

Hurryman S. v Edmond Security Services Ltd

2022 IND 1

Cause Number 306/16

IN THE INDUSTRIAL COURT OF MAURITIUS
(Civil side)

In the matter of:

Mr. Sookraj Hurryman

Plaintiff

v.

Edmond Security Services Ltd

Defendant

Judgment

In this plaint, Plaintiff has averred the following:

- 1. he was in the continuous employment of Defendant as Watchperson since 15.12.2013;*
- 2. he was employed on a 7-day week basis;*
- 3. he was remunerated at monthly intervals at the basic rate of Rs.6,500 per month;*
- 4. he has worked on 54 normal days, 9 Sundays and 2 Public Holidays during period 29.10.14 to 01.01.15 but Defendant has failed to pay him remuneration for extra work performed on normal days, Sundays and Public Holidays;*

5. *during period 29.10.14 to 01.01.15, he has performed more than 2 hours' extra work after having completed his normal day's work on 54 days and Defendant has not paid him a meal allowance;*
6. *he has not been paid End of Year Bonus for Year 2014;*

Plaintiff is, therefore, claiming from Defendant the sum of Rs.28,237.81/- representing overtime for period 29.10.14 to 01.01.15: Rs. 17,957.81, meal allowance for period 29.10.14 to 01.01.15: Rs. 3,780.00 and End of Year Bonus 2014: Rs. 6,500.00.

Defendant, for its part, has denied items 1 to 6 of the plaint above. It has averred that according to its records, Plaintiff was never in its employment as Watchperson or otherwise. It has further taken note that Plaintiff is not in possession of any contract of employment and/or pay slip and/or official attendance sheet emanating from it. It has denied liability and has moved that the present matter be set aside.

Plaintiff deposed in Court to say that he was employed as Security Guard and not as Watchperson. However, part of his testimony is as per the averments above. He admitted that he did not have any written contract of employment with Defendant, nor a copy of his pay slips, nor a signed attendance sheet by the representative of Defendant viz. Doc. P1. In the latter document, at the top just below the handwritten name of Defendant, the name of one Sachin Jissy was mentioned but it was not mentioned in what capacity. He conceded that the attendance sheet was prepared by him and it did not have the logo of the Defendant company. Furthermore, he stated that he was only given a white shirt and a black tie as uniform without any logo of Defendant on them. He stressed that although he had worked for Defendant for about 13 months, it did not contribute for his National Pension Scheme. Then, he admitted that in the year 2013, he was not employed by Defendant but only by RSL Security for a period of one month only. He decided that he approached one Sachin as regards his employment with Defendant but could not say in what capacity. He could not say whether during that one month he was working for RSL company, he was also working for Defendant. He went on to say that although he worked for RSL company for only one month, it has contributed for his National Pension Scheme. He explained that he was paid his monthly salary by Defendant by way of cheque and for which he did not have a copy to produce in Court nor a document from his Bank that such salary was credited on his account every month.

Mr. Frederic Augustin, Defendant's representative, in his capacity as Human Resource Manager gave evidence in Court. He explained that any person employed by Defendant needed to fill an application form, sign a contract and he was given a uniform together with all working equipment. Each employee had an attendance sheet with the logo of the Defendant which was filled by the employee and then verified by a supervisor and then further verified at the office of Defendant. Doc. P1 did not emanate from Defendant company as it did not have the logo of Defendant, nor the signature of its supervisor. Each employee was given a pay slip and there was a contribution made by Defendant to its employees for the National Pension Scheme deducted monthly from their pay slips. That procedure was ongoing since its inception although he was not employed since then, he was aware of same. As per records kept, Plaintiff was not employed by Defendant.

I have given due consideration to all the evidence put forward before me and the submissions of learned Counsel for the Defendant. Plaintiff has admitted that he did work for another company namely RSL Security in the year 2013 and that the said company had contributed for his National Pension Scheme. At some stage, he even admitted that he was not employed by Defendant but only by the RSL company. Then, he decided that he could not say whether he was working for both RSL and Defendant during the same period. Now, he admitted that he had no copy of any cheque as proof of his payment by Defendant for the past 13 months nor any document from his bank to show that his wages were credited monthly on his account. The only document he relied upon was an attendance sheet which he prepared himself which contained no signatures whatsoever but only a handwritten one by him viz. Doc. P1 which is self serving in nature. Moreover, the representative of Defendant stated in Court that each employee had to fill an application form for employment purposes, was made to sign a contract, was given a uniform together with other work equipment and that Doc. P1 was not an attendance sheet emanating from Defendant as it did not contain the logo of Defendant nor was it signed by its supervisor. Furthermore, that one Sachin whom Plaintiff claimed to have approached for employment purposes with Defendant and whose name also appears in his handwritten attendance sheet as per Doc. P1, does not bear his signature nor that of Plaintiff let alone that he was not called as a witness by Plaintiff. Therefore, the possibility that the so called Sachin having a proximity with Defendant, had concocted with Plaintiff by helping him to fill his attendance sheet by providing him with information with work carried out at different sites and at different times so that Plaintiff could claim overtime from Defendant while still working for

the RSL Security, cannot be disregarded. This state of affairs lends support to the testimony of Defendant's representative that as per records kept, Plaintiff was not employed by Defendant although as per the provisions of Section 2 of the Employment Rights Act 2008 – Act 33 Of 2008 an "agreement" *"means a contract of employment or contract of service between an employer and a worker, whether oral, written, implied or express"*. Thus, I take the view that the testimony of Defendant's representative namely Mr. Frederic Augustin is more plausible and reliable.

For all the reasons given above and more importantly in view of Plaintiff's own candid admission that he did not work for Defendant in the year 2013 when he has averred in his plaint above that he was employed by Defendant since year 2013, I am unable to find that the case for the Plaintiff has been proved on a balance of probabilities. I accordingly dismiss the plaint.

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

7.1.22

