

IN THE EMPLOYMENT TRIBUNAL OF GIBRALTAR

Claim No. 65/2021

BETWEEN:

ABDELAZIZ ZENTARI

Claimant

- and -

DIRECTOR OF EMPLOYMENT

Respondent

RULE 27 NOTICE

UPON the initial consideration of all the documents held by the Tribunal in this case¹, the Tribunal considers that (1) it has no jurisdiction² to consider this complaint by the Claimant under Regulation 8 (1) and/or pursuant to Regulation 8 (3) of the Employment Regulations 1994 and/or (2) this complaint has no reasonable prospects of success whatsoever or, alternatively, (3) that the complaint is otherwise devoid of any merit³.

ON THE GROUNDS THAT the Claimant has no right to complain under Regulation 8 (1) (that right was only available to Securitek Ltd under Regulation 8 (1) (a) or (b) and no such complaint was made by the latter in accordance with Regulation 8 (2); the Respondent exercised her statutory discretion to refuse the application by Securitek Limited for a Work Permit (being a non-particular engagement in respect of a non-EEA national) under Regulation 7 (5) (d) as read in conjunction with the proviso to Regulations 8 (1) and (3); the Respondent properly recalled the Work Permit mistakenly issued by her Department on 9th June 2020 against her express instructions, recalling the same within the period of one week upon the mistake being discovered; and, the Claimant did not at any material time have, nor does he have, any underlying and enforceable legal right and/or entitlement (legitimate expectation or otherwise) to that Work Permit as alleged by him and/or at all as a matter of law.

THEREFORE, the Claimant shall have 21 days from the date of this Order to make written representations against his complaint being dismissed as hereinbefore set out, which the Tribunal will then consider further. In default of any such written representations being

¹ Rule 26 (1) of the Employment Tribunal Rules 2016

² Rule 27 (1) *ibid.*

³ Rule 36 (1) (a) *ibid.*

received within the specified time, the Tribunal shall dismiss this complaint without further order on **15th April 2024⁴**.

AND IN THE EVENT that this complaint is so dismissed, the result shall be as if no claim had been presented⁵.

Dated this 22nd day of March 2024

Stephen Bossino
Chairman

⁴ Rule 27 (1) proviso and 27 (2) and Rule 36 (2) and 36 (3) *ibid*.

⁵ Rule 27 (5) *ibid*.

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Claim No. 65/2021

BETWEEN:

ABELAZIZ ZENTARI

Claimant

- and -

DIRECTOR OF EMPLOYMENT

Respondent

**INITIAL CASE CONSIDERATION
&
CASE MANAGEMENT REASONS**

1. Upon my initial consideration of the documents held by the Tribunal in this complaint¹, the following items are missing and I shall order that they be filed with the Tribunal Secretary within 7 days from the date herein:

(1) the Claimant to file his first Permit of Residence covering the period 17th May 2019 to 17th November 2019; and,

(2) the Respondent to file its emails of 9th and 17th June 2020 addressed to Securitek Ltd and the conditions annexed to the Claimant's Unemployment Registration Form dated 30th August 2019.

Preliminary Findings & Views

2. The Claimant asserts that he was an "entitled worker" who "*by virtue of his residence [was] entitled to seek and take up employment in Gibraltar*" and that, therefore, the application for his work permit fell to be considered under Regulation 6 of the Employment Regulations 1994 and not under Regulation 7 as argued by the Respondent.

1 Claimant's Originating Application (Form IT 1) dated 11.10.21 and extract of Employment Tribunal (Forms) Regulations; Claim Form received on 12.10.21); Statement of Defence (6 pages); Claimant's Bundle (with 15 appendices); and, the Respondent's solicitors' Response (received on 18.11.21) and Section 6.2 Grounds.

3. The Claimant's second Permit of Residence does not expressly grant him any right to work in Gibraltar. It simply provides that he was entitled to reside in Gibraltar for six months and giving the corresponding start and end dates. The Claimant, a Moroccan national, had married a Gibraltarian woman on 4th March 2019; resided with her at her Government flat; and, that, entitled him to lawfully reside with her in Gibraltar but to no more, on the face of that document.

4. Both Permits of Residence issued to the Claimant, were issued under Sections 15 (1) and 18 (1) (ee) of the Immigration, Asylum & Refugee Act ("the Act") for two consecutive periods not exceeding 6 months. By December 2019², he had separated from his wife (having renewed his first Permit before then) and by 7th February 2020 he was residing at the Sunrise Motel³. It is beyond argument, and the Claimant well knew this⁴, that his only opportunity for renewing his second Permit of Residence, in his circumstances and at that stage, was by securing employment in the local labour market in order to justify his continued sojourn in Gibraltar. It is also clear that he initially tried to secure "particular engagements" in line with his CV (increasing his chances of obtaining a Work Permit) and, when that failed, he ultimately found a job as a security guard, which was his very last and precarious option - a non-specialised engagement/vacancy which other entitled residents and workers had priority to apply for and obtain.

5. It is indisputable, under section 18 (2) of the Act, that neither of the Claimant's Permits of Residence conferred any labour rights upon him whatsoever. The sub-section reads: "(2) *The holding of a permit of residence shall not of itself entitle the holder thereof to undertake employment in Gibraltar.*"

6. It is also clear that his second Permit of Residence could have been lawfully cancelled under Section 15 (3) (e) of the Act on the grounds that he had ceased to live with his wife (as from December 2019) and, in reality, because the underlying legitimate purpose for which he was lawfully in Gibraltar no longer existed. Instead, the Permit of Residence was allowed to lapse and there was no application to renew it prior to its expiry on 17th May 2020. The Claimant would have had no other grounds to renew it post his separation and after such a brief marriage. There was no recognisable legitimate right and/or purpose why he should remain in Gibraltar any further.

2 Claimant's solicitor's email of 25.08.19 @ 19.36, paragraph 5.

3 See Appendix 7.

4 See paragraph 1, on page 1, and paragraph 5, on page 2, of the Claimant's Statement of Defence.

Employment would have been his only way out. That is exactly why the Claimant applied for his third Permit of Residence on 12th June 2020, three days after being issued with a Work Permit⁵.

7. I am satisfied that the Department of Employment did nothing improper by permitting the Claimant to register as unemployed on 30th August 2019⁶. That, of itself, did not legally confer upon the Claimant any right and/or entitlement other than to seek employment, as a non-EEA national/non-entitled worker, during the remaining period of his unexpired Permit of Residence in accordance with the provisions of Regulation 7 of the 1994 Regulations and, certainly so, not on par with an entitled worker under Regulation 6⁷.

8. On 26th March 2020, Securitek Ltd filed the application for the Claimant's Work Permit together with a Notice of Engagement, both documents were dated the 24th March 2020⁸, but the company failed to comply with Regulation 7 (9) and Schedule 7, Part II, item No. 1 of the 1994 Regulations. It did not pay the requisite fee and failed to do so until 26th May 2020⁹. The Department of Employment processed the paperwork upon receipt of payment, and rightly so in my view, and on 9th June 2020 a one-year Work Permit¹⁰ was issued to the Securitek Ltd to employ the Claimant as a security guard on a three-months' probation contract. The Claimant's Permit of Residence had already expired by then and through no fault of the Department of Employment.

9. That Work Permit was issued under Regulation 7, as is clearly apparent on the face of it. It is not an issue in this case, and I only respectfully raise this matter for possible future reference, but this type of Work Permit ought not to extend, as a matter of law, beyond the period expressly stated to be the contract term. This error can be seen in this case, when the Work Permit was issued for the maximum term of 12 months when the Department of Employment was dealing with a three-months probationary contract of employment – see Regulation 7 (6) of the 1994 Regulations which states that the maximum discretionary period is 12 months. The reason is plainly obvious and important from an immigration stand-point. These are cases

5 See paragraph 9, on page 9, of the Claimant's Statement of Defence and Appendix 11 – Letter from CSRO dated 5th August 2020.

6 See Appendix 4.

7 See paragraph 1, sub-paragraph 2, of the Claimant's Statement of Defence.

8 See Appendix 10.

9 See Appendix 8

10 See Appendix 9.

that require pro-active monitoring and review by both Departments during that period in order to comply with the time-limits provided in the Act for lawful residence purposes, the avoidance of over-extended stays by default and the difficulties that such cases otherwise may give rise to and to the person concerned.

10. On 17th June 2020 the Claimant's Work Permit was recalled by the Respondent on the ground that it had been issued due to an internal administrative error: her instructions to refuse the application on 28th May 2020, when the application was considered upon payment of the requisite fee, were overlooked or missed and not implemented accordingly. That administrative mistake is amply documented and not challenged by the Claimant. I find that the Respondent was well within her rights to recall the permit.

11. The Respondent says that she refused the application for the Claimant's Work Permit under Regulation 7 (5)(d) and did not grant it, pursuant to her statutory discretion, under Regulation 7 (3) (a), (c) and/or (i) - the Claimant was not lawfully resident in Gibraltar at that stage. I find that the Respondent was correct in taking that view. I am satisfied that the Respondent was not seeking to exercise her discretion under Regulation 7 (8) in respect of a lawfully and properly issued Work Permit that she was subsequently seeking to "**revoke**", on one month's notice, under any of the grounds listed in (a) to (d) or under (e) for any of the grounds listed in Regulation 7 (5) (a) to (e) for revocation purposes. This was clearly a case of a direction not being followed and, in breach of the 1994 Regulations, a Work Permit wrongly went out and it had to be recalled.

12. It follows that the Claimant has no legal right to complain to this Tribunal under Regulation 8 (1) (a) of the 1994 Regulations in view of the Respondent's refusal to grant a Work Permit in his case. This is not a case that falls under Regulation 8 (1) (c) for the reasons already given. The Respondent, therefore, correctly notified Securitek Limited under Regulation 8 (1) (a) of the reasons for the Work Permit being recalled and that she had refused it under Regulation 7 (5) (d). I am not certain, at this stage, that the company was notified of its right to complain to the Employment Tribunal, but it is not a relevant matter and/or consideration in this instance. The point does not advance and/or assist the Claimant's complaint in any way.

13. I am also satisfied that the Respondent complied with her obligation under the proviso to Regulation 8 (1). This Tribunal

has no jurisdiction to hear a complaint that involves the exercise of the Respondent's discretion under Regulation 7 (5) (for the purposes of **refusing or renewing** a permit) once she has made it clear what provision she has relied upon. There is nothing that displaces that position on the documents filed by the Claimant. It is solely for the Respondent to police the labour market under Regulation 7 (5) (d) of the 1994 Regulations and not a matter for this Tribunal.

14. Subject to the production of the documents ordered to be disclosed by the parties, the Tribunal is minded to strike out this complaint under Regulation 27 (1) on the grounds that it has no jurisdiction to consider the same or that the complaint has no reasonable prospect of success or, alternatively, under Regulation 36 (1) (a) it must fail for having "*no reasonable prospect of success*" subject to the following caveat:

(a) The Claimant shall have 21 days to show cause in writing against the reasons herein given and/or based on new or additional documentation not yet provided to the Tribunal for its further consideration and, in default, this complaint will stand dismissed without further order.

(b) If new representations and/or documents are received within the said period of 21 days, the Tribunal may dismiss the complaint after considering the same.

(c) The effect of dismissal shall be as if no complaint had been presented.

Dated this 22nd day of March 2024.

Stephen Bossino
Chairman