Arlequin v National Real Estate Ltd

2023 IND 39

CN688/17

THE INDUSTRIAL COURT OF MAURITIUS
(Civil Side)

In the matter of:-

Benoit Norbert Arlequin

Plaintiff

v/s

National Real Estate Ltd

Defendant

JUDGMENT

By way of his *Proecipe*, the Plaintiff is claiming from the Defendant Company **the total sum of Rs84 699. 75/- representing One Month's Wages As Indemnity In Lieu Of Notice, Severance Allowance, and Pro Rata End Of Year Bonus, for his wrongful and unjustified dismissal by the Defendant Company, together with Interest at the rate of 12% per annum as from the date of his unjustified dismissal up to the date of final payment, with Costs.**

The Defendant Company denied the said Claim in its Amended Plea and moved for the Plaintiff's action to be dismissed with Costs.

The Parties were each assisted by Learned Counsel.

The Proceedings were held partly in English and partly in Creole.

Case for the Plaintiff

The Plaintiff's case was in essence that his employment was unjustifiably and wrongfully terminated by the Defendant Company on 09-09-15, as no Disciplinary Committee had been held and no charge of misconduct had been laid against him.

Case for the Defendant Company

The Defendant Company's case was to the effect that the Plaintiff's attendance at work was erratic, and that by letter dated 27-08-15, the Plaintiff was given one month's notice in virtue of Clause 6(b) of his Contract of Employment, which expired on 09-09-15.

It was further the case of the Defendant Company that the Plaintiff was paid Rs19 173/- representing his salary as at 09-09-15, together with one month's salary as an *ex gratia* payment, and the refund of the remaining Annual Leaves for the years 2014 and 2015.

The Defendant Company denied that the Plaintiff's employment had been wrongfully and unjustifiably terminated.

Analysis

The Court has duly considered all the evidence on Record and all the circumstances of the present matter, and the Court has given due consideration to the Submissions of each Learned Counsel.

Applicable Law

It was common ground between the Parties that the Plaintiff last worked for the Defendant Company on 09-09-15, and the applicable Law at the relevant time was the **Employment Rights Act as amended (hereinafter referred to as ERA)**.

Not in dispute

The following was not in dispute:

1) The Plaintiff had been in the continuous employment of the Defendant Company as Security Officer;
2) The Plaintiff's terminal monthly salary was Rs10 929/-; and
3) The Plaintiff last worked for the Defendant Company on 09-09-15.

Wrongful and unjustified Dismissal?

As per his Pleadings, the Plaintiff's case was that the termination of his employment was unjustified as no Disciplinary Committee was held, and that the termination of his employment was wrongful and unjustified as no charge of misconduct was laid against him.

In Court, the Plaintiff adduced no evidence in relation to the abovementioned averments but the following points were put forward by, or on behalf of, the Plaintiff:

1) he had not received (Doc. P2), and then accepted having received same;
2) he had not stopped working on 09-09-15, but adduced no evidence, documentary or otherwise, to substantiate same;
3) he had not been explained the documents (Docs. D2, D3, and D4) at the time he was asked to sign same;
4) he was made to work for 02 years, and stop before going over the said 24-month period;
5) his contract ended in October 2015, so that the Plaintiff worked for 25 months for the Defendant Company; and
6) **s. 5(3A) of the ERA**.

It is settled Law that the Parties are bound by their Pleadings, and the Court finds the following passage from **Odgers' Principles of Pleading and Practice, 22 ed.** to the point:

> Each party must state his whole case. He must plead all facts on which he intends to rely, otherwise he cannot strictly give any evidence of them at the trial… The plaintiff is not entitled to relief except in regard to that which is alleged in the pleadings and proved at the trial (per Warrington J. in Re Wrightson [1908] 1 Ch. at p. 799).

Applying the abovementioned principles to the present matter, the Court finds that it was not open to the Plaintiff to raise the abovementioned issues which had not been specifically averred in his *Proecipe*, and the Court therefore proceeds to determine the present matter on the basis of the averments made in the Pleadings on Record only.

No evidence was adduced either in relation to the failure of the Defendant Company to hold a Disciplinary Committee, or in relation to the failure of the Defendant Company to level a charge of misconduct against the Plaintiff.

The Court therefore finds that the Plaintiff has adduced no evidence on Record to substantiate his Claim as per the averments in his Pleadings.

That being said, the Court is of the considered view that the evidence on Record establishes that there was no termination of the Plaintiff's contract of employment (Doc. D1) by the Defendant Company, for the reasons given below.

First, the initial contract (Doc. P1) was for a determinate period of 01 year, as per Clause 1 of (Doc. P1), and came to an end on 09-09-14.

As to what is meant by a contract of determinate duration comes to an end, reference is made to "*The first extract […] from* ***Droit du travail, 7ème édition, Antoine Mazeaud, cessation normale note 688*** *[…] [which] poses the principle that a contract of determinate duration comes to an end "de plein droit" in the sense that it "s'achève normalement de lui même au terme qui a été fixé, sans formalisme de part ni d'autre..*" (**Robert v Business & Decision Ltee [2023 SCJ 7]**).

As per the clear and unambiguous terms of the contract (Doc. P1), it was the common will of the Parties that the said initial contract (Doc. P1) would come to an end on 09-09-14.

Second, the said initial contract (Doc. P1) was expressly renewed on the same terms and conditions as per the letter (Doc. D1), and hence the second contract was for a determinate period of 01 year, to come to an end on 09-09-15 (**Robert (supra)**).

From the express terms of the said two contracts (Docs. P1 and D1), it is clear that each of the Plaintiff's contracts of employment with the Defendant Company were for a determinate duration of 01 year, subject to any express renewal of same.

Third, significantly, the Plaintiff agreed that the contract subject matter of the present Proceedings was for a period of one year.

This admission on the part of the Plaintiff in Court amounts to an *aveu judiciaire*, which has "*une force probante remarquable, puisqu'il constitue une preuve complète. En effet, l'article 1356 du Code Civil dispose que l'aveu judiciaire "fait pleine foi contre celui qui l'a fait" en sorte que le juge*

est lié par l'aveu: il s'impose au juge, qui doit tenir pour exacts les faits avoués (A. Marais, introduction au droit, Vuibert, no. 291, p. 217) – l'aveu judiciaire intervient donc au cours du procès, devant la juridiction appelée à trancher le litige, le sort du procès dépendant d'une telle déclaration" [Cour de Cassation Civ. 3e, 10 Mars 2016, no. 15 – 10.995]" (**De Guardia De Ponte v Park Lane Properties & Ors [2021 SCJ 16]**).

At no stage was any attempt made by the Plaintiff to establish that the said admission *a été la suite d'une erreur de fait*.

Hence, it has been established that the said contract (Doc. D1) was for a determinate period of 01 year.

Fourth, the Plaintiff was informed by way of letter (Doc. P2) that his second contract (Doc. D1), which was coming to an end on 09-09-15, would not be renewed, and that he would be paid his salary in lieu of the remaining period of service.

The Plaintiff at first denied having received the said letter (Doc. P2), and eventually admitted in cross-examination having received same.

And this letter, which was produced by the Plaintiff himself, specifies *inter alia* that the contract (Doc. D1) was for a period of 01 year and was coming to an end on 09-09-15.

And fifth, the payment of such salary in lieu of the remaining period of service (as opposed to notice), by the Defendant Company, in no way detracts from the fact that the Plaintiff's contract of employment (Doc. D1) was for a determinate period of 01 year as admitted by the Plaintiff in Court, and which contract (Doc. D1) was coming to an end on 09-09-15 by the common will of the Parties.

In light of all the above, the Court is of the considered view that there was no termination of the Plaintiff's contract of employment (Doc. D1) by the Defendant Company, but rather that same came to an end by the common will of the Parties on 09-09-15.

Further, the Plaintiff stated that he had not been explained the said documents (Docs. D2, D3, and D4), but at no stage put in issue the authenticity/veracity of the said documents.

The Plaintiff also stated he did not know how to read English too well and that he had not been explained the said documents at the time he was requested to sign same, but it is to be noted that at no stage did the Plaintiff state he did not understand his Contract (Doc. P1), which is also in English.

The Court bears in mind that the burden is on the employer, i.e. on the Defendant Company, to prove that the dismissal was justified, but in light of all the evidence on Record and all the factors highlighted above, the Court is of the considered view that there is no evidence on Record to establish that there was termination by the Defendant Company of the Plaintiff's employment, and that the said termination was either unjustified and/or unjustified and wrongful.

Conclusion

In light of all the evidence on Record, all the circumstances of the present matter, and for all the reasons given above, the Court finds that the Plaintiff has not established his case against the Defendant Company on the Balance of Probabilities, **and the present matter is therefore dismissed.**

No order as to Costs.

[Delivered by: D. Gayan, Ag. President]
[Intermediate Court (Financial Crimes Division)]
[Date: 06 June 2023]