DHARMEN RAMBUKUS VS BLUE LAGOON BEACH HOTEL CO LTD

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Cause Number: 40/16

THE INDUSTRIAL COURT OF MAURITIUS

(CIVIL DIVISION)

In the matter of:

DHARMEN RAMBUKUS

Plaintiff

VS

BLUE LAGOON BEACH HOTEL CO LTD

Defendant

JUDGMENT

Introduction

This case concerns a claim by the Plaintiff in the sum of Rs 209,733.03 for a case of alleged unjustified dismissal.

The Plaintiff was in the continuous employment of Defendant as a waiter since the 30th October 2008, for and in consideration of a monthly remuneration at the basic rate of Rs 9,245, on a 6-day week basis. His yearly remuneration for the period ranging from January to December 2017 amounted to Rs 129,066.50 and his average monthly remuneration amounted to Rs 10,755.54. His last day of work was on the 5th January 2015 and he was off duty on the 6th January 2015.

The case for the Plaintiff

It is the version of the Plaintiff that on the 7th January 2015, after clocking in at 13 44 hours, he was required to call on Defendant's General Manager before assuming duty. The

Defendant verbally suspended him with immediate effect and informed him that a letter regarding the reason of suspension would follow. On the 9th January 2015, the Plaintiff received a letter from the Defendant whereby it was alleged that his verbal resignation on the 7th January 2015 with immediate effect was accepted. The Plaintiff denied having resigned from employment and instead considered Defendant to have terminated his employment on the 8th January 2015 without notice and without any justification by its acts and doings. By virtue of an amended Plaint, the Plaintiff is claiming from the Defendant the sum of Rs 209,733.03 made up as follows:

(a) One month's wages as indemnity in lieu of notice	Rs 10,755.54
(b) Severance allowance for 74 months continuous employment	Rs 198,977.49

	Rs 209,733.03

The Plaintiff further prayed the Court to order the Defendant to pay to him interests at the rate of 12% per annum on the amount of severance allowance payable from the date of termination of employment to the date of payment, together with costs incurred for attending Court.

The case for the Defendant

The Defendant denied being indebted to the Plaintiff in the sum claimed or in any sum whatsoever. It is the case for the Defendant that the Plaintiff did not attend work on the 08th January 2015 and Defendant, based on Plaintiff's attitude, representation and reaction during the meeting which he had with the General Manager on the eve, had no alternative but,

(i) To assume that the Plaintiff had indeed resigned from his employment and,
(ii) To issue, in all good faith, the letter dated 08th January 2015.

The Defendant further averred that the Plaintiff's intention to leave his employment is tantamount to a voluntary resignation and was conveyed to the Defendant's General Manager in unequivocal terms. The terms of the letter were a mere reflection of the Plaintiff's genuine intent to voluntarily resign from his employment. Therefore, according to the Defendant, the Plaintiff is not entitled to any compensation, whether by way of severance allowance or otherwise.

Observations

I have assessed the evidence on record. This is a case of unjustified dismissal whereby the Plaintiff must aver that his employment was unjustly terminated and the Defendant must prove that same was justified. It has been laid down in the case of **TAHALOOD. R. vs CONSOLIDATED ENERGY CO LTD (2021) SCJ 160** that:

> *"it is trite law that in an action for unjustified dismissal the plaintiff need only aver that his employment was terminated without any cause or justification because the*
>
> *burden of proof on that issue rested on the defendant employer (vide Harel Frères Ltd v. Veerasamy [1968 MR 218])"*

I have therefore considered the versions of all the parties in this case to determine whether the employment was justly or unjustly terminated. Whilst it is the Plaintiff's case that the Defendant terminated his employment without cause or justification, it is the Defendant's case that the Plaintiff voluntarily resigned from his employment.

I shall first start with the version of the Plaintiff. It is undisputed that on the 5th January 2015, the General Manager of the Defendant, Mr Nellacootee, called a meeting with all the Food and Beverages Staff wherein the Plaintiff was present. According to the Plaintiff, Mr Nellacootee's words and body language were aggressive verbally at the meeting, at a time when he was tired and it was time for him to go home. In cross-examination, the Plaintiff explained that he found it insulting that the General Manager of the Defendant called him for a meeting when he had work to do. Upon being questioned, he averred that the meeting started at 15 10 hours when his work finished at 15 00 hours. As he was cornered about the fact that the meeting was after his work hours as his work had ended by 15 10 hours, he changed his version to say that he was called at the meeting at 14 40 hours.

He conceded that in the course of the meeting, he interrupted the General Manager of the Defendant as he wanted to know what was being reproached of him. He vented out his mishaps at work, including issues of overtime, transport, his state of health but as the General Manager of the Defendant was addressing everyone about their problems at work, he left the meeting. When he was questioned about the way he left, the Plaintiff stated that the door could have been banged when he walked out under the pretext that the lock was broken.

At the very outset, I find that the Plaintiff adopted a difficult attitude vis a vis his employer during a meeting. It seems that he was confrontational and created a fuss during a meeting. Having said that, it is important to consider what happened next to determine the nature of the dismissal in this case because it is on the 07th January 2015 that the termination of employment occurred according to both the Plaintiff and the Defendant.

On the 7th January 2015, the Plaintiff resumed work after a day off on the 6th January 2015. He went to see the General Manager of the Defendant, Mr Nellacootee, as his card was not on spot. After much was said in examination and cross-examination, the Plaintiff ultimately agreed that on that day, he went to see the General Manager of the Defendant on 2 occasions. He went a first time, left and then came back a second time. Therefore, there were 2 meetings.

The Plaintiff testified that the General manager of the Defendant suspended him from work. He asked about the reason behind the suspension but received no explanation. According to the Plaintiff, he waited for the reason behind the suspension before he went to see Mr Nellacootee a second time in company of Mr Sawock.

Interestingly, when the Plaintiff was initially asked in examination in chief and in cross-examination about the second meeting which he had when he returned to the office of the General Manager of the Defendant on the same day, in company of Mr Sawock, another employee of the Defendant, he refused to answer claiming that he could not give any explanation about the second meeting if the Labour Officer or Counsel for the Defendant would not tell him the time at which he attended the second meeting. In fact, the Labour Officer tried more than 10 times to ask the Plaintiff what happened during the second meeting with Mr Nellacootee in company of Mr Sawock and for each and every time, the Plaintiff declined to answer standing behind the veil that he would not give any explanation without the Labour Officer specifying the time of the second meeting of the 7th January 2015.

Counsel for the Defendant tried to narrow down the timing of the meetings of the 7th January 2015 to enable the Plaintiff to gear his answer in cross-examination. The Plaintiff explained that he went in the first time at 13 50 hours and was escorted out by a security officer at about 14 10 hours. He went back with Mr Sawock a second time but he refused to answer anything about the second meeting stating that he would not give any version of events if the time of the second meeting is not spelt out to him. He went so far as to say that it was insulting for him to be asked a question without precise reference to the time and elected to keep his right of silence in relation to the contents of the second meeting of the 7th January 2015 with Mr Nellacootee in presence of Mr Sawock.

When the case was called on a subsequent date for Continuation purposes, the Plaintiff's version did not improve much. He maintained the same attitude in cross-examination. He started off by saying that there was no second meeting with Mr Nellacootee. He averred that there was one meeting, following which he went home. The Plaintiff kept going around in circles, refusing to answer questions directly. He had to be thoroughly questioned

to finally state that there were 2 meetings with the General Manager of the Defendant, the second one being in presence of Mr Sawock.

According to the Plaintiff, at the second meeting, the General Manager of the Defendant, Mr Nellacootee, asked him what happened and he vented out his complaints. He contended that he did not resume work after the 7th January 2015 because he was suspended. He denied that he resigned from his employment. The icing on the cake occurred in re-examination when the Plaintiff said that nothing was said in the second meeting and Mr Nellacootee never told him anything. In relation to his work status, he did not understand anything, except that he was on suspension. In re-examination, he went so far as to say that the second meeting with Mr Nellacootee in presence of Mr Sawock went well and he did not have a clue what actually happened.

I find that the reluctance of the Plaintiff to tell the Court about what happened in the second meeting of the 7th January 2015 to be of cardinal importance in the case since it is only the happening of the second meeting which can identify whether the Plaintiff was dismissed or whether he resigned from his place of work.

It is to be noted that when the Plaintiff was questioned about the version of the Defendant that is whether he was not dismissed on the 7th January 2015 but was only suspended for failing to apologise for his behaviour on the 5th January 2015, he refused to answer. When the Plaintiff was told that the General Manager had explained to him that he was not being dismissed but was suspended and that he would receive a charge letter in due course requesting him to appear before a disciplinary committee, he refused to answer. He further failed to answer whether the Defendant accepted his apologies in exchange of a warning on the 7th January 2015. When thoroughly questioned, he aggravated matters by saying that he attended only one meeting during which nothing was said to him.

He could not confirm whether he refused to sign a warning note nor if he was told that him leaving the office would be tantamount to a resignation from his employment. He simply left and did not turn up to work after the 7th January 2015.

I find that the Plaintiff came across as a reluctant witness who failed to establish clearly that he was dismissed. Both the Labour Officer and Defence Counsel had to repeat the same questions for the Plaintiff to give a straightforward answer. I find the refusal of the Plaintiff to give his version regarding what happened in the course of the second meeting resulted in leaving the version of the Defendant that the termination of employment was based on a resignation to be unrebutted and proved. Moreover, his unclear version about the number of meetings held and the vague nature of the contents of the meeting make the Plaintiff fall short from being a witness of truth.

I have noted that the Plaintiff levelled complaints at the Labour Office of Mahebourg. Mr Seeruttun a labour officer came to Court to give evidence about these complaints and explained that on the 6th January 2015, the Plaintiff levelled a precautionary measure to the effect that Mr Nellacootee told him the following words: "si pas capave travaille quitte travaille ale faire mason". He also allegedly registered a complaint at Blue Bay police station. On the next day, the Plaintiff called again at the Labour Office and made a new precautionary measure in the following words: "mo travaille à Blue Lagoon Hotel Jordi Monsieur Ansley Nellacootee Director fine dire moi verbalement qui li pe suspend moi si ena quitte développment mo pour faire bureau travail connais".

On the 12th January 2015, the Plaintiff again attended the labour office one more time and registered a complaint to the effect that he had worked as a waiter since November 2008 and he has received a letter dated the 8th January 2015 where it was stipulated that he has asked for resignation but he was not agreeable to same.

It is peculiar enough that the complaints levelled by the Plaintiff through a precautionary measure do not reflect his testimony in Court in as much as he told the Court that the meeting with Mr Nellacootee went well, nothing was said and he was never dismissed. Moreover, Mr Seeruttun's enquiry revealed that there was only one meeting between the Plaintiff and Mr Nellacootee on the 7th January 2015. He understood that the case for the Defendant rested on a resignation on the part of the Plaintiff and although he enquired in the case, his enquiry was limited to securing the versions of the parties only. Nonetheless, he conceded that there was nothing sinister in the letter sent by the Defendant to the Plaintiff dated the 8th January 2015.

I do not find the testimony of Mr Seeruttun to be enlightening about the nature of the termination of the Plaintiff's employment. Be that as it may, I have also considered the version of the Defendant as reflected by the version of Mr Nellacootee and Mr Sawock.

It is the case for the Defendant that on the 5th January 2015, at about 2 30 pm, the General Manager of the Defendant, Mr Ansley Nellacootee, called a meeting with all the food and beverages staff. It was a meeting scheduled at the beginning of the year with the aim of thanking the staff as a note of appreciation for their work accomplished.

The Plaintiff was present at the meeting but he kept interrupting the General Manager. At 03 00 pm, although the meeting was still ongoing, the Plaintiff left the meeting and when he was asked by the General Manager why he was leaving, the Plaintiff replied in a loud vice which was heard by all the staff present that "mo l'heure travail in fini. Mo pas ena le temps ecoute zot cozer". He then left the conference room and banged the door loudly.

The Plaintiff was off on the next day and resumed work on the 7th January 2015. When Plaintiff arrived at the security post of the premises of Defendant, he was informed by the security officer to go and see the General Manager before reporting to his post. In the office of the General Manager, Mr Nellacootee, the latter informed the Plaintiff that he was unhappy with his behaviour of the 5th January 2015 and asked him to apologise but the Plaintiff refused.

It was then that Mr Nellacootee informed the Plaintiff that he was suspending him with immediate effect. The Plaintiff refused to leave the office of Mr Nellacootee and asked that a letter confirming that he was being dismissed be remitted to him, to which Mr Nellacootee explained to the Plaintiff that he was not being dismissed but was being suspended and that he would receive a charge letter in due course requesting him to appear before a disciplinary committee. The Plaintiff then left the office.

Some minutes later, the Plaintiff returned to the office of Mr Nellacootee accompanied by another employee of the Defendant, Mr Kailash Sawock who informed Mr Nellacootee that Plaintiff had come back to apologise. However, instead of apologising the Plaintiff stated the following words to the address of Mr Nellacootee: "mo pas pou demande pardon moi mais si zot envie excuse moi, ok". Mr Nellacootee informed the Plaintiff that he was accepting his apologies and withdrawing the suspension but he would nonetheless issue a warning to the Plaintiff. Thereupon the latter replied: "Mo pas pou signe aucaine warning moi, si coum sa mo pe aller".

Upon being asked to clarify the purport of his words, the Plaintiff said: "Mo pas pou signe narien, apres mo ava guete". Mr Nellacootee warned the Plaintiff that if he left the office it would be considered that he was resigning from his employment. The Plaintiff again replied: "apres mo ava gueter" before leaving the hotel premises on his own volition.

In Court, both Mr Nellacootee and Mr Sawock testified as per the plea on record such that the versions of the Defendant remained consistent with the pleadings. Mr Nellacootee totally denied that he addressed the Plaintiff aggressively or that he reproached the Plaintiff for his work in any way whatsoever. He explained that the Defendant never suspended the Plaintiff and the decision of the latter to leave his work, amounted to a resignation. This version is supported by the version of Mr Sawock who testified that Mr Nellacootee gave a warning to the Plaintiff at the second meeting held on the 7th January 2015 but the latter refused to sign the warning letter and opted to leave his work.

It is clear from the sequence of events that Mr Nellacootee called the Plaintiff for a first time on the 7th January 2015 for a meeting during which he informed the Plaintiff that he was suspended with written reasons to follow, then came a second meeting on the same day in company of Mr Sawock whereby Mr Nellacootee offered a chance to the Plaintiff, removing

the suspension and issuing a warning instead, which was refused by the Plaintiff who opted to leave and never to resume his work. I find that the versions of Mr Nellacootee and Mr Sawock are corroborative, detailed, straightforward and clear. They spoke with precision and clarity and I find no reason to doubt the versions of Mr Nellacootee and Mr Sawock as being true.

Discussions

In view of the above, and more specially in view of the version of the Plaintiff which rested on his refusal to give a clear and straightforward version of events as compared to the credible and reliable version of the Defendant, I find true the version of the Defendant. In the circumstances, it is easily concluded that the Plaintiff received a suspension warning in the course of the first meeting on the 7th January 2015, then the Plaintiff came back before the General Manager of the Defendant who withdrew the suspension with the intention to give the Plaintiff a warning. It is the Plaintiff who refused to acknowledge the warning and elected to leave his employment, despite having been informed that his would constitute a resignation.

I have considered the nature of the resignation of the Plaintiff. It was said in the case of **GEORGES MAHADEO INDUSTRIES LTD VS ISSORYN (2010) SCJ 369** that: *"it is the court's business to ensure that a resignation is given thoughtfully and freely"*. The employee's right to resign is unqualified and can be exercised in writing, verbally or can be deduced from his behaviour. *«Il apparaît donc bien que la démission peut être donnée: par écrit; verbalement; enfin se déduire du comportement du salarié, qui par son attitude explicite ou implicite a démontré qu'il entendait irrévocablement quitter l'entreprise.»* **-Dalloz, Droit du Travail, janv. 1994, para. 19.**

In the present case, it has been explicitly tendered in evidence through the version of the Defendant that the Plaintiff elected to resign from his place of work despite having been warned that his action would constitute an act of resignation. It cannot be said that the resignation was given under emotions since the Plaintiff has had the time to attend 2 meetings, to talk to the general manager of the Defendant, to refuse to sign a warning note and to elect to leave his job, knowing that the departure would be construed as a resignation.

I take the liberty of quoting an extract from the case of **GEORGES MAHADEO INDUSTRIES LTD VS ISSORYN (2010) SCJ 369**:

> *"In that regard, it becomes important to sound the intention of the worker in the given situation:*
>
> *«On observera de manière générale que le juge s'attache à apprécier in concreto quelle fut l'intention du salarié; entendait-il ou non quitter l'entreprise de son propre*

chef? Le juge ira au-delà de l'apparence pour analyser autant que faire se peut l'intention réelle du salarié: quitter l'entreprise ou y demeurer.» ***Dalloz, Droit du Travail, janv. 1994, para. 34.***

The post-event conduct of the worker is one of the many indications that help to find what that intention was".

In the present case, the Plaintiff never contended that he intended to resume work and in fact, did not resume work on the 8th January 2015 or thereafter. His version to the effect that he did not resume work after the 8th January 2015 because he was awaiting a suspension letter is given the lie by the fact that he attended a second meeting with Mr Nellacootee on the 7th January 2015 whereby his suspension was recalled in exchange of an apology on the part of the Plaintiff. When the Plaintiff refused to sign a warning letter and said that he would leave, he was unequivocally told that this would be construed as a resignation. On the next day, the Plaintiff was favoured with a letter clearly expressing same. In the circumstances, the Plaintiff cannot, after having been expressly and unequivocally notified, pretend that he was expecting a suspension letter.

I find that there was a clear intention on his part to put an end to his employment. "*Toutefois, il faut impérativement que cet acte de rupture soit bien constitutif d'une démission … .»* ***Dalloz, Droit du Travail, janv. 1994.*** In view of the fact that the Plaintiff elected to leave despite knowing that he was only given a warning instead of suspension or dismissal and did not resume his employment, I find that the resignation was free and voluntary. He did so knowing that his departure from work would be construed as a resignation, a statement which was explicitly made clear to the Plaintiff.

Conclusion

In view of the above, I find that the Defendant has successfully established that the termination of the Plaintiff's employment was based on a resignation on the part of the Plaintiff. The Plaintiff has failed to prove his case on a balance of probabilities. I dismiss the case for the Plaintiff.

Judgment delivered by: M.GAYAN-JAULIMSING, Ag President, Industrial Court

Judgment delivered on: 16th August 2024