

Johannes Beer Garden and Bodega

Hugo Moot Case 2022



Johannes Breweries A/S (limited public company) is a large Danish brewery. On 1 July 2018, Johannes Breweries A/S, which has always been open for visitor tours, updated their visitor area to a full hands-on visitor centre, the Johannes Beer Garden, complete with educational displays, a large, informative and relaxing outdoor area and a trendy café, the Johannes Bodega, with good, old-fashioned, handcrafted beers and nice, traditional foods. The Johannes Beer Garden is placed as a development of the large, old park areas around the brewery, which are now an experience for the entire family with botanical garden, glasshouses, a sculpture-park, displays and hands-on experience. The Johannes Bodega has a very nice, open plan seating arrangement inside, with views through big glass walls to the brewery floor kettles and big glass doors to the outside seating arrangements with easy access to the Johannes Beer Garden. The Johannes Bodega serves a variety of beer-based foods with local ingredients produced in their own herb garden and greenhouses.

A visit to the Johannes Breweries and the new Johannes Beer Garden has become a popular visitor's attraction, and the place is often quite busy with locals as well as international tourists.

Johannes Beer Garden and Bodega A/S (limited public company) is organised as a separate business entity under its own management. Johannes Breweries A/S as the mother company has placed all operations of the visitor centre in the company Johannes Beer Garden and Bodega A/S, which is managed by its own board of directors. The chief of operations, Svend Svendsen, is responsible for the visitor centre, Johannes Beer Garden and Bodega A/S, and for all its employees. Svend Svendsen is registered with the Danish Business Authority as a director of Johannes Beer Garden and Bodega A/S with reference to the managing director. The managing director of Johannes Breweries A/S, Kirsten Kristensen, is also registered as the managing director of Johannes Beer Garden and Bodega A/S. This arrangement has been chosen primarily for image reasons, as Kirsten Kristensen is well-known and well-respected in the Danish commercial world. Although Svend Svendsen formally defers to Kirsten Kristensen, so far, all the suggestions and plans of Svend Svendsen have been immediately approved by Kirsten Kristensen. In the everyday activities, management and decisions are carried out by Svend Svendsen after the formal approval of Kirsten Kristensen. Kirsten does, on the other hand, singlehandedly negotiate Svend Svendsen's remuneration package and park perks. Svend Svendsen is a member of the board of directors, where he participates on an ad hoc basis but without voting rights.

Johannes Beer Garden and Bodega A/S is covered by a collective agreement, the Industry and Services Agreement 2020-2023.

The employees at Johannes Beer Garden and Bodega A/S perform a variety of functions to give the visitors a high class, natural, historical, and wholesome experience. The outdoor staff consists of 19 men, who love the outdoors and the hard work, and two women, who are experts in greenhousing. They maintain the beautiful park area and the greenhouses. In the kitchen, 14 women of all ages prepare the lovely meals and wait on the tables, whereas two dishwashers and two cleaners, all males, constantly make sure everything is nice and welcoming inside. All staff are remunerated according to the minimum payment clause, Clause 22, of the Industry and Services Agreement.

Some of the greenhouse staff are former brewery workers, who have retained their high pay levels from their brewery worker days. Unfortunately, some brewery workers tend to have a high level of beer consumption. To save them from their road to demise, Johannes

Breweries A/S relocated the affected brewery workers to the alcohol-free Johannes Beer Garden workplace. Working outside, they enjoy a more sustainable work lifestyle, with lots of fresh air and no beer and they do not lose their employment or their salary levels. Brewery workers have a 4 years' occupational education background. One of these relocated brewery workers, Ole Olsen, now works in the greenhouses.

Salary negotiations are continuous and are carried out by the shop stewards, who have been elected by the various groups of staff. The café staff group has managed to negotiate a monthly average salary of 3,000 EUR; the outdoor parks and greenhouse staff have negotiated a monthly average salary of 3,500 EUR.

Generally, the workplaces are physically separate. The outdoor workers maintain the gardens and greenhouses; the other staff work in the café areas and do not really go outside, only to clear the tables on the lovely, sunny terrace adjacent to the gardens.

In the spring of 2021, Johannes Beer Gardens and Bodega A/S is put up for tender. Several contractors are in play, as Johannes Beer Gardens and Bodega is a popular and well sought-after visitor centre, and the economy is superb. Johannes Breweries A/S aims for the best quality as well as a continuation of the overall impression of a well operated visitor centre; the success of Johannes Beer Garden and Bodega A/S spills over on the image of Johannes Breweries.

The company DAMA excels in developing authentic, Danish food (DAMA is short for *Dansk Mad*, i.e., Danish food) and food adventures, but has no interest in outdoor parks, recreation areas or greenhousing. So, another contractor must come into play for the outdoor areas. The result is that DAMA continues the Bodega, and Green Galore continues the outdoor area/greenhouses. This is not entirely to the delight of DAMA, as Green Galore is one of the annoying, new competitors in the market for modern, Danish foods. Indeed, Green Galore offers services both in the hospitality sector and in the green sector. Yet, however, this was how the contracts were concluded.

The transfer is made on 1 June 2021, and the operational company, Johannes Beer Garden and Bodega A/S, is immediately dissolved with all assets and employees taken over by the two new contractors. The employees are transferred to perform the same work for the new contractors, as they did for Johannes Beer Garden and Bodega A/S. The collective agreement continues to be in force for the employees, as both DAMA and Green Galore are members of Danish Industry and thus must apply collective agreements concluded by Danish Industry.

Immediately, however, the new contractors face problems with the transferred staff, resulting in three claims being filed against DAMA and Green Galore in solidum.

First, a café worker from the Bodega, Ms Helle Hansen, representing the female employees of the Bodega, on 1 July 2021 files a claim for equal pay. In Helle Hansen's view, the café staff are entitled to the same level of pay as the outdoor workers group.

During the initial meetings in preparation for the court proceedings, a few witness statements were submitted. One is a written statement from Ole Olsen, another statement is from Ms Dorthe Dideriksen, who also works in the Bodega. The statements are not contested and are admitted as testimonies in the case. Green Galore is not too happy about the case and the involvement of one of their new employee, Ole Olsen. The salary negotiations for the two separate groups had until now gone smoothly, and Ole Olsen

should under all circumstances not be too concerned about the salaries of his former colleagues. DAMA and Green Galore suddenly find themselves attracting a lot of negative attention in the media because of the case for equal pay, attention that is not welcome straight after a delicate transfer.

Then, the chief of operations, Svend Svendsen, who really likes being in charge, creates a stir. He loves the varying tasks and the diversity of his staff – and he feels that a big part of the success of Johannes Beer Garden and Bodega A/S is owed to his outstanding management and people skills. In his view, it would be fair to call him ‘visionary’ or ‘innovative’ – maybe even ‘genius’. Until the transfer, he has spent probably 40% of his time with the café services, and 60% of his time with the outdoor area – as the outdoor areas have required more innovative solutions and a more intentional effort with the staff to get the new image in place. The managerial tasks have over time been the same in the two entities, the investment in time is the only distinguishing element in his commitments.

Svend Svendsen and Johannes Beer Gardens and Bodega have not concluded a formal contract of engagement. Instead, a description of the tasks of the chief of operations sets out his major areas of responsibilities and the format for negotiating his salaries with Kirsten Kristensen, the managing director. The salary level for Svend Svendsen over time does not vary considerably from other managers in charge of 20-30 staff members.

DAMA and Green Galore have not been entirely clear on the question of how to continue the employment of Svend, the chief of operations. DAMA has concerns about continuing with Svend Svendsen as a part-time manager. The risk of Svend Svendsen ending up working as part-time manager with DAMA and part-time manager with Green Galore is quite an issue for DAMA for obvious, competitive reasons. And full-time employment of an operations manager is not a viable option for DAMA; there simply are not enough managerial tasks to fill a full-time position. Green Galore, on the other hand, would like to keep status quo with Svend Svendsen on a part-time basis, but is similarly reluctant to have one of their central managers working also with another company. It is not possible for Green Galore to employ Svend as full-time manager, as the economic considerations for taking over the Beer Garden operations did not include remuneration for a full-time manager.

Negotiations have come to a halt, and Svend Svendsen knows that he wants to continue his central role in management and does not want his hours to be reduced. Svend Svendsen thus files a claim to be employed full time by Green Galore, as this is where he spent most of his working time before the transfer. Subsidiarily, he claims to continue working full time, with his time divided between DAMA and Green Galore.

Finally, Ole Olsen, who submitted a statement in favour of the café staff in the equal pay claim, is now transferred to Green Galore. He is very pleased with his inclusive and equality-like approach to working with women, and thinks it is only reasonable that the lovely ‘kitchen ladies’ are paid the same as the outdoor workers. As it turns out, Ole Olsen is also a talented and entertaining singer. To recognize his efforts in the equal pay case, he is invited to sing a few songs at the summer party of the former Johannes Beer Garden and Bodega A/S, organized by Green Galore and DAMA in unison. His repertoire at the party covers quite a few topical songs; The Song of the Old Gardener (<https://www.youtube.com/watch?v=kunV6AcDDZw>), The Song of the Young Gardener (<https://www.youtube.com/watch?v=7MpEB951ANo>), and Don’t sit under the Apple Tree

(https://www.youtube.com/watch?v=J2j_fco-lfg), and so on – much to the amusement of the audience. The atmosphere is loose and fun, and he delights in this well-deserved attention, especially from all the lovely ‘kitchen ladies’, whom he, after all, had done a huge favour. Really, there is no harm in a favour being paid back by the admiring attention of the women at the summer party.

As the hours passed on, and after having had yet another wee drink or two, Ole Olsen took the liberty to continue with another song from his vast repertoire. This time, a similarly entertaining but absurdly profane, Danish song about a guy from Ore, who met a wh..... with big boobies and very large buttocks (<https://www.youtube.com/watch?v=HBR71Vk-rkQ>). This development spurred many half-drunk colleagues to flock around the microphone to entertain with their own favourite songs, though none as graphic as the song of the Guy from Ore. It was a grand summer party indeed.

A few days later, two of the female employees approached Ole Olsen to educate him a bit, saying that the song of the Guy from Ore had clearly crossed the line. Ole Olsen responded with a smile and a wink that they should not be too concerned; he was singing only to the beautiful women at the party.

The two female employees, not too pleased with this response, went straight to the HR Manager Mette Mortensen of Green Galore and reported from the summer party. As the HR Manager googles the full lyrics of the song of the Guy from Ore, she is immediately shocked. Some would indeed find this text offensive. Her eyes rest on a few lines of the text, such as ‘Once I met a naked man, He was screaming for a whore’ and ‘They did it in so many ways, they humped and puffed for 14 days’. This Ole Olsen, the HR Manager thinks to herself, there is nothing but trouble with him nowadays. First his statement in the equal pay case, a statement that was unnecessary and uncalled for, and she had already pondered how to address this disloyal behaviour towards his new employer. And now this – the singing at the summer party. The views conveyed in the song of the Guy from Ore do not match Green Galore’s values, the text is clearly demeaning to women and has an extremely crude tone. And, she reminds herself, as a result of recent, unwanted media attention involving an unfortunate #MeToo situation at Green Galore, strict staff guidelines on how to avoid sexist behaviour and sexual harassment, both physically and verbally, had just been introduced. After contemplating the overall situation, the HR Manager gives Ole Olsen written notice of termination and puts him on garden leave for the entire notice period.

Ole Olsen immediately files a claim for reinstatement, alternatively compensation, for wrongful dismissal.

The parties agree to have all three claims assessed by an industrial arbitration court according to the Labour Court Act, section 21 litra 3). None of the parties raise questions concerning choice of forum or other formalities.

Overview of claims

Claim 1:

Ms. Helle Hansen claims compensation from DAMA for breach of the Equal Pay Act, repayment of salaries for the last 3 years since the start of the visitor centre, as well as future salary levels to be aligned with that of the outdoor workers' group.

Claim 2:

Svend Svendsen claims to be employed full time by Green Galore, as he spent most of his working time outdoors before the transfer. Subsidiarily he claims that his time is divided by DAMA and Green Galore, so that his central role in developing the visitor centre and management of staff is continued and his hours are not reduced.

Claim 3:

Ole Olsen claims re-instatement, alternatively compensation, on grounds of unlawful termination.

DAMA and Green Galore reject all claims.

Appendices:

Appendix A Legal sources

Appendix B Concept of Employee: The position in Denmark, by Jens Kristiansen

Appendix C: Ole Olsen's statement

Appendix D Dorthe Dideriksen's statement

Appendix E Organizational chart, business relations before and after the transfer

Appendix F Text of 'the South of Ore', and the Danish original 'Og det var syd for Køge'