

FIL-PRIM'AWLA TAL-QORTI ĊIVILI

Protest Ġudizzjarju nru. /2020,
fl-ismijiet:

Association of Airline Pilots Malta (ALPA)

-vs-

1. Air Malta p.l.c. (C 2685)
2. Il-Ministru għall-Ekonomija,
Investiment u Intrapriżi Żgħar

Protest Ġudizzjarju tal-Association of Airline Pilots Malta (ALPA)

Tesponi bir-rispett:

1. ILLI permezz ta' avviż datat sebgha ta' April tas-sena elfejn u għoxrin (07.04.2020), il-kumpanija protestata Air Malta p.l.c. innotifikat lill-Assocjazzjoni protestanti, kif ukoll lid-Direttur Ġenerali tar-Relazzjonijiet Industrijali u tal-Impieg, bil-'proposta' tagħha li tiddikjara sensji kollettivi *ai termini* tar-Regolamenti dwar Sensji Kollettivi (Ħarsien ta' l-Impiegi) (Legislazzjoni Sussidjarja 452.80) ('Dok. ALPA 1'). F'tali 'proposta', il-kumpanija protestata ddikjarat li bi hisebha tittermina l-impieg ta' mija u tmien (108) bdoti u li żżomm biss sitta u għoxrin (26).

Il-perjodu statutorju ta' tletin (30) ġurnata, stipulat fl-istess Regolamenti sabiex isiru konsultazzjonijiet bejn il-principal u r-rappreżentanti tal-impjegati, beda jiddekorri minn dak inhar u, għaldaqstant, għadu għaddej.

2. ILLI tali avviż ingħata mill-kumpanija protestata wara numru ta' rappreżentazzjonijiet foloz u qarrieqa, fosthom li kien intlaħaq qbil mal-Assocjazzjoni protestanti, kif ukoll mal-*Unions* l-oħra li jirrapreżentaw l-interessi tal-klassijiet l-oħra tal-impjegati tal-kumpanija, u dan wara diskussjoni li kienet allegatament inżammet għal dan il-għan ('Dok. ALPA 2').

L-allegazzjonijiet tal-kumpanija protestata ġew miċhuda mill-Assocjazzjoni protestanti permezz ta' ittra datata tmienja u għoxrin ta' Marzu tas-sena elfejn u għoxrin (28.03.2020), indirizzata lid-Direttur Ġenerali tar-Relazzjonijiet Industrijali u tal-Impieg ('Dok. ALPA 3'), kif ukoll permezz ta' ittra bl-istess data, indirizzata

lill-Kap Eżekuttiv tal-kumpanija protestata (**'Dok. ALPA 4'**). F'dawn l-ittri ġie rrievat ukoll li tali aġir jikkostitwixxi ksor tal-obbligi derivanti mir-Regolamenti dwar Dritt għal Informazzjoni u Konsultazzjoni ma' l-Impjegati (Legislazzjoni Sussidjarja 452.96), kif ukoll reat *ai termini* tar-Regolament 11 tal-istess.

3. ILLI l-avviz surreferit, mogħti mill-kumpanija protestata nhar is-7 ta' April, 2020, ingħata minnha biss ftit tal-ħin, *ossia* madwar sagħtejn, wara li l-Assocjazzjoni protestanti kienet, għal darb'ohra, formalment ikkonfermat l-intenzjoni tagħha li tkun partecipi fil-proċess ta' konsultazzjoni meħtieġ *ai termini* tar-Regolamenti dwar Dritt għal Informazzjoni u Konsultazzjoni ma' l-Impjegati (Legislazzjoni Sussidjarja 452.96). Fl-istess korrispondenza, l-Assocjazzjoni protestanti kienet espremiet ukoll it-tħassib serju tagħha dwar il-mod kif il-kumpanija protestata kienet qed tibqà tinsisti li tagħlaq il-bibien kollha għal kwalunkwe negozjati relattivi għall-*'proposti'* li l-istess kumpanija protestata kienet ressqet qabel ma għażlet li tagħti lok għall-bidu tal-imsemmi proċess regolat permezz tar-Regolamenti dwar Sensji Kollettivi (Ħarsien ta' l-Impiegi) (Legislazzjoni Sussidjarja 452.80), u, konsegwentement, interpellatha sabiex twettaq l-obbligi tagħha f'dan ir-rigward (**'Dok. ALPA 5'**).
4. ILLI, għaldaqstant, qabel ma nġhata bidu għall-proċedura kkontemplata fir-Regolamenti dwar Sensji Kollettivi (Ħarsien ta' l-Impiegi) (Legislazzjoni Sussidjarja 452.80), l-Assocjazzjoni protestanti mhux biss ġiet imcaħħda mid-dritt tagħha li tircievi informazzjoni dwar il-materji dettaljati fis-sub-regolament 1 tar-Regolament 4 tar-Regolamenti dwar Dritt għal Informazzjoni u Konsultazzjoni ma' l-Impjegati (Legislazzjoni Sussidjarja 452.96), iżda ġiet, saħansitra, imcaħħda wkoll mid-dritt tagħha li tiġi kkonsultata dwar l-istess materji *ai termini* tas-sub-regolament 3 tal-istess Regolament. Għaldaqstant, l-Assocjazzjoni ma nġhatat l-ebda opportunità sabiex tressaq l-opinjoni tagħha u, għaldaqstant, li tircievi twegibiet għall-istess opinjonijiet *ai termini* tas-sub-regolament 4 tal-istess Regolamenti. Dan, għar-rigward tal-*"qagħda, struttura u żvilupp probabbli ta' impjegi fl-intrapriża u fuq kull mizura anticipatorja ppjanata, b'mod partikolari meta jkun hemm theddida għall-impjegi fl-intrapriża"*, kif ukoll għar-rigward ta' *"informazzjoni u konsultazzjoni fuq decizjonijiet li x'aktarx jistgħu jwasslu għal bidliet sostanzjali fl-organizzazzjoni tax-xogħol jew relazzjonijiet kontrattwali"*.
5. ILLI wara li l-kumpanija protestata għażlet li tagħti bidu għall-proċedura ta' konsultazzjoni mandatorja stipulata fir-Regolamenti dwar Sensji Kollettivi (Ħarsien ta' l-Impiegi) (Legislazzjoni Sussidjarja 452.80), l-Assocjazzjoni protestanti ressqet diversi talbiet formali sabiex il-laqgħat relattivi jsiru fil-preżenza tal-Kap Eżekuttiv

tal-kumpanija u/jew fil-preżenza ta' wiehed mid-Diretturi tagħha. Tali talbiet saru in vista tax-xewqa tal-Assocjazzjoni protestanti li tinghata l-opportunità li tiddiksuti l-veduti u l-proposti tagħha ma' rappreżentanti tal-kumpanija protestata li, fil-fatt, għandhom l-awtorità li jieħdu deċiżjonijiet ta' natura eżekuttiva. Dan, in vista tas-serjetà tal-kwistjoni u tal-perikolu ċar għall-impiegi tal-ħaddiema tal-istess kumpanija.

Sal-lum il-ġurnata, il-kumpanija protestata għadha qed tinsisti li, kemm il-Kap Eżekuttiv, u kemm id-Diretturi tal-kumpanija, ma għandhom l-ebda intenzjoni li jkunu preżenti għal dawn il-laqgħat.

6. ILLI dan in-nuqqas da parti tal-kumpanija protestata qiegħed jkompli jżid man-nuqqas ta' trasparenza u ta' kontabilità fl-operat tal-linja nazzjonali tal-ajru, senjatament in vista tal-fatt li, waqt laqgħa miżmuma nhar id-disgħa ta' April tas-sena elfejn u għoxrin (09.04.2020), il-membri tal-Kumitat Eżekuttiv tal-Assocjazzjoni protestanti ġew imwissija li huma "diġà jinsabu mkeċċijin".
7. ILLI jiġi rrilevat ukoll li, sal-lum il-ġurnata, inżammet biss laqgħa waħda mar-rappreżentanti tal-kumpanija protestata wara li ngħata bidu għall-proċedura ta' konsultazzjoni surreferita nhar id-disgħa ta' April tas-sena elfejn u għoxrin (09.04.2020). Minn dak inhar, u wara li l-Assocjazzjoni protestanti ressqet it-talbiet tagħha sabiex id-diskussjonijiet relattivi jitkomplew fil-preżenza ta' membru tal-kumpanija li jpoġġi fuq il-Bord tad-Diretturi, il-kumpanija protestata naqset milli tiskeda laqgħa oħra, u dan minkejja l-insistenza tal-Assocjazzjoni protestanti f'dan ir-rigward.
8. ILLI l-Assocjazzjoni protestanti qiegħdha, permezz tal-preżenti, tirrileva l-irritwalità u n-nuqqas ta' siwi legali tal-proċedura invokata mill-kumpanija protestata *ai termini* tar-Regolamenti dwar Sensji Kollektivi (Harsien ta' l-Impiegi) (Legislazzjoni Sussidjarja 452.80) u qiegħdha tipprotesta formalment kontra dan l-aġir abbużiv u illegali da parti tagħha. Dan, senjatament, in vista tan-nuqqas ċar da parti tal-kumpanija protestata li twettaq l-obbligu tagħha *ai termini* tar-Regolament 6 tal-istess Regolamenti, *ossia* l-obbligu tagħha li żzomm konsultazzjonijiet li "għandhom ikopru kif jista' jkunu evitati s-sensji kollektivi jew it-tnaqqis tan-numru ta' impjegati milqutin minn tali sensji u biex jimmitigaw il-konsegwenzi tagħhom."

F'dan ir-rigward, issir referenza għall-interpretazzjoni tal-obbligi kontenuti fid-Direttiva tal-Kunsill 98/59/KE dwar l-approssimazzjoni tal-liġijiet ta' l-Istati

Membri dwar *redundancies* kollettivi', *ossia* l-baži għat-traspozizzjoni u għall-implimentazzjoni tar-Regolamenti surreferiti, kif riportat fis-sentenza tal-Qorti tal-Gustizzja tal-Unjoni Ewropea fl-ismijiet **Akavan Erytisalojen Keskusliitto AEK ry and Others –vs- Fujitsu Siemens Computers Oy**:¹

“A consultation which begun when a decision making such collective redundancies necessary had already been taken could not usefully involve any examination of conceivable alternatives with the aim of avoiding them.”

9. ILLI, fil-fatt, minkejja l-obbligu ċar li żżomm fis-seħħ il-proċedura ta' konsultazzjoni għal mill-inqas tletin (30) ġurnata, kif ukoll l-obbligu li tagħmel dak kollu neċessarju sabiex tassigura l-effikaċja u l-utilità tal-istess, il-kumpanija protestata, saħansitra, għamlet numru ta' attentati sabiex ixxejjen il-garanziji proċedurali akkordati lill-membri tal-Assoċjazzjoni protestanti, saħansitra billi ressqet talbiet lid-Direttur Ġenerali tar-Relazzjonijiet Industrijali u tal-Impieg sabiex jitwaqqaf l-imsemmi proċess sabiex l-istess kumpanija tkun tista' tittermina l-impieg ta' mija u tmien (108) bdot qabel l-egħluq tal-imsemmi perjodu (**Dok. ALPA 6'**). Dan, minkejja li l-Assoċjazzjoni protestanti baqgħet, u għadha, qed tinsisti li għandhom jinżammu laqgħat ta' konsultazzjoni *ai termini* u skond l-ispirtu tar-Regolamenti dwar Sensji Kollettivi (Harsien ta' l-Impieg) (Legislazzjoni Sussidjarja 452.80).
10. ILLI dan l-attentat jikkostitwixxi ksur tal-obbligi derivanti mil-liġi tal-Unjoni Ewropea, *ossia* dawk derivanti mid-Direttiva tal-Kunsill 98/59/KE, kif rijaffermtat fis-sentenza tal-Qorti tal-Gustizzja tal-Unjoni Ewropea fl-ismijiet **Irmtraud Junk -vs- Wolfgang Kühnel**,² *ossia* ksur tal-obbligu impost fuq il-kumpanija protestata li tikkonduċi negozjati mal-Assoċjazzjoni protestanti *entro* u fil-parametri tal-perjodu statutorju ta' tletin (30) ġurnata:

With regard to the consultation procedure, this is provided for, within the terms of Article 2(1) of the directive, 'with a view to reaching an agreement'. According to Article 2(2), this procedure must, 'at least, cover ways and means of avoiding collective redundancies or reducing the number of workers affected, and of mitigating the consequences by recourse to accompanying social measures'.

¹ Każ C-44/08 [2009], para.47.

² Każ C-188/03 [2005], para. 42 – 45.

It thus appears that Article 2 of the directive imposes an obligation to negotiate.

The effectiveness of such an obligation would be compromised if an employer was entitled to terminate contracts of employment during the course of the procedure or even at the beginning thereof. It would be significantly more difficult for workers' representatives to achieve the withdrawal of a decision that has been taken than to secure the abandonment of a decision that is being contemplated.

A contract of employment may therefore be terminated only after the conclusion of the consultation procedure, that is to say, after the employer has complied with the obligations set out in Article 2 of the directive.

11. ILLI, b'zieda mas-suespost, jiġi rrilevat li l-Gvern ta' Malta, li huwa wkoll azzjonist maġoritarju u ewlieni tal-kumpanija protestata Air Malta p.l.c, qiegħed jonqos mill-obbligu tiegħu li jieħu l-miżuri neċessarji sabiex jissalvagwardja l-impiegi tal-membri tal-Assoċjazzjoni protestanti, kif ukoll milli jieħu l-miżuri idoneji fl-awtorità u fil-kontroll tiegħu sabiex jiġi minimizzat l-impatt fuq l-istess haddiema. Dan, bi vjolazzjoni tal-obbligi li kien assumu l-Onorevoli Konrad Mizzi, fil-kapaċità tiegħu ta' Ministru għat-Turizmu għan-nom u in rappreżentanza tal-Gvern ta' Malta, direttament fil-konfront tal-Assoċjazzjoni protestanti permezz ta' skrittura konkluża nhar is-sitta u għoxrin ta' Jannar tas-sena elfejn u tmintax (26.01.2018), permezz ta' liema l-bdoti tal-Air Malta kienu ngħataw "garanzija ta' xogħol go Malta [...] da parti tal-Gvern ta' Malta, u dan "sad-data tal-iffirmar ta' Ftehim Kollettiv gdid bejn l-Air Malta p.l.c u l-ALPA (**Dok. ALPA 7**).

Għaldaqstant, il-Gvern ta' Malta qiegħed jabdika u jonqos wkoll mill-obbligu tiegħu li jidhol f'diskussjonijiet mal-Assoċjazzjoni protestanti bil-għan li jittieħdu l-miżuri neċessarji bl-iskop li jiġu protetti l-impiegi tal-membri tal-Assoċjazzjoni protestata gewwa t-territorju Malti.

12. ILLI, b'zieda mas-suespost, jiġi rrilevat li, sal-lum il-gurnata, ir-rappreżentanti tal-Gvern ta' Malta, li huma ministerjalment u politikament responsabbli għall-kumpanija protestata, qegħdin saħansitra jirrifjutaw li jidhlu fi kwalunkwe forma ta' djalogu mal-Assoċjazzjoni protestanti bl-iskop li jiġu diskussi l-miżuri idoneji li huma permissi mit-Trattat dwar il-Funzjonament tal-Unjoni Ewropea (TFEU).

13. ILLI, fid-dawl tas-suespost, jiġi rrilevat ukoll li l-intenzjoni tal-kumpanija protestata li tittermina l-impieg ta' mija u tmien (108) bdoti hija bbażata fuq raġunijiet li ma

jsibux riskontru fid-dritt, senjatament fil-principji li jirregolaw t-terminazzjoni ta' impiegi f'kazijiet ta' sensji kollettivi. Dan, stante li l-kumpanija protestata qieghdha tonqos mill-obbligu taghha li tidhol fi process serju ta' konsultazzjoni necessarju ghall-iskambju ta' proposti intizi sabiex jigi minimizzat l-impatt u l-pregudizzju fuq il-bdoti tal-kumpanija protestata, kif ukoll milli tikkonsidra alternattivi relattivi ghar-riorganizazzjoni taghha. Dan, bi vjolazzjoni, *inter alia*, tal-Artikolu 37(1) tal-Att dwar l-Impiegi u r-Relazzjonijiet Industrijali (Kapitolu 452 tal-Ligijiet ta' Malta), tar-Regolamenti dwar Sensji Kollettivi (Harsien ta' l-Impiegi) (Legislazzjoni Sussidjarja 452.80), tar-Regolamenti dwar Dritt ghal Informazzjoni u Konsultazzjoni ma' l-Impjegati (Legislazzjoni Sussidjarja 452.96), tal-Artikoli 6, 21, 24 u 29 tal-Karta Soċjali Ewropea, tal-Artikolu 27 tal-Karta tad-Drittijiet Fundamentali tal-Unjoni Ewropea, kif ukoll tal-Artikolu 11 tal-Konvenzjoni Ewropea dwar id-Drittijiet tal-Bniedem u l-Libertajiet Fundamentali.

14. ILLI, fi kwalunkwe kaz, l-intenzjoni tal-kumpanija protestata li zzomm biss sitta u ghoxrin (26) bdot fl-impieg tinjora konsiderazzjoni u valutazzjoni serja u ghaqlija tal-vijabilita u tas-sostenibilita tal-operat tal-linja nazzjonali tal-ajru wara li jigu rrilassati r-restrizzjonijiet attwali fuq is-safar, u dan bi vjolazzjoni tal-principji legali li jirregolaw it-terminazzjoni ta' impiegi f'kazijiet ta' sensji.
15. ILLI, permezz tal-prezenti, ghal kull *buon fini*, l-Assocjazzjoni protestanti qieghdha tirrizerva d-dritt taghha li titlob stharrig dettaljat, u li titlob rendikont, tal-agir tal-protestati, u/jew ta' min minnhom, relattiv ghal kwalunkwe decizjoni li tista talvolta tittiehed, u/jew li tista talvolta tigi kkomunikata mill-kumpanija protestata Air Malta p.l.c., in konnessjoni mat-terminazzjoni tal-impieg tal-membri tal-Assocjazzjoni protestanti u mal-possibilita li tigi evitata tali decizjoni, inkluz billi titlob stharrig relattiv ghall-operat tal-Bord tad-Diretturi tal-istess kumpanija u tal-obbligi taghhom skond il-ligi, kif ukoll billi tipprocedi gudizzjarjament fil-konfront tal-istess protestati.
16. ILLI, permezz tal-prezenti, l-Assocjazzjoni protestanti qieghdha, minn issa, tipprovdi wkoll avviz formali tal-intenzjoni taghha li tipprocedi fil-konfront tal-kumpanija protestata, *inter alia*, ai termini tal-Artikolu 75 tal-Kapitolu 452 tal-Ligijiet ta' Malta, fl-eventwalita li tippersisti bl-intenzjoni taghha li tittermina l-impieg tal-membri tal-Assocjazzjoni protestanti minghajr ma tottempra ruhha mal-obbligi legali taghha.

GHALDAQSTANT, in vista tal-konsiderazzjonijiet suesposti, filwaqt li tipprotesta formalment kontra l-aġir tal-protestati, l-Assoċjazzjoni protestanti qiegħdha, permezz tal-preżenti, tqiegħed lill-istess protestati *in dolo, mora et culpa* għall-finijiet u effetti kollha tal-liġi, filwaqt li qiegħdha, minn issa, iżżommhom responsabbli għad-danni kollha li jistgħu jiġu sofferti mill-membri tagħha b'konsegwenza tat-terminazzjoni tal-impieg tagħhom, u, konsegwentement, qiegħdha tinterpellahom sabiex, b'effett immedjat, iwettqu l-obbligi legali tagħhom.

Tant sabiex il-protestati jirregolaw ruhhom, kif ukoll sabiex jagħrfu jevitaw il-htieġa ta' proċeduri ġudizzjarji.

Bl-ispejjeż tal-preżenti u b'rizerva għal kull azzjoni ċivili, penali, industrijali u kostituzzjonali, spettanti lill-Assoċjazzjoni protestanti skond il-liġi.

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PL Daniel Aquilina

Assoċjazzjoni protestanti: ALPA, P.O. Box 6, Malta International Airport, Luqa.

Notifika:

- i. Air Malta p.l.c., Level 2, Skyparks Business Centre, Malta International Airport, Luqa.
- ii. Il-Ministru għall-Ekonomija, Investiment u Intrapriżi Żgħar, Ministeru għall-Ekonomija, Investiment u Intrapriżi Żgħar, 197, Palazzo Zondadari, Merchants Steet, Valletta. VLT 1172.
- iii. Il-Ministru Carmelo Abela, Ministeru fl-Uffiċċju tal-Prim Ministru, Auberge de Castille, Valletta. VLT 1061.
- iv. Id-Direttur Ġenerali tar-Relazzjonijiet Industrijali u tal-Impieg, Dipartiment tar-Relazzjonijiet Industrijali u tal-Impieg, 121, Melita Street, Valletta. VLY 1121.
- v. Il-Ministru għat-Turiżmu u l-Protezzjoni tal-Konsumatur, Ministeru għat-Turiżmu u l-Protezzjoni tal-Konsumatur, 233, Triq ir-Repubblika Valletta.
- vi. L-Avukat tal-Istat, l-Uffiċċju tal-Avukat Ġenerali, Il-Palazz tal-Granmastru, Triq ir-Repubblika, Valletta.

'Doh. ALPA'

From: EC ALPA Malta
Sent: Tuesday, 7 April 2020 21:15
To: Andre Portelli
Subject: Fw: Proposed Redundancies and Arrangement for Collective Consult

FYI Andre

Kind regards,
ALPA EC

----- Forwarded message -----

From: "James Genovese" <james.genovese@airmalta.com>
To: "Vella Muscat Diane at MEAE" <diane.vella-muscat@gov.mt>, "EC ALPA" <ec@alpamalta.org>
Cc: "Clifford Chetcuti - CEO" <ceo@airmalta.com>, "Emvic Debono - CFO" <cfoo@airmalta.com>, "Omar Bonello - CFO" <cfo@airmalta.com>
Sent: Tue, 7 Apr 2020 at 20:30
Subject: Proposed Redundancies and Arrangement for Collective Consult

07th April 2020

ATTN :The Director General of DIER

ALPA Executive Committee

By electronic mail only

Re: Proposed Redundancies and Arrangement for Collective Consultation at Air Malta plc (C2685)

Dear Ms Vella Muscat, ALPA Executive Committee,

Proposed Redundancies and Arrangement for Collective Consultation

This letter is to inform you that the Company regrettably has to announce to its workforce that a number of employees falling under the collective agreement signed with the Association of Airline Pilots Malta (the "Union") will be made redundant due to the current circumstances and the failure

to reach agreement with the Union on cost mitigation measures which could have avoided such redundancies.

This letter is being sent in terms of Regulations 4, 6 and 8 of the Collective Redundancies (Protection of Employment) Regulations (LN 428 of 2002) (the "Regulations") and we should therefore now enter into a period of formal consultation with the Union.

Given the time sensitivity of the matter, and also considering that no agreement was reached with the Union on the company's proposed arrangements in terms of Article 42 of the Employment and Industrial Relations Act, and that the Company is of the view that there are no ways in which to avoid redundancies or to even reduce the number of employees affected (as indicated in this letter) the Company refers to regulation 9 of the Regulations and, based on the current circumstances, requests that the default 30 day period for effecting terminations is not extended further.

For clarity, the period of notice of termination of all employees affected by the collective redundancy exercise is deemed to start running from the date of this letter.

As the recognised union we will be consulting with the Union throughout this period and, despite the matters outlined above, the Company will, as required in terms of regulation 5 of the Regulations, seek the union's views and feedback on the following:

- How the proposed numbers of redundancies can be avoided or reduced
- How we can minimise the impact of redundancies upon employees affected.

We will seek to try and reach agreement with the Union where possible and we would like to assure you that we intend the consultation process to be a genuine and meaningful one. We will take final decisions taking your views and feedback into account, to the extent possible. The Union representatives will also be given the opportunity to consult with employees.

We will arrange regular collective consultation meetings for the abovementioned 30 day period and suggest that the first consultation meeting be held on Thursday the 9th of April 2020 at 14:00 at Skyparks. .

We are including below a list of information which is to be provided to you in accordance with regulation 6 of the Regulations, which should also allow you to be in a position to begin consultation:

1. Reasons for Redundancies

The COVID-19 outbreak has substantially affected the Company. Not only have its operations dwindled to a mere 2 flights per day (as opposed to the scheduled average of 20 flights daily) but the extraordinary amount of cancellations, and therefore reimbursements, together with the obligation to continue servicing fixed costs, such as aircraft lease payments, have led the Company to necessitate mitigation of costs, including payroll costs.

In the circumstances, the Company sought to agree with the Union on measures which would reduce payroll costs, while avoiding redundancies and ensuring that employees within the scope of the collective agreement would receive a monthly income which would allow them to anyway cope with their and their families' day-to-day requirements. Regrettably, no agreement was reached and it was therefore not possible for the Company to implement the cost mitigation measures intended.

2. Number of Employees Normally Employed and Numbers of Employees Affected

The Company currently employs 134 employees who fall under the collective agreement signed with the Union. These are all on an indefinite term contract.

The Company requires 108 employees to be made redundant as part of this exercise. This will nonetheless ensure that it retains a sufficient number of employees to continue operating at the current levels (which are expected to be sustained for a number of months).

3. Criteria For Selection of Redundant Employees

The Company proposes making redundancies based on seniority, or rather the 'last in, first out' principle on the same terms as set out in the Employment and Industrial Relations Act and the collective agreement, having regard to seniority in the relevant class, and in the other/lower classes by applying the 'bumping down' methodology.

The Company has already applied the above methodology and will provide a list of employees who are affected by this collective redundancy during the first meeting proposed above.

4. Redundancy Payments

The Company shall compensate employees made redundant in accordance with applicable law, namely by payment during their notice period (or an equivalent amount if terminated by the Company earlier).

While the relevant collective agreement requires discussion on a severance package in addition to the payments due statutorily, the Company does not feel that any additional payments are to be made in the circumstances. Should the Union not agree to this position, the Company will engage in discussions which could also protract beyond the effective date of termination of the employees affected by the redundancies.

5. Periods

Redundancies shall be effective immediately upon expiry of the notice period applicable to the relevant affected employee, having regard to the fact that such period of notice shall be deemed to have commenced on the date of this letter. The Company reserves the right to require the employment relationship to be effectively terminated prior to the expiry of the notice period, subject to paying the relevant employee an amount equal to the payment due to such employee for the unexpired period of notice.

While trusting that we have covered all aspects of information required to be provided by the Regulations, we look forward to your confirmation that the first consultation meeting be held as proposed above.

Yours sincerely,



More than just an airline

James Genovese | A/Chief Human Resources Officer

Air Malta plc | SkyParks Malta International Airport, Luqa | LQA 4000 Malta

t +356 22999154 | Internal 5518

e james.genovese@airmalta.com | w airmalta.com



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24th March 2020

The Director General
Department for Industrial and Employment Relations
121, Melita Street
Valletta VLT 1121

By electronic mail only

Dear Ms Vella Muscat,

I am instructed to write on behalf of Air Malta plc (C2685) (the "Company"). The Company operates in the aviation sector which has experienced a significant impact over the last weeks owing to the Covid-19 outbreak.

The extraordinary number of cancellations which, coupled with the travel bans in place and consequently no bookings, has left the airline in a situation where it will be experiencing a huge, temporary financial decline.

At this point, many employers who have been hit by the current circumstances have already been forced to proceed with terminating contracts and declaring redundancies. The Company wishes to offset, at least in part, the impact of the current situation without having to take (at least, for the time being) more drastic measures to the detriment of our employees.

The Company has discussed the proposals below with all unions concerned, reached agreement thereon, and is now seeking approval for their implementation, as required in terms of Article 42 of the Employment and Industrial Relations Act (Cap. 452).

The Company currently employs 754 employees in various positions with different responsibilities and exigencies related to the operation of the airline, accordingly, while the measures below are set out in more generic terms, their application will have to be targeted with a view to having the maximum cost benefit to the Company, while safeguarding the level of operation required from time to time, and seeking to inflict the least hardship possible on the workforce.

In this context, the Company's proposal is to adopt the following measures:

- (i) primarily, to make use of forced leave according to law, utilising both vacation leave entitlement from the financial year 2019/2020, as well as up to the full entitlement for the year 2020/20201;¹

¹ Air Malta's financial year runs from 1 April to 31 March.

- (ii) following utilisation of available vacation leave, a reduction of working hours would be required across most of the Company's workforce, although to a different degree, depending on the relevant employees' roles and the business requirements. In this respect, the Company expects to put employees on reduced hours ranging from 40% to 80% of their current working hours, with a corresponding reduction in salary;
- (iii) If the current circumstances remain unchanged, or if they deteriorate (such as a mandatory lock down being imposed), it is envisaged that the Company will have to place certain employees on forced unpaid leave, to be called in to work on an 'as needed' basis and being remunerated only for hours effectively worked. Again, the application of this measure will depend to a great extent on the circumstances at the time, the business needs, as well as the roles of the individuals concerned.

Apart from the above, and as a measure to be implemented with immediate effect, the Company will be revoking certain benefits granted to employees in terms of applicable collective agreements, particularly a salary adjustment mechanism whereby an employee's actual salary at the end of a year would be grossed up to equate to the relevant employee's take home pay, for a particular year selected by the said employee. This adjustment mechanism would clearly cancel out any efforts by the Company to cut costs in this difficult time and its continued application would unavoidably lead to forcing the Company into declaring redundancies.

I trust that you will consider that these measures are acceptable, given the exceptional circumstances which are prevailing and considering that the measures are primarily intended to safeguard its employees' jobs for as long as is practically possible in the circumstances. Accordingly, the Company kindly request that permission is given for a period of four weeks at which point it will be in a better position to assess the circumstances and revise the proposal, if required.

Given that the circumstances are somewhat urgent, your earliest response would be appreciated. Clearly, the Company remains at your disposal to provide further clarifications as you may require, and Mr James Genovese is being copied in this email correspondence for that purpose.

Yours Sincerely,



Ron Galea Cavallazzi

c.c. Client

DR. ANDRÉ PORTELLI
LL.B., LL.M. (EUR.LAW) LL.D.
ADVOCATE

201, Triq Brared,
Birkirkara. BKR 1256.
Malta.

Mobile: (00356) 79 05 93 16
Email: andreportelli@live.com

Ms. Diane Vella Muscat
The Director General,
Department for Industrial and Employment Relations,
121, Melita Street,
Valletta. VLT 1121.

28th March, 2020.

By electronic mail:

diane.vella-muscat@gov.mt; info.dier@gov.mt;

Dear Ms. Vella Muscat,

I write for and on behalf of the **Association of Airline Pilots Malta (ALPA)** of P.O. Box 6, Malta International Airport, Luqa, with reference to Air Malta p.l.c.'s letter of 24th March, 2020, wherein it was alleged that the company had discussed the proposals indicated therein with all Unions concerned and that an agreement had been reached in this regard. I also wish to refer to Mr. Omar Grech's email of 26th March, 2020, wherein my clients were requested to provide their approval, or otherwise, of the proposals contained in the above-mentioned email.

In this respect, my clients would like to draw your attention to the fact that the company's assertion is completely false and misleading. No agreement was reached in relation to the said proposals.

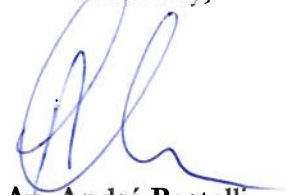
Such 'proposals' were merely outlined by company representatives during the meeting held at very short notice on 24th March, 2020, following notice of the convening thereof being provided merely a few hours prior thereto. In fact, the measures envisaged by the company were presented as a 'done deal' and not as proposals aimed at an exchange of views and at the establishment of dialogue between the employees' representatives and the employer with a view to reaching an agreement. Indeed, the ALPA representative present at the said meeting had made it very clear that the said proposals would need to be considered and discussed with the members of the Executive Committee prior to any form of representations being made by the Association in this respect.

The conduct of the company, therefore, also constitutes a clear violation of the obligations imposed on employers in virtue of the Employee (Information and Consultation) Regulations (S.L. 452.96), as well as an offence in terms of Regulation 11 thereof.

Accordingly, the request made by Air Malta p.l.c. in terms of Article 42 of Chapter 452 of the Laws of Malta is clearly premature, devoid of any legal or contractual basis, and, therefore, cannot, and must not, be entertained by the Department for Industrial and Employment Relations.

You are therefore respectfully being called upon to desist from taking any action in terms of, or pursuant to, the said letter dated 24th March, 2020.

Yours faithfully,



Av. André Portelli

c.c. Mr. Omar Grech, Department for Industrial and Employment Relations, 121, Melita Street, Valletta. VLT 1121. – omar.c.grech@gov.mt

Dr. Andrew Grima, Advocates Primei, 19, St. Mark Street, Valletta. VLT 1362. – agrima@advocatesprimei.com

DR. ANDRÉ PORTELLI
LL.B., LL.M. (EUR.LAW) LL.D.
ADVOCATE

201, Triq Brared,
Birkirkara, BKR 1256,
Malta.

Mobile: (00356) 79 05 93 16
Email: andreportelli@live.com

Captain Clifford Chetcuti
Chief Executive Officer,
Air Malta p.l.c.,
Level 2, Skyparks Business Centre,
Malta International Airport
Luqa.

28th March, 2020.

By Electronic mail:
ceo@airmalta.com

Captain Chetcuti,

I write for and on behalf of the *Association of Airline Pilots Malta (ALPA)* of P.O. Box 6, Malta International Airport, Luqa, with reference to Air Malta p.l.c.'s letter of 24th March, 2020, addressed to the Director General, Department for Industrial and Employment Relations, as well as with reference to the letter bearing the same date, addressed to my clients, which was handed to the ALPA representative, Captain Matthew Degiorgio, at the end of the meeting held on the same day.

Accordingly, your attention is hereby drawn to the fact that my clients have formally informed the Department for Industrial and Employment Relations that no agreement was reached, and this, contrary to the misleading and unfounded assertions contained in the above-mentioned letter addressed to the said Department.

As you very well know, the proposals indicated in the above-mentioned correspondence were presented as a 'done deal' and that they were merely outlined during the meeting held at very short notice on 24th March, 2020. Moreover, you will recall that my clients were only informed of such meeting a few hours before the scheduled time and that Captain Matthew Degiorgio had made it very clear that the said proposals would need to be considered and discussed with the members of the Executive Committee prior to any form of representations being made by the Association in this respect. Therefore, it is abundantly clear that the measures envisaged by the company were not presented as proposals aimed at

an exchange of views and at the establishment of dialogue between the employer and the employees' representatives with a view to reaching an agreement.

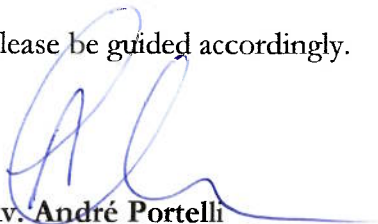
The conduct of the company, therefore, constitutes a clear violation of the obligations imposed on employers in virtue of the Employee (Information and Consultation) Regulations (S.L. 452.96), as well as an offence in terms of Regulation 11 thereof.

Accordingly, the company's request to the Department for Industrial and Employment Relations in terms of Article 42 of Chapter 452 of the Laws of Malta is clearly premature, devoid of any legal or contractual basis, and, therefore, cannot be entertained by the Department for Industrial and Employment relations. This, in view of the fact that the conclusion of any agreement in this respect must necessarily be premised on meaningful and effective consultation between the employer and the employees' representatives.

You are therefore being called upon to desist from taking any measures which are adverse to the obligations contained in the said Employee (Information and Consultation) Regulations (S.L. 452.96).

My clients hereby also provide formal notice of their intention to take all appropriate measures to hold the company responsible at law for any shortcomings, including their intention to institute the necessary judicial proceedings aimed at obtaining immediate and timely relief and redress from any measures adopted in breach of the duty of care owed by the company towards its employees.

Please be guided accordingly.



Av. André Portelli

C.C. Ms. Diane Vella Muscat, Director General, Department for Industrial and Employment Relations, 121, Melita Street, Valletta – diane.vella-muscat@gov.mt; info.dier@gov.mt;

Mr. Omar Grech, Department for Industrial and Employment Relations, 121, Melita Street, Valletta – omar.c.grech@gov.mt;

Mr. James Genovese, Chief HR, People and Performance, Air Malta p.l.c., Level 2, Skparks Business Centre, Malta International Airport, Luqa – james.genovese@airmalta.com;

Dr. Ron Galea Cavallazzi, Camilleri Preziosi Advocates, Level 3, Valletta Buildings, South Street, Valletta. VLT 1103. – ron.galeacavallazzi@camilleripreziosi.com;

Dr. Andrew Grima, Advocates Primei, 19, St. Mark Street, Valletta. VLT 1362. – agrima@advocatesprimei.com;

From: EC ALPA Malta
Sent: Tuesday, 7 April 2020 18:21
To: James Genovese - CHRO
Cc: Emvic Debono; Clifford Chetcuti - CEO; Omar Bonello - CFO; Andre Portelli; ALPA Committee Address
Subject: Re: MOM revised

Dear James,

ALPA has already expressed its willingness to conduct a meaningful and effective consultation. A proper dialogue covering all points as raised by both parties is required in order for this to be accomplished.

We feel that to date this is severely lacking. As I'm sure you would agree, a 30 minute meeting as held on the 2nd April 2020, presenting a '*fait accompli*' is not in any way meaningful nor effective. Additionally, ALPA's queries were not properly addressed during the same meeting, instead presenting the association with vague replies and meaningless assurances.

We do concur that ALPA requested fresh proposals to be made by the company but we deny having told you that we cannot forward the proposals to the members. What we informed the CEO is that the current situation will make any possible meetings difficult, and attesting to this, is the fact that ALPA's 2020 AGM has been postponed indefinitely.

We also deny that we have '*directed the Company to take those measures as allowable by applicable law*'. There is an irritating habit which the current management undertakes in our association's regard, consistently trying to place words in our mouths which are not intended by the same association.

We remain puzzled by your interpretation of our desire to undertake an effective and meaningful consultation, to mean that we are pushing you into some corner of sorts.

Once again the Association remains willing, and, once again, hereby formally calls on the company to abide by its legal obligations to initiate a process of meaningful and effective consultation prior to any decisions being taken.

ALPA-Malta, hereby also provides formal notice of its intention to take the necessary measures in order to safeguard its members rights and prerogatives, should this plea fall on deaf ears.

Best Regards,

ALPA EC

On 05 Apr 2020, at 19:47, EC ALPA Malta <ec@alpamalta.org> wrote:

Dear James,

We thank you for your email. We will reply in due course after seeking the required legal advice.

From: Andre Portelli
Sent: Thursday, 16 April 2020 20:57
To: Ron Galea Cavallazzi; Andrew Grima
Cc: carmelo.abela@gov.mt; Vella Muscat Diane at MEAE; Clifford Chetcuti - CEO; Emlac Debono - CFO; Omar Bonello - CFO; James Genovese - CHRO; EC ALPA Malta
Subject: RE: Proposed Redundancies and Arrangement for Collective Consultation at Air Malta plc

Dear Dr. Grima,

I write with reference to Dr. Galea Cavallazzi's email of today which is, in itself, evidence of Air Malta p.l.c.'s utter failure to understand its obligations, *qua* employer, in terms of the Collective Redundancies (Protection of Employment) Regulations (Subsidiary Legislation 452.80).

As already indicated in my email of this morning, ALPA had requested the company to provide it with a date and time for discussions to continue. However, no reply has been forthcoming.

There can be no justification for trying to trample on the rights of the employees of the company by attempting to seek approval for the elimination of their statutory and procedural guarantees. This, in a clear attempt at exerting undue pressure and influence on the operation of a Government Department.

It should go without saying that the DIER should primarily be focused on safeguarding employee rights, whilst seeking solutions to the problems raised by the projected redundancies in terms of applicable jurisprudence of the CJEU.

Accordingly, ALPA hereby provides notice of its intention to take all necessary measures to ensure that its rights deriving from the statutory 30 day period provided for in the Collective Redundancies (Protection of Employment) Regulations are not prejudiced.

Kind regards,

André

Dr. André Portelli
LL.B., LL.M., (Eur.Law), LL.D.
201, Triq Brared, Birkirkara. BKR 1256. Malta.
Mob: (+356) 7905 9316 / Tel: (+356) 27 556 270

From: Ron Galea Cavallazzi
Sent: Thursday, 16 April 2020 18:18
To: Andrew Grima; Andre Portelli
Cc: carmelo.abela@gov.mt; Vella Muscat Diane at MEAE; Clifford Chetcuti - CEO; Emlac Debono -

CFOO; Omar Bonello - CFO; James Genovese - CHRO; EC ALPA Malta

Subject: RE: Proposed Redundancies and Arrangement for Collective Consultation at Air Malta plc

Dear Dr Grima,

Thank you for your email, which is duly noted.

May I highlight that it is only through your communication below that Air Malta has been made aware of ALPA's request for an extension of the original 30 day notification period. This reaffirms Air Malta's conviction that ALPA is merely seeking to delay the process while, in the meantime, securing the payment of full basic salary to pilots, at the company's expense.

Air Malta is not privy to the content of the letter dated 15 April 2020 referred to in Dr Portelli's email, and is therefore unable to comment thereon.

To address a few matters in Dr Portelli's email, reference is made to the original notification sent by Mr Genovese on the 7 April 2020, which contains all the information required to be provided by the employer in terms of regulation 6 of the Collective Redundancies (Protection of Employment) Regulations. It is mind-boggling that ALPA is expecting business plans from the company in circumstances where the aviation sector has been brought to a virtual stop for a period which is not determined and is yet undeterminable. The facts are that the company's operations have shrunk drastically and are likely to be sustained at the current level for a period which requires a reduction in the number of pilots employed. It is unclear what other information is being sought at this time or how the company could possibly abuse a process which was specifically designed for the current circumstances.

It is unclear what alleged irregularities are being claimed by ALPA. As indicated above, this is a textbook case for collective redundancies and the company is proceeding according to applicable legislation at every step.

Finally, with respect to the request for a follow-up meeting, this would not have been required if ALPA attended the meeting as scheduled, rather than being intent on even dictating who ought to represent the company during meetings. The company's position regarding attendees at meetings relating to the collective redundancy process is clearly set out in my email of the 15th April 2020, which position is being referred to for avoidance of repetition.

When statements are made to the effect that exceptional circumstances are totally absent, one questions whether the ALPA is living in our same reality – if the current circumstances do not qualify as exceptional, one wonders what would.

It is for these reasons (which are, indeed, corroborated by Dr Portelli's email below) that Air Malta has requested a reduction in the original 30 day notification period. While there is the objective necessity to reduce the number of pilots employed, there is also no prospect of reaching agreement with ALPA on a reduction in the number of redundancies.

While appreciating that the Department must assess both requests received, and while clearly objecting to any extension proposed by ALPA, Air Malta reiterates its request and invites the Department to assess the same in the context of the facts emerging from the correspondence below.

Kind regards,

Ron

Ron Galea Cavallazzi

Partner [[bio](#)]

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CAMILLERI PREZIOSI
ADVOCATES

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From: Andrew Grima <agrima@advocatesprimei.com>

Sent: 16 April 2020 12:58

To: Andre Portelli <andreportelli@live.com>; Ron Galea Cavallazzi <ron.galeacavallazzi@camilleripreziosi.com>

Cc: carmelo.abela@gov.mt; Vella Muscat Diane at MEAE <diane.vella-muscat@gov.mt>; Clifford Chetcuti - CEO <ceo@airmalta.com>; Emvic Debono - CFOO <cfoo@airmalta.com>; Omar Bonello - CFO <cfo@airmalta.com>; James Genovese - CHRO <chro@airmalta.com>; EC ALPA Malta <ec@alpamalta.org>

Subject: RE: Proposed Redundancies and Arrangement for Collective Consultation at Air Malta plc

Attn: Avv. André Portelli
201, Triq Brared, Birkirkara. BKR 1256. Malta.

Attn: Avv. Ron Galea Cavallazzi
Level 3, Valletta Buildings, South Street, Valletta VLT1103, Malta

Dear Colleagues,

Re: Notification of Collective Redundancies

I write on behalf of the Director General, Department for Industrial and Employment Relations (DIER) with reference to the correspondence received by the DIER, specifically the letter dated the 15th April, 2020 sent out by the Association of Airline Pilots Malta (ALPA) and the subsequent communication sent out by Airmalta plc (“the Company”).

The DIER acknowledges the requests being made on either side, namely ALPA’s request for an extension of the 30 day time window (set in Regulation 9 of S.L. 452.80) and the request made by the Company for Director General to grant the Company a shorter period of notification.

At this stage, I am instructed to inform both parties, that the Department will be assessing the requests received and will communicate a decision in due time.

Regards,

Dr. Andrew Grima
Partner



Advocates Primei

19, St. Mark Street, Valletta, VLT 1362, Malta
Mob: +(356) 7906 7273
Tel: +(356) 2137 8617
Fax: +(356) 2010 8617
e-mail: agrima@advocatesprimei.com
website: www.advocatesprimei.com

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 Before you print – think about the environment

From: Andre Portelli
Sent: 16 April 2020 09:49
To: Vella Muscat Diane at MEAE <diane.vella-muscat@gov.mt>
Cc: Andrew Grima <agrima@advocatesprimei.com>; Clifford Chetcuti - CEO <ceo@airmalta.com>; Emvic Debono - CFOO <cfoo@airmalta.com>; Omar Bonello - CFO <cfo@airmalta.com>; James Genovese - CHRO <chro@airmalta.com>; EC ALPA Malta <ec@alpamalta.org>
Subject: RE: Proposed Redundancies and Arrangement for Collective Consultation at Air Malta plc

Attn: The Director General
Department for Industrial and Employment Relations

Dear Ms. Vella Muscat,

I write for and on behalf of the **Association of Airline Pilots Malta (ALPA)** with reference to the email sent by Dr. Galea Cavallazzi on behalf of Air Malta p.l.c. on 15th April, 2020, whereby a request was lodged to your Department to shorten the original

period of consultation stipulated at law in terms of the Collective Redundancies (Protection of Employment) Regulations (Subsidiary Legislation 452.80).

In this respect, the Association, first and foremost, hereby makes reference to the content of its letter addressed to your Department, also dated 15th April, 2020, which has, as yet, not been acknowledged, whereby it has formally drawn your attention to the irregularities relating to the above-mentioned process.

The Association also hereby formally reaffirms that it is willing, and has every intention, to enter into a process of meaningful consultation with the Air Malta p.l.c in line with the obligations imposed on the said company, both in terms of the above-mentioned Regulations, as well as in terms of the Employee (Information and Consultation) Regulations (S.L. 452.96). Indeed, the Association had requested that the company's CEO, or a representative of the company having executive decision-making authority, be present in order to ensure that consultation be effective by ensuring a direct link with the company's Board of Directors, as well as some much-needed accountability. To date, however, the company seems intent on ignoring such basic tenets.

In any case, the company also seems intent on ignoring its obligations stemming from Regulation 6 of the Collective Redundancies (Protection of Employment) Regulations (Subsidiary Legislation 452.80) by failing to provide the information necessary in order for meaningful and effective consultation to be conducted. Particularly, to date, the representatives of the company present during the meeting held on 9th April, 2020, have acknowledged, in no uncertain terms, that the company does not have a concrete business plan in place. Accordingly, the company's most recent assertion that "the Company is currently operating 2 aircraft and would retain, following the termination of 108 pilots, sufficient pilots to operate the said 2 aircraft" is, not only surprising, but also out of place and devoid of any substance. Moreover, the company has, to date, failed to divulge any details regarding its proposals to effect redundancy payments, any details relating to proposal severance packages, or any details relating to the period over which redundancies are proposed to be effected.

Therefore, the company's request is clearly premature and in direct contradiction with the rights and prerogatives which form the very basis and spirit of the above-mentioned Regulations and, therefore, is evidence of the intent of the company to abuse of, and to disnature, the collective redundancy process by, systematically, adopting an approach contrary thereto.

Surprisingly, this stance also runs counter to the statement of intent contained in the Press Release issued by the Board of Directors of the company yesterday (15th April, 2020), wherein reference was made to "industrial relations" being conducted, as well as "proposal[s] being made to the employees and the representatives".

Indeed, by means of an email dated 14th April, 2020, sent directly by the undersigned to Mr. Genovese, the Association had formally requested a follow-up meeting in order to

continue the discussions with the company. To date, the Association has not received a reply thereto and no follow-up meeting has been scheduled.

It is also worrying that the company should opt to lodge such a request, well-knowing that Article 9 of the Collective Redundancies (Protection of Employment) Regulations (Subsidiary Legislation 452.80) requires "exceptional circumstances", which, in any case, are totally absent in the present circumstances.

In view of the above considerations, the Association hereby calls on you desist from taking any action in terms, or pursuant to, Air Malta p.l.c.'s request contained in the above-mentioned email dated 15th April, 2020, and hereby reaffirms that it will be doing everything in its power to contest any irregularities relating to the above-mentioned process, including the adoption of all necessary measures to ensure that all parties and players abide by, and act within the parameters stipulated at law, as well as in accordance with their *vires*.

Thanking you in advance for your attention in the matter.

Kind regards,

André

Dr. André Portelli

LL.B., LL.M., (Eur.Law), LL.D.

201, Triq Brared, Birkirkara. BKR 1256. Malta.

Mob: (+356) 7905 9316 / Tel: (+356) 27 556 270

From: EC ALPA Malta

Sent: Wednesday, 15 April 2020 22:52

To: Andre Portelli

Subject: Fw: Proposed Redundancies and Arrangement for Collective Consultation at Air Malta plc

Sent from Yahoo Mail on Android

----- Forwarded message -----

From: "Ron Galea Cavallazzi" <ron.galeacavallazzi@camilleripreziosi.com>

To: "Vella Muscat Diane at MEAE" <diane.vella-muscat@gov.mt>

Cc: "agrima@advocatesprimei.com" <agrima@advocatesprimei.com>, "Clifford Chetcuti - CEO" <ceo@airmalta.com>, "Emvic Debono - CFOO" <cfoo@airmalta.com>, "Omar Bonello - CFO" <cfo@airmalta.com>, "James Genovese" <james.genovese@airmalta.com>, "EC ALPA" <ec@alpamalta.org>

Sent: Wed, 15 Apr 2020 at 22:47

Subject: RE: Proposed Redundancies and Arrangement for Collective Consultation at Air Malta plc

The Director General

Department for Industrial and Employment Relations

Dear Ms Vella Muscat,

I am instructed to write to you on behalf of Air Malta plc following Mr Genovese's email of the 7 April 2020 (included below), notifying the company's intention to make 108 employees falling in the class of pilots (and covered by the collective agreement signed between the company and ALPA) redundant.

The company's intention was to engage in effective consultation with ALPA (as well as a representative of non-unionised pilots who requested representation) with a view to seeking ways to potentially reduce the number of redundancies. In fact, it proposed a first meeting to be held on the 9 April 2020.

Following that initial meeting, another meeting was set for yesterday, the 14 April 2020. ALPA failed to attend that meeting for no apparent reason, other than their insistence for the company's CEO to also be present for the meeting.

The company has set up a team, composed of the CHRO, CFOO and CFO, to be present during discussions in connection with the collective redundancies process triggered by the company and therefore did not accede to this request. The CEO is not part of that team and, although not intended to attend the said meetings, is accessible to the company's team for reference as and when may be required.

In any event, it is the company's prerogative to determine which persons represent it at such meetings. However, ALPA not only expected to be in a position to dictate who ought to be present to represent the company, but also deemed it appropriate to refuse to attend the meeting on that basis.

Regrettably, irrespective of whether this is merely a delaying tactic or otherwise, it is neither acceptable, nor conducive to any form of agreement with ALPA and the company sees no prospect

of reaching any such agreement. Apart from this, the Company is currently operating 2 aircraft and would retain, following the termination of 108 pilots, sufficient pilots to operate the said 2 aircraft.

In view of the above, Air Malta plc requests that, in terms of regulation 9 of the Collective Redundancies (Protection of Employment) Regulations (LN 428 of 2002), the original 30 day period for consultation is shortened and that terminations can be effected as from Tuesday 21 April 2020.

Thanking you in advance for your consideration.

Kind regards,

Ron

Ron Galea Cavallazzi

Partner [[bio](#)]

#STOPHESPREAD – WE ARE WORKING REMOTELY BUT NOT “OUT OF OFFICE” – [READ MORE HERE](#)

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From: James Genovese <james.genovese@airmalta.com>

Sent: 07 April 2020 20:31

To: Vella Muscat Diane at MEAE <diane.vella-muscat@gov.mt>; EC ALPA <ec@alpamalta.org>

Cc: Clifford Chetcuti - CEO <ceo@airmalta.com>; Emlac Debono - CFO <cfo@airmalta.com>; Omar Bonello - CFO <cfo@airmalta.com>

Subject: Proposed Redundancies and Arrangement for Collective Consultation at Air Malta plc

07th April 2020

ATTN :The Director General of DIER

ALPA Executive Committee

By electronic mail only

Re: Proposed Redundancies and Arrangement for Collective Consultation at Air Malta plc (C2685)

Dear Ms Vella Muscat, ALPA Executive Committee,

Proposed Redundancies and Arrangement for Collective Consultation

This letter is to inform you that the Company regrettably has to announce to its workforce that a number of employees falling under the collective agreement signed with the Association of Airline Pilots Malta (the "Union") will be made redundant due to the current circumstances and the failure to reach agreement with the Union on cost mitigation measures which could have avoided such redundancies.

This letter is being sent in terms of Regulations 4, 6 and 8 of the Collective Redundancies (Protection of Employment) Regulations (LN 428 of 2002) (the "Regulations") and we should therefore now enter into a period of formal consultation with the Union.

Given the time sensitivity of the matter, and also considering that no agreement was reached with the Union on the company's proposed arrangements in terms of Article 42 of the Employment and Industrial Relations Act, and that the Company is of the view that there are no ways in which to avoid redundancies or to even reduce the number of employees affected (as indicated in this letter) the Company refers to regulation 9 of the Regulations and, based on the current circumstances, requests that the default 30 day period for effecting terminations is not extended further.

For clarity, the period of notice of termination of all employees affected by the collective redundancy exercise is deemed to start running from the date of this letter.

As the recognised union we will be consulting with the Union throughout this period and, despite the matters outlined above, the Company will, as required in terms of regulation 5 of the Regulations, seek the union's views and feedback on the following:

- How the proposed numbers of redundancies can be avoided or reduced
- How we can minimise the impact of redundancies upon employees affected.

We will seek to try and reach agreement with the Union where possible and we would like to assure you that we intend the consultation process to be a genuine and meaningful one. We will take final decisions taking your views and feedback into account, to the extent possible. The Union representatives will also be given the opportunity to consult with employees.

We will arrange regular collective consultation meetings for the abovementioned 30 day period and suggest that the first consultation meeting be held on Thursday the 9th of April 2020 at 14:00 at Skyparks. .

We are including below a list of information which is to be provided to you in accordance with regulation 6 of the Regulations, which should also allow you to be in a position to begin consultation:

1. Reasons for Redundancies

The COVID-19 outbreak has substantially affected the Company. Not only have its operations dwindled to a mere 2 flights per day (as opposed to the scheduled average of 20 flights daily) but the extraordinary amount of cancellations, and therefore reimbursements, together with the obligation to continue servicing fixed costs, such as aircraft lease payments, have led the Company to necessitate mitigation of costs, including payroll costs.

In the circumstances, the Company sought to agree with the Union on measures which would reduce payroll costs, while avoiding redundancies and ensuring that employees within the scope of the collective agreement would receive a monthly income which would allow them to anyway cope with their and their families' day-to-day requirements. Regrettably, no agreement was reached and it was therefore not possible for the Company to implement the cost mitigation measures intended.

2. Number of Employees Normally Employed and Numbers of Employees Affected

The Company currently employs 134 employees who fall under the collective agreement signed with the Union. These are all on an indefinite term contract.

The Company requires 108 employees to be made redundant as part of this exercise. This will nonetheless ensure that it retains a sufficient number of employees to continue operating at the current levels (which are expected to be sustained for a number of months).

3. Criteria For Selection of Redundant Employees

The Company proposes making redundancies based on seniority, or rather the 'last in, first out' principle on the same terms as set out in the Employment and Industrial Relations Act and the collective agreement, having regard to seniority in the relevant class, and in the other/lower classes by applying the 'bumping down' methodology.

The Company has already applied the above methodology and will provide a list of employees who are affected by this collective redundancy during the first meeting proposed above.

4. Redundancy Payments

The Company shall compensate employees made redundant in accordance with applicable law, namely by payment during their notice period (or an equivalent amount if terminated by the Company earlier).

While the relevant collective agreement requires discussion on a severance package in addition to the payments due statutorily, the Company does not feel that any additional payments are to be made in the circumstances. Should the Union not agree to this position, the Company will engage in discussions which could also protract beyond the effective date of termination of the employees affected by the redundancies.

5. Periods

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Illum 26 ta' Jannar 2018

Ftehim milhuq bejn, minn naha 'l wahda, l-Onorevoli Ministru Konrad Mizzi, detentur tal-karta tal-identita` numerata 521577M, Ministru ghat-Turizmu, ghan-nom u in rapprezentanza tal-Gvern ta' Malta, kif debitament awtorizzat;

U minn naha 'l ohra, l-Kaptan James Fenech detentur tal-karta tal-identita` numerata 137975M, l-Kaptan Charmaine St John detentrici tal-karta tal-identita` numerata 171974M, il-First Officer John De Carlo detentur tal-karta tal-identita` numerata 262985M, il-First Officer Josef Pirota detentur tal-karta tal-identita` numerata 398584M, il-First Officer Matthew Degiorgio detentur tal-karta tal-identita` numerata 34481M, flimkien ghan-nom u in rapprezentanza tal-Airline Pilots Association Malta (ALPA), kif debitament awtorizzati.

Flimkien maghrufa bhala l-partijiet.

Ghal kull buon fini jigi dikjarat illi riferenza ghall-"piloti" hija riferenza ghall-Kaptana u First Officers prezentement impjegati mal-AirMalta plc.

Jippremettu illi :

1. Immedjatament qabel l-iffirmar ta' dan il-ftehim, u ghalhekk illum stess, gie konkluz u ffirmat Ftehim Kollettiv bejn AirMalta plc u l-ALPA.
2. Illi l-partijiet fuq dan il-ftehim kienu resqu ghall-iffirmar ta' dikjarazzjoni ta' principji/ftehim datat 18 ta' Awissu 2016, u ftehim iehor datat 29 ta' Marzu 2017.

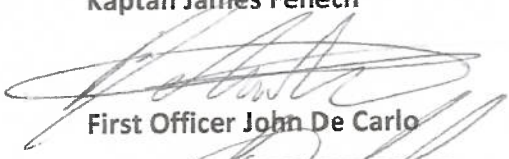
Illi l-partijiet jaqblu illi bis-sahha ta' dan il-ftehim, il-Gvern qiegħed jagħti garanzija ta' xogħol go Malta u *take home pay* lill-piloti, skont il-kundizzjonijiet emergenti mill-Ftehim Kollettiv iffirmat illum stess. Din il-garanzija qed tingħata sad-data tal-iffirmar ta' Ftehim Kollettiv għid bejn l-AirMalta plc u l-ALPA (jigifieri l-Ftehim Kollettiv li jsegwi dak iffirmat illum), li għandu jigi konkluz u ffirmat fi zmien ragjonevoli wara l-iskadenza tal-Ftehim Kollettiv prezenti.

Il-partijiet jiddikjaraw li r-relazzjoni ta' bejniethom għandha tkun regolata b'dan il-ftehim.

Salv il-premess, il-partijiet jiddikjaraw li huma sodisfatti b'dan il-ftehim u li m'għandhomx aktar pretensjonijiet kontra xulxin.


L-Onorevoli Ministru Konrad Mizzi


Kaptan James Fenech


First Officer John De Carlo


First Officer Matthew Degiorgio


Kaptan Charmaine St John


First Officer Josef Pirota