

30 MAY 2001

IN THE INDUSTRIAL TRIBUNAL OF GIBRALTAR RECEIVED TODAY

Case N°: 20/98,

BETWEEN:

ABDELKADER MENOVAR

Complainant

and

BAY CATERING LIMIED

Respondent

Ruling:

Mr. Nuza requests a further adjournment of these proceedings on behalf of the Complainant and on the basis of his client's recurring back problem, which has today necessitated his attendance at St. Bernard's Hospital, for the purposes of having an X-ray taken. Mr. Miisud, on behalf of the Respondent, resists the application and seeks an Order for the dismissal of the Complaint for want of prosecution.

This matter first arose in November 1998. Since then seven hearing dates have been granted, namely two in 1999, two in 2000 and four this year inclusive of today. For a variety of reasons, none were proceeded with.

Whilst the Complainant's affliction may be longstanding, I do not believe it is so severe as to have prevented his attendance yesterday and much less so today; most especially, after having been advised about the terms of my Order, which Mr. Nuza assures me were communicated to the Complainant through third parties, given the Complainant has not spoken directly with Mr. Nuza, in respect of the hearings of yesterday and today.

In considering this matter, I accept Mr. Mifsud's submission that a distinction must be drawn between hospital treatment and the requirement to attend hospital simply for the purposes of having an X-Ray taken and that fundamentally if the Complainant is fit to attend hospital for the purposes of an X-Ray, then he is surely fit to attend this Tribunal. However, I would go further and add: 'how much more so, after having started the course of medication prescribed yesterday, which is suspected to be of an anti-inflammatory and analgesic nature and so should have started to ameliorate the situation?'

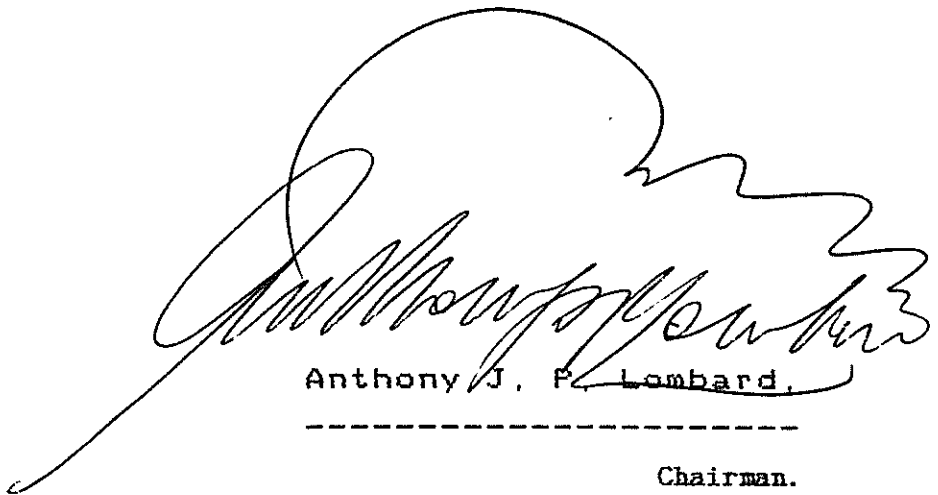
I also accept the evidence of the Secretary of the Tribunal, Mr. Prescott who, with the consent of Messrs Nuza and Mifsud, kindly agreed to assist us with his advice and experience, in respect of the procedure normally followed in these matters.

According to Mr. Prescott, the Health Centre does not arrange appointments for X-Rays, but rather delivers forms to patients for presentation to the Radiology Department of St. Bernard's Hospital requesting the grant of such an appointment, in favour of the individual named therein. An appointment is then granted some time into the future and hardly if ever for the same day. Furthermore, forms do not have to be presented immediately, nor, necessarily, by the person requiring the X-Ray.

Interestingly, the copy of the actual form given to the Complainant and kindly produced by Mr. Nuza, in support of his application, omits to stipulate the date upon which it had to be presented to the Radiology Department, nor, for that matter, any required or specific date by when the appointment should have been granted.

Accordingly, in my view, there was no urgency for the Complainant to attend the Radiology Department of St. Bernard's Hospital this morning, to the extent it prevented him from appearing before us; most especially, when he had already failed to appear yesterday and well knew the strict terms of my Order, as a result of that non-appearance.

In the circumstances, I perceive a lack of seriousness on the part of the Complainant, not to say contempt, in his attitude towards these proceedings and so accede to the application to dismiss and so Order the dismissal of the Complaint for want of prosecution.



Anthony J. P. Lombard.

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Chairman.