

Valentin J.D. v Rey and Lenferna Limited

2025 IND 1

Cause Number 28/18

**IN THE INDUSTRIAL COURT OF MAURITIUS
(Civil Side)**

In the matter of:-

Jean Denis Valentin

Plaintiff

v.

Rey and Lenferna Limited

Defendant

Judgment

The averments of this plaint are as follows –

1. *Since 18 January 2012, Plaintiff had been in the continuous employment of Defendant Company. He was last employed as Storekeeper earning a monthly terminal salary of Rs 18,192 and he was entitled to end of year bonus.*
2. *By way of a letter dated 7.4.2017, he was informed that he was suspended from duty and that an enquiry was ongoing.*
3. *By way of a letter dated 15.5.2017, Defendant informed him that he was convened to attend a Disciplinary meeting in regard to the alleged charges which were being investigated against him.*

4. *By way of a letter dated 2.6.2017, Defendant Company informed him that it summarily dismissed him from his aforesaid employment. His dismissal was unfair and without good cause or justification.*

Plaintiff has, therefore, claimed from Defendant the sum of Rs. 328,593/- representing 30 days remuneration in lieu of notice: Rs 18,192 and severance allowance (Rs 18,192 x 13/12 x 63/12 years x 3): Rs 310,401 for alleged wrongful, unjustified and unfair dismissal.

Defendant, for its part, in its amended plea, has denied liability.

It has averred that by way of letter dated 15.5.2017, the Management informed Plaintiff of the charges levelled against him-

- (i) *Whilst being on duty, you proceeded with the delivery of new batteries without the required documents (Battery claim forms);*
- (ii) *You raised a battery claim form without notification and authorization from the after sales supervisor or any other person in a supervisory position;*
- (iii) *You colluded with Messrs Etrange and Pather to cause Rey & Lenferna's battery stock (references RLCONSo60, RLCHARGo61, LUBCONSo61 and LUBCHARgo61) to be mishandled and caused a shortfall in sales at the showroom;*
- (iv) *Whilst being on duty, you circumvented the Department's established procedures and effected move-order transfers from RLCONSo60 to other consignees' sub inventories without any notification, justification and authorization.*

Defendant has averred that Plaintiff's employment was terminated by way of a letter dated 2.6.2017 pursuant to a disciplinary hearing held on 30.5.2017 during which Plaintiff was afforded a fair hearing and given the opportunity to answer the charges levelled against him.

In the light of the testimonies and evidence adduced at the said disciplinary hearing, the Chairperson of the Disciplinary Committee concluded that the charges Nos. 1,2 and 4 levelled against Plaintiff had been proved.

By way of a letter dated 2.6.2017, Defendant informed Plaintiff of its decision to terminate his employment on the ground of misconduct as Defendant could not have, in all good faith taken any other course of action against Plaintiff in view of the seriousness of the charges levelled against him. It has denied being indebted to the Plaintiff in the sum claimed or in any other sum whatsoever.

No evidence has been adduced in Court in relation to the third charge given that same was not proved before the disciplinary committee of Defendant. I shall confine myself to the evidence adduced in relation to the first and second charges for the reasons which will become apparent later.

The case for the Plaintiff rested solely on the evidence given by him in Court as follows:

The business of Defendant was the sale of batteries for cars, lorries and motorcycles.

Plaintiff was employed by Defendant as storekeeper for batteries department for 6 years earning a monthly salary of Rs 18,192.

On 7.4.2017, he was informed by his employer that he was suspended from work as an enquiry was ongoing. The enquiry was done and on 15.5.2017, he was informed by Defendant that he was convened to appear before a disciplinary committee to be held on 30.5.2017 as per the provisions of the law to answer 4 charges levelled against him and he was assisted by his Counsel. The 4 charges are reproduced below:

1. *Whilst being on duty, you proceeded with the delivery of new batteries without the required documents (Battery claim forms);*
2. *You raised a battery claim form without notification and authorization from the after sales supervisor or any other person in a supervisory position;*
3. *You colluded with Messrs Etrange and Pather to cause Rey & Lenferna's battery stock (references RLCONSo60, RLCHARGo61, LUBCONSo61 and LUBCHARgo61) to be mishandled and caused a shortfall in sales at the showroom;*
4. *Whilst being on duty, you circumvented the Department's established procedures and effected move-order transfers from RLCONSo60 to other*

consignees' sub inventories without any notification, justification and authorization.

He appeared before the disciplinary committee of Defendant and following his hearing, he was sent his dismissal letter by Defendant.

Now as regards the first and second charges, the material date has not been mentioned, but Plaintiff was aware that it was on a specific Saturday as it was not a common occurrence for every Saturday for Plaintiff to have acted in the manner he did, despite a reduced staff on a roster basis as admitted by him in Court, in the absence of the whole of his Supervisory team namely his Manager viz. Mr. Nuteau, the Aftersales Supervisors viz. Mr. Pather and Mr. Luteau's son, the assistant of Mr. Pather viz. Mr. Etrange leaving him with only the Electrician whose name has not been mentioned by him throughout the trial. Therefore, he was fully aware of the material day which was Saturday 5.11.2016 in relation to both charges and that it concerned one Battery Claim Form which he admitted having signed on that day after having filled it or raised it himself as per Doc. D4. Furthermore, he admitted that when he appeared before the disciplinary committee, he was given the date and at no point, he said be it at the committee or in Court that he was not aware of that date in order to prepare his defence in relation to the first two charges so that it is beyond dispute that it was on the specific Saturday 5.11.2016.

Thus, I can safely infer on a balance of probabilities that Plaintiff was fully aware of the date of the first and second charges in relation to one Battery Claim Form and for which he was assisted by Counsel otherwise he would have asked for particulars of the material date had it been an issue for him given that he was on suspension already.

Plaintiff explained in Court that his job was to store batteries and to deliver them upon receiving Battery Claim Forms following sale of batteries which turned out to be faulty.

His head in the hierarchy was Mr. Pather. Then, he decided that the latter was an Aftersales Supervisor and that his hierachal head was Mr. Jean Marie Nuteau who was the Manager of the battery department. There was a well-established procedure at the battery department section and each one had his responsibility for the job he was supposed to do. Thus, it was not part of Plaintiff's scheme of duty to raise or fill a Battery Claim Form and nor could he comment on it, but he was only

expected to deliver a battery of similar capacity and to return the claim form and battery to the Aftersales Supervisor.

Therefore, when someone came with a defective battery supported by documentary evidence, the first person to attend to him was the Electrician. After the Electrician had checked the battery and found that it was not in good working order, he would inform the Aftersales Supervisor that the battery was defective.

The Aftersales Supervisor would raise a claim form following information given to him by that Electrician. Then, the Aftersales Supervisor would bring the Battery Claim Form to the Plaintiff. The latter's job was just to deliver the battery and he had nothing to do with the work of the Electrician nor that of the Aftersales supervisor. He had no paperwork to do meaning to check or otherwise but only to deliver the battery and the claim form. Then, the Aftersales Supervisor would give the battery to the Electrician to be placed in the car of the client and would raise a move order as the battery had already been delivered and thus, the said battery had to be removed from the Defendant's computer system.

On the material day, Mr. Pather being the Aftersales Supervisor as well as his assistant Mr. Etrange were not working as per a roster. Furthermore, it was not Mr. Nuteau Senior being Plaintiff's Manager that was supposed to work on that day but Mr. Nuteau Junior, being his son who was an Aftersales Supervisor.

Plaintiff was reproached for not having followed the procedure for the return of a battery under warranty following a customer request for one of the same model and value. The first person concerned was the Battery Supervisor as per Doc. D1. Then, it was the Electrician, Technician or Aftersales Officer. It was only afterwards that he came into play.

Plaintiff followed all the procedure although all the persons in a Supervisory role were absent on the material day so that he as storekeeper and the Electrician were the only persons who worked on that day. In the morning of the 5.11.2016, Plaintiff's Manager, Mr. Jean Marie Nuteau, phoned him informing him that his son was unwell and that he would not turn up on that day. He asked him to look into the matter if there were claims to be done, to fill the battery claim forms and then on Monday morning to collect all the claim forms, documents found at that time to leave all of them with Mr. Pather for him to carry out the verifications.

When a client turned up, the Electrician came to him telling him that the battery was bad. He brought his document and Plaintiff raised the Battery Claim Form. That was not his job but he had been given a direct order from his Manager to do so in order to replace those who were absent.

In that Battery Claim Form, he had to write the name of the customer, the date, the battery number and the registration number of the vehicle. When doing the claim form, the Electrician came with the warranty card and if not in possession of same, he wrote the battery number and battery name being either Exide or Lucas on paper. On the material day, the Electrician gave him that information on a piece of paper. He put that information in the Battery Claim Form as he had to fill that form and he signed it as per Doc. D4. It was not supposed to be done by him. Then, the battery was given to the client.

There was nowhere in the written procedure in place when the Aftersales Supervisor was absent, he had to do the job. As per the written procedure, it was Mr. Jean Marie Nuteau Junior being the Aftersales Supervisor who was supposed to do that.

On the material day, Plaintiff was also reproached for having raised a Battery Claim Form without notification or authorization from the Aftersales Supervisor given that in the absence of Mr. Pather, it was the other Aftersales supervisor to do so. He was alone at storekeeping on that day as he used to have a helper as well.

Upon being shown a Battery Claim Form that he signed on that day, Plaintiff said that he was aware of that and he confirmed that it was his signature that was found on it (Doc.D4).

He made the following admissions: -

1. He did not put the name of the Electrician who checked the battery and found that it was defective on that Battery Claim Form, although it was important for him to do so.
2. There was neither the name of the Electrician nor the Electrician's signature on that claim form.
3. Although he was not used to do that job, when his Manager asked him to do it, he was expected to do it well. On the face of the document, one would not know who tested the battery and it was written on it "cell failure".

4. The Battery Claim Form did not contain the name of the Electrician, but it showed the vehicle number and that the battery was delivered. The battery that was refunded was of same model and of same capacity for that vehicle but it was not of the same make namely Lucas.
5. He could not say whether Exide was more expensive than Lucas. But usually when a client came with a defective battery, then it was replaced with one of same capacity but it could be of another make. He could not say whether the battery was being replaced by a more expensive one for which authorization was to be sought as he was not aware about the price.
6. On the face of the document (Doc. D4), one would not know that the battery was defective and that there was nothing certifying that the Electrician had tested the battery.
7. He did not have proof to say that he was instructed to do that but he had a direct verbal order from his Manager. He was convened to appear before a disciplinary committee on 30.5.2017. He was given the opportunity to answer the charges levelled against him whereby he was assisted by Counsel.
8. The first 2 charges were found proved against him by the said committee and the Defendant terminated his contract of employment.

Now, the Transcript of proceedings of 29.11.2023 at page 12 reads as follows:

"MR KALLEE CONTINUES WITH CROSS-EXAMINATION."

Q. Répondez à la question. Si mo montrer la Cour, mo re dire ou li bien. Ça document la, eski la Cour pou conner ça batterie ine tester, ine signer par ene électricien? Cést tout.

A. Non.

Q. Et c'est pou ça même raison ki la compagnie ine trouver ki ou fine fauter et ine demande ou l'explication dans ene comité disciplinaire et par la suite ou fine donne ou l'explication, et ou l'explication pas fine accepter parski c'est ene faute ki ou fine faire et suite à ça, banla fine dismiss ou, monsieur Valentin.

BY COURT:

Q. Vous êtes d'accord vous n' êtes pas d'accord?

A. Oui.

MR KALLEE: Oui il est d'accord, ok. That will be all."

Plaintiff further admitted that what happened on the material day which was a Saturday, did not happen every Saturday. Then, he decided that when he was called before a disciplinary committee, he was represented by a Counsel and he did not agree to the charges meted out to him as that was why he came to Court to ask for compensation in the sum claimed in the plaint.

The case for the Defendant rested solely on the evidence given in Court by Mr. Mark Lagane in his capacity as Manager as follows:

As per the Return of Battery document namely Doc. D1, once Plaintiff received the Battery Claim Form, he processed and delivered the battery only.

On 5.11.2016, a Battery Claim Form meant there were 2 batteries – one battery which was supposedly to be defective and one battery refunded. Both batteries were not of the same make. As per that document namely Doc. D4, there was no information that the battery was duly checked, verified and tested by the Electrician. The Battery Claim Form was approved by Plaintiff and signed by him and at the material time, he was working for Defendant. Again, as per that document, the witness would not be in a position to say that the battery was defective or had any problem.

He was not present at the material time. The Electrician who was a technician was authorised to raise a Battery Claim Form as per the established procedure which was as per Doc. D1 at paragraph 6.1.5. The Battery Claim Form or claim forms should have been signed by the technician as well. The procedure was like that and there was no change in the procedure. The decision to dismiss Plaintiff was taken at high management level.

I have given due consideration to all the evidence put forward before me and the submissions of both learned Counsel for the Plaintiff and Defendant. The first 2 charges levelled against Plaintiff as per his letter of charges (Doc. D5) read as follows:

1. *Whilst being on duty, you proceeded with the delivery of New batteries without the required documents (Battery Claim Forms);*

2. You raised a Battery Claim Form without notification and authorization from the After Sales Supervisor or any other person in a Supervisory position;

(...) The outcome of the above wrong doings resulted in batteries being delivered for free where they should not have been.

Now, I shall focus on charges 1&2 together. It has remained undisputed, unchallenged and uncontested that on the material day, the whole of the Supervisory team was absent and Plaintiff and the Electrician were the only people working.

The testimony of Defendant's witness in his capacity as Manager namely Mr. Lagane has also remained unrebutted that the Electrician being a Technician or an Aftersales Technician within the meaning of Paragraph 6.1.5 of the procedure for the return of battery under warranty (Doc. D1) was allowed to raise a Battery Claim Form whereby "BCF" meant "Battery Claim Form" as follows:

"The BCF shall be verified and signed by the Battery Supervisor, the Battery Technician and the Customer. In the absence of the battery's Supervisor, the After Sales Technician can sign on BCF form.

The customer shall sign on the BCF to act as a proof of the product refund."

Therefore, it is abundantly clear that the raising of the Battery Claim Form was the job of the Technician and not that of the storekeeper and the Electrician was a Technician.

Hence, it was the job of the Electrician in the absence of the Aftersales Supervisor (Mr. Nuteau Junior) to have raised the Battery Claim Form as per Doc. D4 upon instructions received from Mr. Nuteau Senior, the Manager. Thus, the Electrician would have fed the details himself in that Battery Claim Form showing that the battery was defective and he would have inserted both his name and signature in the slots provided and would have insisted upon the customer's signature as per the slot provided. The Electrician would have also inserted that it was a cell failure after the battery had been tested by him and he would have signed that fact and would have accepted the claim for the battery and would have approved it as per the slots provided so that a refund for a new battery would have been done by Plaintiff.

Now, *ex facie* Doc. D4, it is admitted by Plaintiff that he did not put the name of the Electrician in the Battery Claim Form to substantiate the fact that the battery which was tested by that Electrician was found to be defective on the ground of a cell

failure nor did he make that Electrician sign to that effect in the required slot provided.

As regards the approval of the Battery Claim Form (Doc. D4), Plaintiff filled in his middle name only and did not sign in the required slot for approval in the sense that it remained unapproved, as he signed in the slot which concerned him in his capacity as storekeeper only issuing the battery refund and he signed the Doc. D4 for that sole purpose.

Hence, a verbal instruction given directly by Plaintiff's Manager over the phone to the Plaintiff to raise the Battery Claim Form on the material day is not plausible let alone Plaintiff had no witness or document to support that fact and that at no time during the course of the trial, he gave the name of that Electrician who gave him the information required on a piece of paper after having inspected the battery concerned.

Such authorization is a far cry from the manner the Battery Claim Form was filled or raised by Plaintiff, as it was an unapproved Battery Claim Form coupled by the absence of any inspection whatsoever by the Electrician in order to draw the inference that the battery was defective so as to warrant the delivery for the refund of a new battery to the client. That was why Plaintiff signed for the delivery of the battery only which means that he proceeded with the delivery of the new battery without the required document as the Battery Claim Form itself was incomplete and could not be relied upon as per Doc. D4.

Thus, I do not believe Plaintiff that he was authorized to raise a Battery Claim Form whilst on duty on the material day by his Manager when there was already a Technician (see- Doc. D1 at paragraph 6.1.5.) on duty namely the Electrician who was entitled to do that job in the absence of the Aftersales Supervisors.

It is apposite to note that Plaintiff admitted unequivocally that given the Battery Claim Form (Doc. D4) did not bear the name and signature of the Electrician, there was no information that the battery was defective and that another battery needed to be delivered by him and which he did deliver and that was a *faute* committed by him and on that basis his Defendant employer dismissed him. Although in re-examination, he said that he did not agree with the charge otherwise he would not have entered the plaint, it is clear that there was an unequivocal admission for which there was no need to clarify although having lodged a plaint

could be inferred that he did not agree with that charge then, but that could not be stretched to cover the stage of cross-examination whereby he has candidly admitted that he was at fault. Obviously, Plaintiff cannot plausibly invoke that on the material day, the said unapproved Battery Claim Form as per Doc. D4 was the required document for the delivery of a new battery whilst he was on duty and for which he was authorized by his Manager over the phone to raise such a claim form outside his scope of duty when the Electrician could have done so within his scope of duty.

Hence, the unescapable conclusion is that the Defendant has discharged the burden of proof placed upon it in that at the time it dismissed the Plaintiff on the material it had and of which it ought to have been reasonably aware following the finding of its disciplinary committee on the first 2 charges, it could not in good faith have taken any other course of action but to dismiss the Plaintiff employee so that his dismissal was not unjustified (see- **Smegh (Ile Maurice) Ltée v Persad D.** [\[2011 PRV 9\]](#))).

In the circumstances, there is no need for the Court to adjudicate on the 4th charge.

For the reasons given above, the case for the Plaintiff should fail. I, accordingly, dismiss the plaint with costs.

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

20.1.2025

