

Meerah S.J.F.S. v Omnicane Milling Operations Limited

2020 IND 12

Cause Number 502/17

IN THE INDUSTRIAL COURT OF MAURITIUS
(Civil side)

In the matter of:

Mr. Samuel Jean Frederick Sheik Meerah

Plaintiff

v.

Omnicane Milling Operations Limited

Defendant

Judgment

In this plaint, it is common ground that Plaintiff is in the continuous employment of Defendant as Pan Boiler grade 1 since first of June 2010 and his terms and conditions of employment are governed by the Sugar Industry (Non-Agricultural Workers) (Remuneration Order) Regulations 1985, GN 129 of 1985. He is employed on a 6 days week basis during crop season (7 hours on 5 days and 5 hours on Saturdays) and on a 5 days week basis during intercrop season (5 days of 8 hours). He is required to work on a shift of 12 hours per day on a roster basis of one day followed by one night and one - off during crop season. His basic rate of pay as at September/October 2016 (that is, during crop season 2016) was Rs. 15141.88 per month. However, Defendant has added in its plea that Plaintiff works on a shift system of 3

shifts x 4 days x 12 hours as per the Permanent Arbitration Tribunal hereinafter referred to as "PAT" Award dated 3 May 2006.

Plaintiff has averred that he performed 100 hours extra work (that is, 15 hours at normal rate, 73 hours at 1.5, 5 hours at double rate and 7 hours at triple rate for period 12.9.16 to 8.10.16 but has been paid an amount of Rs. 6420.92 as extra wages instead of Rs. 13,584.48.

Plaintiff has further averred that he performed more than 2 hours work after having completed his normal day's work on 15 days for period 12.9 to 8.10.16 and has not been paid the meal allowance of Rs. 70 per day in accordance with Section 19 of the Employment Rights Act 2008.

Plaintiff is, therefore, claiming from Defendant the sum of Rs.8213.56/- representing alleged arrears due on extra wages Rs (13,584.48 - 6420): Rs. 7163.56 and meal allowance on 15 days for period 12.9.16 to 8.10.16 (Rs.70 x 15 days): Rs.1050.

Defendant, for its part, has denied liability and has averred that no meal allowance is applicable inasmuch as a normal day's work is the 12 hours shift.

The evidence on behalf of Plaintiff unfolded as follows.

Plaintiff gave evidence in Court. He departed from the averments of his plaint in that he candidly conceded that his claims for overtime and meal allowance were not founded and that Defendant had paid him correctly for what he needed to be paid. He further departed from his averments by saying that he was not working in accordance to what has been averred in his plaint but in accordance to an established structured shift system compatible with the plea of Defendant and he conceded that he was aware of the purport of the PAT Award given in 2016. But he said that his qualm was that he could not understand why some other workers doing the same work at the same time were paid more as overtime.

Plaintiff's only witness was of no help to the Court as his testimony was essentially that he only made a mathematical computation in order to reach the claim of the Plaintiff as per the relevant Remuneration Order.

Defendant did not adduce any evidence in Court.

I have given due consideration to all the evidence put forward before me and the submission of learned Senior Counsel appearing for the Defendant. At this stage, it is significant to note that the tenor of the evidence adduced has to be imperatively within the bounds of the pleadings for it to be of any weight as highlighted in the Supreme Court case of **Tostee J.Y. v Property Partnerships Holdings (Mauritius) Ltd** [\[2015 SCJ 41\]](#) as follows:

*"The case of **Ramjan v Kaudeer**[\[1981 MR 411\]\[1981 SCJ 387\]](#) may also be referred to whereby the court had relied upon cases of **Chetty v. Vengadasalon**[\[1901 MR 22\]](#), **Deena v. Malaiyandee** 1940 Pt.II MR 156 and **Ramdharry v. Dhumun**[\[1942 MR 108\]](#) as being examples of judgments which have been quashed on appeal on the ground that the decisions were based on issues which did not appear in the pleadings.*

*The case of **Ramjan v Kaudeer** (supra) further referred to certain passages of Bullen and Leake, and Jacobs Precedents of Pleadings 12th Ed. which were quoted in the judgment of **Jagatsingh and Walter v. Boodhoo** (supra) and explained that once a party has stated the facts on which he relies, these facts are binding and the Court cannot ground its judgment on other facts which may come to light in the course of the trial" (emphasis added).*

Furthermore, a “cause of action” comprises of “every fact which is material to be proved to enable the plaintiff to succeed; in other words, every fact which, if traversed, the plaintiff must prove to obtain judgment” (- see **Heera v Ramjan & Ors.**[\[1976 MR 220\]](#)).

Now, one major departure from Plaintiff’s averments of his plaint is when he said in Court that Defendant had already correctly paid him for what he had worked for by conceding that his claims for overtime and meal allowance are not founded. This has led to another major departure from his averments when he said that he could not understand why some other workers were paid more as overtime after having further departed from his averments that he was working under an established structured shift system compatible with the plea of Defendant and not in the manner averred in his plaint. However, at no time he said that he was certain that those workers were performing under the same shifts as him as he was aware of their exact shifts & frequencies and nor did he bring any one of them as his witness in Court let alone that he conceded that he was aware of the purport of the PAT Award given in 2016 and that he is

still in employment with Defendant. Indeed, this state of affairs has fortified the plea of Defendant in that he was not entitled to any arrears of overtime and as such he has not established on a balance of probabilities that he was entitled to any meal allowance whatsoever as invoked by him.

For the reasons given above, I am unable to find that the case for the Plaintiff has been proved on a balance of probabilities. Hence, being in duty bound, the case is dismissed.

S.D. Bonomally (Mrs.) (Ag. Vice President)

9.6.2020