 14/76.

10 (2) That the said section 3(2)(a) does not in any way offend any of the provisions of Articles 24 and 26 of the Constitution; that Article 28. 1 of the Constitution does not come into play at all; that the said section applies to all persons in the same category alike and has no element of discrimination therein; that
15 the fact that a reduction may be made on the same basis from the emoluments of an employee who may not devote all his time to his employer as compared with one who devotes his full time to another employer does not constitute any form of discrimination; and that, accordingly, the appeals must fail.

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Appeals dismissed.

Appeal against conviction.

25 Appeal against conviction by Eureka Ltd. and another who were convicted on the 16th November, 1978 at the District Court of Limassol (Criminal Case No. 9060/78) on one count of the offence of omitting to pay the sum of £ 836.545 mils to the Fund for the Relief of Displaced and Stricken Persons, contrary to sections 3(1)(2), 4(1), 7(b) and 9 of the Emoluments (Temporary Reduction) Law, 1976 (Law No. 14 of 1976) and were sentenced
30 by Korfiotis, D.J. to pay £ 15.- fine each and were further ordered to pay the above sum into the said fund.

A. Adamides, for the appellants.

A.M. Angelides, Counsel of the Republic, for the respondents.

35 A. LOIZOU J. gave the following judgment of the Court. These are appeals from the judgment of the District Court of Limassol by which the appellant Company and its Managing Director were found guilty of the offence of omitting to pay to

The Fund for the Relief of Displaced and Stricken Persons, the sum of £ 836.545 mils, contrary to sections 3(1)(2), 4(1), 7(b) and 9 of the Emoluments (Temporary Reduction) Law, 1976, (Law No. 14 of 1976) hereinafter to be referred to as the Law. Thereupon they were sentenced to £ 15.- fine each and ordered to pay the aforesaid amount. 5

The facts of the case are as follows:-

The appellant Company had its installations and 90 % of its property in Famagusta town, which is inaccessible to it since the Turkish occupation of the area in August 1974. Mr. Xanthos Sarris and his wife Zacharoulla Sarri, were employed by it before the 20th July, 1974, as Managing Director the first, and as member of the Board of Directors the latter, at a remuneration of £433.- and £163.- per month respectively. Their remuneration was reduced after the 20th July, because of the financial difficulties in which the Company found itself. They moved to Athens and were visiting Cyprus and devoting only a limited part of their time to the affairs of the Company, as compared with their full time engagement prior to 1974. They continued so working at a reduced salary until the end of 1976. 10
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The learned trial Judge after hearing the evidence adduced came to the conclusion that the employment of the aforesaid two persons which started before the 20th July, continued after the coming into operation of the Law with the same employer, namely the appellant Company. It rejected the argument of counsel for the defence, that because of the reduction of their emoluments in October, 1975, their residing abroad and their devoting only a percentage of their time to the appellant Company, the conclusion to be drawn was that the original employment of these two persons had been terminated and that a new employment started after the 20th July. This argument was based on the evidence given by the second appellant, who, however, at no time stated, nor did anybody else on behalf of the appellant Company say that the employment of the aforesaid two persons had been terminated, and if so, under what circumstances and in what manner. It was urged also before us that from the aforesaid circumstances it could in Law be inferred that there had been a termination of the old employment and the commencement of a new one as from October, 1975. 25
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We find that on the material before the learned trial Judge, 40

the conclusion that there was no termination of employment and commencement of a new one was duly warranted by the evidence before him. The termination of the service of a Managing Director or a member of the Board of Directors, is not a matter
5 for which there could be no record or other concrete material that could have been produced at the earliest opportunity, as for example when first approached by the appropriate authorities in respect of this case, or at the trial.

On this factual basis the present case was rightly found to
10 come within the provisions of section 3 subsection 2, paragraph (a) of the Law which provides that in the case of employment which commenced before the 20th July, 1974 and continues after the coming into force of this Law with the same employer, the reduction is calculated on the basis of the level of remuneration which existed on the 20th July, 1974, increased, however,
15 by the amount of any increases which may have been given after the 20th July. Under paragraph (b) thereof in the case of new employment which commenced after the 20th July, 1974, the reduction is calculated on the basis of the agreed and actually
20 paid to the employee remuneration. It is on this latter provision that the appellants tried to base their case but they failed.

It remains now to consider the question of the unconstitutionality of section 3(2)(a) of the Law as offending Articles 24, 26 and 28 of the Constitution. Article 24.1 provides that every
25 person is bound to contribute according to his means towards the public burdens and under paragraph 4 thereof, no tax, duty or rate of any amount whatsoever other than customs duties shall be of a destructive or prohibitive nature.

It was argued that the payment as calculated is based on a
30 salary which is not actually received by the employee. Considering the amounts payable under the aforesaid provision we find that the said section does not in any way offend any of the provisions of Article 24.

Article 26 of the Constitution safeguards the right of every
35 person to enter freely into any contract, subject to such conditions, limitations or restrictions as laid down by the general principles of the Law of Contract.

The mode of calculation of the reduction and the provisions in general of section 3(2)(a) of the Law do not offend this Article

of the Constitution because they do not interfere with the right of any person to enter freely into any contract of employment. The question whether there could be a termination of an old employment and the conclusion of a new one does not arise in the present case on the facts as found by the trial Judge. 5

Article 28.1 of the Constitution which safeguards the equality of all persons before the Law, the Administration and Justice and protects from arbitrary discrimination, does not come into play at all. The aforesaid statutory provision challenged applies to all persons in the same category alike and has no element of discrimination therein. The fact that a reduction may be made on the same basis from the emoluments of an employee who may not devote all his time to his employer as compared with one who devotes his full time to another employer does not constitute any form of discrimination. 10 15

For all the above reasons the appeals are dismissed.

Appeals dismissed.