



Ministero dello Sviluppo Economico
Direzione Generale per la Politica Industriale
e la Competitività



Specific instance prot. n. 37515/2.3.11 submitted to the Italian National Contact Point by the FIOM-CGIL labour union of Massa Carrara on February 24, 2011

FINAL STATEMENT¹

Background

1. On October 9, 2008 EATON s.r.l., a sole shareholder company operating in the fields of designing, manufacturing and marketing of automotive products, informed the Parties concerned of its decision to shut down operations at its plant of Massa and of its intention to dismiss the 345 laid-off workers of the factory.
2. The Company based its decision on arguments denouncing the international economic crisis which determined, despite the efforts of the company, an unbearable loss of production volume and competitiveness of the plant.
3. By agreement ratified on December 17, 2008², the Company committed to: apply for 24 months Extraordinary Government Lay-off Indemnity (Cassa Integrazione Guadagni Straordinaria) for workers, starting from December 15, 2008; anticipate and integrate the amount of that indemnity; seek to reallocate the redundant workers; pay p. 10,000 to each dismissed employee who would accept the termination of the employment by March 31, 2009.

Instance submission

¹ Unofficial English translation. The official version of the statement is in Italian.

² Agreement between the EATON s.r.l., the labour unions and the municipality of Massa, signed at the Department of Labour Policies of the Province of Massa Carrara.



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4. On February 24, 2011, FIOM-CGIL labour union of Massa Carrara, on behalf of its members formerly employed in the EATON s.r.l. plant of Massa, submitted a complaint to the Italian PCN versus the above-mentioned company, by means of a registered letter.
5. The complainant blamed EATON s.r.l. for closing down the plant of Massa and starting the lay-off procedure in violation of the recommendations of the OECD Guidelines on "Employment and Industrial Relations" (Guidelines, 2000 ed., chap. IV), as:
 - a) those choices were not determined by a corporate crisis, but indeed, by the wish to increase the revenues through the shift of production to Eastern Europe;
 - b) the management of the entire affair and the relationships held with workers, as well as the refusal of the Company to request an extension of the lay-off for workers, demonstrated its inability to abide by the procedures established by the European legislations for such cases.

Chapters of the Guidelines concerned

6. Chapter IV, "Employment and Industrial Relations", ed 2000.

Parallel proceedings

7. At the time of submission of the instance the following parallel proceedings were in place:
 - a) the negotiating table, opened on December 14, 2008 at the Ministry of the Economic Development upon request of the Tuscany Region, the Province of Massa Carrara and the Municipalities of Massa and Carrara, to find a solution for the re-industrialisation of the area. The Municipality of Villafranca, the National Labour Unions CGIL, CISL, UIL, UGL and the Category Unions FIM-CISL, FIOM-CGIL and UIL-Uilm, Failm-Cisal were also involved in the negotiation. Later on, the re-industrialisation process would be followed by the Tuscany Region.
 - b) at the initiative of the labour unions before the Court of Massa a series of individual labour lawsuits against EATON s.r.l. - for declaration of nullity of the dismissal notice, and for a number of alleged procedural violations - were opened and they ended in July 2011, with a settlement defining all the redundancy issues, including the economic ones.



Initial assessment, positive outcome and communication to the Parties

8. Following the initial assessment, the NCP informed FIOM-CGIL (letter of March 31, 2011) that the issue raised merited further examination.
9. On the same date the NCP informed EATON s.r.l. of the presentation of the instance and of the positive outcome of the initial assessment and invited the company to submit its replies.

Counterparty's replies

10. On June 6, 2011 EATON s.r.l. filed its written replies, challenging all the complainant's assertions as follows:
 - a) the situation of economic crisis affecting the plant was evident, as a result of a 40% decrease in production and of irreversibly huge losses accumulated in the period around the closure;
 - b) the company conduct with workers had been compliant with the provisions of the Guidelines, since the company maintained the activity in Massa until the economic situation had become unsustainable;
 - c) the company had initiated and maintained the lay-off procedure in accordance with the law and with the principles of the Guidelines on employment and industrial relations and had also participated in numerous meetings at various levels, with representatives of labour unions and public authorities;
 - d) the company had guaranteed more than decent incomes to redundant workers, by making recourse to the Extraordinary Layoff until the date of effective termination;
 - e) the company attempts to re-industrialise the area had not yet been successful, due to the inconsistency of the expressions of interest received.

Assistance to the Parties

11. In order to provide its assistance to the Parties, by letter dated July 28, 2011, the NCP convened them separately.



12. On the same date, as part of the settlement before the Court of Massa (see above, "Parallel proceedings"), the FIOM-CGIL declared to withdraw the instance submitted to the NCP and delegated EATON s.r.l. to transmit the report of the agreement to the NCP. The NCP received the report on August 2, 2011.
13. Afterwards, the FIOM-CGIL, by letter dated September 5, 2011 informed the NCP that it did not intend to give up the procedure, because the conduct of EATON s.r.l. after the settlement was in contrast with the will of conciliation expressed therein.
14. In this situation, the NCP, by virtue of its role of mediator, institutionally appointed to the amicable solution of disputes, decided to confer with the Parties, first separately, then together, in order to verify and facilitate the maintenance of the agreement.

Meeting of the NCP with the FIOM-CGIL

15. On September 28, 2011 the NCP met the FIOM-CGIL, which, while expressing satisfaction with the settlement of the economic position of dismissed employees, complained about the hostile conduct held by EATON s.r.l. against the labour union after conciliation.
16. In particular, FIOM-CGIL denounced the methods chosen by EATON s.r.l. to take possession of the plant of Massa (at dawn, severing the chain of the entrance) which was guarded by former employees and the company refusal to continue to grant the latter the use of a room for their meetings.

Meeting of the NCP with EATON s.r.l.

17. On October 19, 2011 the NCP met EATON s.r.l., which, for its part, reiterated that it considered the procedure before the NCP closed by the settlement of July 2011. If not so, the company asked the counterparty, which was in breach of the commitment therein assumed, to renounce to the settlement. The company excluded that the facts occurred in the aftermath of the agreement could be taken into account by the NCP.

Meeting of the NCP with both Parties jointly

18. On November 10, 2011 the meeting of the NCP with both Parties took place.



19. About the termination of proceedings, each Party reiterated the views already expressed.
20. The FIOM-CGIL, then, declared that it was ready to ask its unionised workers to remove their installations from the property of EATON s.r.l, if they were allowed to use a room for their meetings.
21. It also reiterated its willingness to find a common solution, inviting, at the same time, the EATON s.r.l. to cooperate, with all the means at its disposal, with the labour unions and the public authorities, in order to mitigate as much as possible the impact of the closure of the plant on the life of so many workers, not only from an economic point of view.
22. EATON s.r.l., after invoking its right to access to its property at any time and in any way, highlighted that, in that case, the choice to take possession of the plant at that time was dictated by the need not to create tensions, while the choice to sever the chain of the entrance - without violence or damage to persons or property - was due to the unfitness of the of the key it had been given for that purpose .
23. The company recalled that the removal of any personal effect from the plant was not only a commitment of workers, provided for in the individual settlements, but also a behaviour recommended by the Court of Massa.
24. The company claimed that it could not allow the former workers to use a room of the plant, because of safety reasons.
25. Both Parties reserved the right to submit written pleadings.
26. The NCP closed the meeting calling for a consensual solution of these issues, inviting EATON s.r.l. to investigate the possibility that the former employees were granted the room they requested for a definite time and stating that it would wait for written submissions.

Written pleadings

27. On April 17, 2012 EATON s.r.l. submitted its written pleadings, asking conclusively the NCP:
 - a) to declare that the issues raised by the FIOM-CGIL did not merit further examination (cited Guidelines, 2000 ed. - Procedural Guidance - C3);



- b) otherwise, whereas the NCP deemed the raised issues relevant, to declare the proceedings be terminated (for natural end);
- c) or, in the alternative, to declare unfounded, unproven and, however, irrelevant the issues raised in the instance.

28. FIOM-CGIL did not submit any written pleading.

Final Recommendations

- 29. The settlement made in July 2011, before the Court of Massa, defined the issues concerning the lay-off procedure. Thereby, the FIOM-CGIL of Massa Carrara declared that it would withdraw the instance submitted to the NCP.
- 30. However, the circumstances occurred afterwards led the complainant to question the agreement and to declare its intention to keep the proceeding open.
- 31. Therefore, by virtue of its conciliatory role, supervising the overall conduct of the Parties, the NCP found that there were still reasons for conflict, even considering the subject matter settled by the parallel proceedings before the court of Massa; therefore it continued to offer its good offices and to assist the Parties with a view to a comprehensive solution of the whole case .
- 32. Meanwhile, the sequence of events and the beginning, under the leadership of the Tuscany Region, of a sensitive stage of important negotiations related to the future of the plant and of the workers of Massa, had led, in practice, to overcome the issues lastly brought to the attention of the NCP.
- 33. In this context, the NCP recommends that the Parties work together in good faith to the best solution of such a complex case , affecting many workers and the economy of an entire region, in coherence with the collaborative spirit underlying the conciliation proceedings and the proceeding before the NCP and in accordance with the agreements made and with the rules of fairness.
- 34. In particular, for the future, the NCP recommends that EATON s.r.l. strive for the highest involvement of workers whenever a major organisational change is under consideration (Guidelines, "Employment and Industrial Relations" ed., 2011, § §. 6 and 7), in ways and



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times that permit the cooperation of the labour unions and the institutions to mitigate the impact of such changes on workers, especially in the case of closure of an entity resulting in lay-off or collective dismissal, preventing the transfer of all or part of a production out of the country in question from becoming a pressure instrument on workers in negotiations.

Rome, March 14, 2013

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