Matadin v Wendover Retail & Co. Ltd

2025 IND 44

THE INDUSTRIAL COURT OF MAURITIUS

(Civil Side)

In the matter of:-

CN 148/2020

Sanjay Matadin

PLAINTIFF

v.

Wendover Retail & Co. Ltd

DEFENDANT

JUDGMENT

1. The Plaintiff avers that he was in the continuous employment of the Defendant since 2007. He avers that, on 17 March 2016, he was constructively dismissed in circumstances which he describes in his plaint. He is claiming a total sum of Rs 419,335.29 from the Defendant consisting of severance allowance, outstanding remuneration and wages as indemnity in lieu of notice.

The case for the Plaintiff

2. The Plaintiff testified to the effect that the Defendant runs a filling station where he was employed as supervisor. On 17 March 2016, the Defendant's director, Mr. Mookeshwarsing Gopal, strongly reprimanded him about an incident that had happened on the eve. The Plaintiff was told that he had failed in his duty as a pump attendant, under his supervision, had refuelled a lorry whilst its engine was still on. The Plaintiff told Mr. Gopal that at the relevant time he (i.e. the Plaintiff) was in the office, and that he could not be held accountable for what had happened outside. According to the Plaintiff, Mr. Gopal grew vexed and insulted him in presence of his colleagues. Mr. Gopal banged his hand on the table and told the Plaintiff to *"bez fesse*

aller". Mr. Gopal directed him to sign a *"warning"* and told him that he could not resume work until he had done so. The Plaintiff refused to sign same as he was convinced that he had not done anything wrong. The Plaintiff felt humiliated. He left soon after.

3. In cross-examination, the Plaintiff stated that he made a complaint to the Labour Office on the day following the altercation with Mr. Gopal. The Plaintiff denied that he had abandoned his work, nor that he had received any correspondence from his former employer. He further denied having admitted his past mistakes in a document dated 27 April 2016.

4. Mrs Choychoo from the Labour Office confirmed in Court that the Plaintiff had made a complaint against his employer on 18 March 2016 and filed a copy thereof **(Document B)**. She also produced a copy of Mr. Gopal's version **(Document C)**.

5. Mr. Sewraz gave evidence regarding the average remuneration of the Plaintiff **(Document E)** and Mrs Resal from the Ministry of Social Security confirmed that the Defendant contributed to the National Pensions Scheme on behalf of the Plaintiff from May 2007 to February 2016 **(Document F)**.

The case for the Defendant

6. Mr. Mookeshwarsing Gopal deposed on behalf of the Defendant and explained the circumstances of the incident involving the Plaintiff. On 16 March 2016, Mr. Gopal saw the Plaintiff refuelling a vehicle whilst its engine was still on. He told the Plaintiff that this was dangerous as a serious accident could occur, and gave him a verbal warning. The next day, Mr. Gopal noticed that the Plaintiff was serving a client who was smoking in his car. Mr. Gopal called the Plaintiff and told him that he was not paying attention to his job. He reminded the Plaintiff that he had signed many *"warnings"* and that, despite having stolen from the company, he had not been sacked. Mr. Gopal affirmed that he told the Plaintiff *"please sign a warning, and then you take your work"*, to which the latter replied *"mo envoy ou ferfoute, mo pas pou signe okene warning, gueter qui ou capav faire."*

7. Mr. Gopal asserted that he then requested two other workers to convince the Plaintiff to sign the *"warning"* and resume his work, but the latter refused. He did not

go back to work and left the premises. Mr. Gopal stated that on 21 March 2016, he sent a letter by way of registered post to the Plaintiff asking him to resume work **(Document A)**. On 27 April 2016, Mr. Gopal requested the Plaintiff to sign a letter – which he (i.e. Mr Gopal) had drafted – acknowledging that he had authorised credit sales to customers in the sum of Rs 35,251.87, which money had not been recovered by the company **(Document G)**.

8. Mr. Gopal was adamant that he was willing to take the Plaintiff back in employment, but the latter declined. Mr. Gopal produced a letter dated 04 July 2017 which he had sent to the Ministry of Labour **(Document H)**. He conceded that wages for the month of March 2016 amounting to Rs 8,400. approximately were still due to the Plaintiff. Mr. Gopal added that the Plaintiff had been involved in reprehensible conduct in the past; he was also absenting himself very often.

9. In cross-examination, Mr. Gopal came back on the incident of 16 March 2016 and asserted that the Plaintiff had failed to properly supervise the pump attendant. The Plaintiff was told to sign the *"warning"* and resume work. Mr. Gopal denied having insulted the Plaintiff.

Analysis and finding

10. I have considered the evidence on record in the light of the pleadings and the submissions of Learned Counsel for the Defendant. The Plaintiff claims that his employment was constructively terminated by the Defendant on account of the incident with Mr. Gopal as described above. On the other hand, the Defendant pleads *"in limine litis"* and on the merits of the case that the Plaintiff abandoned his work and cannot, thus, claim unjustified dismissal.

11. In **Raman Ismael v. United Bus Service (1986) MR 182**, the Supreme Court held that *"constructive dismissal is inherently different from dismissal in the sense that it is the employee who necessarily takes the initiative in considering the contract as having been repudiated, with the result that the expressed intentions of the employer are not strictly relevant."* Indeed, the intents of the employer are immaterial and the Court, in deciding whether there has been constructive dismissal or not, is primarily concerned with the objective effects of the conduct of the employer on the employee.

12. In **Joseph v. Rey & Lenferna Ltd. (2008) SCJ 342**, it was held as follows:

> *"A constructive dismissal by an employer occurs where an employee is entitled to put an end to his contract of employment by reason of his employer's conduct. Although the employee terminates his employment, it is the employer's conduct which constitutes the breach of contract. It is therefore imperative that the employee clearly indicates, by word or conduct, that he is treating the contract as having been terminated by his employer and if he fails to do so, he will not be entitled to claim that he has been constructively dismissed."*

13. Moreover, it is crucial that the employee reacts fast following the conduct which he believes is constitutive of constructive dismissal. Otherwise, his acquiescence to the conduct may be considered as a waiver to future action. In **Periag v. International Beverages Ltd (1983) MR 108**, the Supreme Court endorsed the words of Lord Denning in ***Western Escavations (Ece) Ltd. v. Sharp*** **1978 1 ALL E.R. 713**:

> *"… the employee must make up his mind soon after the conduct of which he complains. If he continues for any length of time without leaving, he will be regarded as having elected to affirm the contract and will lose the right to treat himself as discharged."*

14. After careful examination of the version of the Plaintiff and that of Mr. Gopal, I find the Plaintiff's account of events more plausible than that of Mr. Gopal. The Plaintiff was coherent and credible in relating the events. Although it is to be observed that the Plaintiff did not repeat *verbatim* what is averred in the plaint, he has nevertheless remained consistent on the essence of his complaint. This is in stark contrast with the Defendant's posture. Indeed, at paragraph 9 of its plea, the Defendant avers that the Plaintiff was *"given a warning since as a supervisor, he allowed a client's vehicle to be filled with diesel whilst the engine was on, despite knowing full well the alarming risks of explosion that this entails. The Plaintiff refused to sign a written warning to that effect, and left his job straightaway without returning."* However, the evidence of Mr. Gopal in Court was on different premises as summarised above. This seriously undermines the Defendant's case.

15. I further note that Mr. Gopal was somehow evasive when questioned on whether he had imposed the signature of a *"warning"* as a precondition for the Plaintiff to resume work on 17 March 2016, and as to whether the Plaintiff was given

the possibility not to sign the *"warning"* and carry on with his work. It transpires throughout the evidence that Mr. Gopal took the Plaintiff's refusal to sign the *"warning"* very seriously as can be gathered from his testimony alongside **Document A** (*"You refused to sign the warning …"*), **Document C** (*"Respondent [i.e. Mr. Gopal] insisted that warning should be signed …"*) and **Document H** (*"In fact he [i.e. the Plaintiff] refused to sign a Warning Letter for a serious negligence and he left the company and he never came to work."*). It is evident that on 17 March 2016, Mr. Gopal was attempting to compel the Plaintiff to sign a *"warning"* against his will. By his acts and doings, Mr. Gopal had made it clear that the signature of the *"warning"* was not a mere request but a prerequisite for the Plaintiff to get back to work. Whilst it is an employer's prerogative to issue a *"warning"* to an employee when circumstances so require, the latter cannot be forced to sign same under the pain of not being allowed to work.

16. Moreover, I believe the Plaintiff when he says that he was insulted by Mr. Gopal, who was particularly annoyed with the manner in which the Plaintiff was performing his job as supervisor. If anything, the number of past shortcomings on the part of the Plaintiff that had been noted by Mr. Gopal, as alluded to by him, would explain such tempestuous reaction on 17 March 2016, but certainly not justify same. True it is that not any kind of ill-treatment will enable a worker to relinquish his employment and claim constructive dismissal. The impugned conduct on the part of the employer must be particularly reprehensible, or to use the words of Lord Denning in ***Western Escavations (supra)*** *"sufficiently serious to entitle him [i.e. the employee] to leave at once"* – *vide* **Adamas Limited v. Cheung [2011] UKPC 32**. I find that this was so here. By swearing at the employee and imposing the signature of a *"warning"*, Mr. Gopal fell foul of the law and engaged the Defendant's responsibility.

17. It is worth highlighting that the Defendant admits in its plea that *"the Plaintiff refused to sign a written warning … and left his job straightaway without returning."* The Plaintiff's response to his employer's coercive conduct was, thus, unambiguous and immediate. In view of all the circumstances, I find that it was not unreasonable or disproportionate on the part of the Plaintiff to construe his work as having been terminated.

18. In its plea, and in Court, the Defendant has responded to the Plaintiff's claim by contending that the latter had abandoned his work, which entitled him to no remedy against his former employer. In view of my above finding, the issue is not *stricto sensu* live anymore. I shall, nevertheless, address same for the sake of completeness.

19. The applicable law on the issue of abandonment of work at the material time (i.e. March 2016) is the Employment Rights Act 2008, as amended. Following an amendment to section 36 of that enactment, which came into force on 11 June 2013 (Act 6 of 2013), subsection (5) read as follows:

> *"An agreement shall not be broken by a worker where he absents himself from work for more than 2 consecutive working days without good and sufficient cause for a first time unless the employer proves that the worker has, after having been given written notice –*
>
> *(a) by post with advice of delivery; or*
>
> *(b) by delivery at the residence of the worker,*
>
> *requiring him to resume his employment, failed to do so within a time specified in the notice which shall not be less than 24 hours from receipt of the notice."*

20. In the present matter, there is no evidence that the Defendant had written to the Plaintiff requiring him to resume work. The importance of such *"written ultimatum"* was made abundantly clear by the Judicial Committee of the Privy Council in **Seetohul v. Omni Projects Ltd [2015] UKPC 5** – a case which turned on corresponding provisions of the Labour Act 1975, as amended. This is a prerequisite when an employer seeks to invoke abandonment of work as a defence to a claim. I consider that reliance by the Defendant on the letter sent to the Plaintiff by way of registered post on 21 March 2016 **(Document A)** is not of much assistance to the Defendant's cause. I say so for two reasons. Firstly, there is no evidence that the letter had indeed reached the Plaintiff as there is no *"advice of delivery"*. This was crucial as the Plaintiff denied cognisance of that correspondence. Secondly, and more importantly, the letter's tenor is more in the form of reproaches than a notice to resume work. Indeed, much is said in that letter about the Plaintiff's faults at work and, at the last two paragraphs, the Plaintiff is requested to collect his outstanding salaries and return his uniform to the company. Hence that letter cannot, by any stretch of the imagination, be construed as a notice to resume work. The defence of abandonment of work cannot therefore stand.

21. For all the foregoing reasons, I find that the Plaintiff has established his claim on a balance of probabilities.

22. The average monthly remuneration of the Plaintiff was to the tune of Rs 14,966.87 – based on **Document E**.

23. The Plaintiff is, thus, entitled to the sums listed at paragraph 2 of the plaint, namely:

(a)	outstanding remuneration for the period 26.02.2016 to 17.03.2016:	Rs	7,746.37
(b)	wages as indemnity in lieu of notice:	Rs	14,966.87
(c)	severance allowance for 106 months' continuous service (Rs 14,966.87 x 3 x 106/12):		Rs 396,622.05
	TOTAL:		Rs 419,335.29

24. I, therefore, order the Defendant to pay to the Plaintiff the sum of Rs 419,335.29. I make no order as to interest or compensation for court attendance.

06 June 2025

M. ARMOOGUM

Magistrate