

Bahadoor Y. v National Transport Corporation

2020 IND 15

Cause Number 758/17

IN THE INDUSTRIAL COURT OF MAURITIUS
(Civil side)

In the matter of:

Mr. Yogindranath Bahadoor

Plaintiff

v.

National Transport Corporation

Defendant

Judgment

In this plaint, it is common ground that Plaintiff who was in the continuous employment of Defendant as Conductor since 5 September 1986 was employed on a 5-day per week basis and was remunerated at monthly intervals at the basic terminal rate of Rs.662.18/- per day.

Plaintiff has averred that by way of a letter dated 1 March 2016 which he received by post on 3 March 2016, he was convened to appear before a disciplinary committee on 9 March 2016 to answer a charge of alleged misconduct leveled against him and in that respect, he attended the disciplinary hearing on 9 March 2016 and where he denied the charge.

On 15.3.16, Defendant terminated his employment by way of letter of same date on ground of misconduct as alleged.

Thus, he has averred that he considers the termination of his employment to be without notice and without justification given that:

- (i) Defendant did not notify him of the charge within 10 days of the day on which he became aware of the misconduct;
- (ii) he has not been given at least 7 days' notice to answer the charge made against him.

Plaintiff is, therefore, claiming from Defendant the sum of Rs.1,303,832.42/- representing wages as indemnity in lieu of notice (Rs.662.18 x 22 days): Rs. 14, 567.96 and severance allowance for 354 continuous months service: (Rs.662.18 x 22 days x 3 months x 354/12 years): Rs.1,289,264.46.

Defendant, for its part, has admitted that Plaintiff was employed as conductor by it and that by way of a letter dated 1 March 2016 which Plaintiff received a copy on the same day, he was convened to appear before a disciplinary committee on 9 March 2016 to answer a charge of alleged misconduct leveled against him. It has averred that, he attended to the disciplinary hearing on 9.3.16, he denied the charge and that on 15.3.16, it terminated his employment by way of letter of same date as the Central Disciplinary Committee found that he was guilty of misconduct and in view of the said findings and his several previous warnings and suspensions, it had in the circumstances no alternative than to dismiss him. It has further averred that he appealed to the Ministry of Public Infrastructure and his appeal was set aside. It has thus moved that his action be dismissed with costs as he is not entitled to any of the sums claimed.

The evidence on behalf of Plaintiff unfolded as follows as far as notification is concerned.

Plaintiff gave evidence in Court. He departed from the averments of his plaint in that he conceded that he was notified of the charge made against him by Defendant's *prepose* by hand on 1 March 2016 as per Doc. A wherein he acknowledged receipt of same by signing at the bottom and not by post on 3 March 2016. In that letter, he was convened for a hearing before the Central Disciplinary Committee of Defendant on 9 March 2016 in relation to that charge

namely misconduct as leveled against him by the reporting officer, Mr. P. Moocheet having as his witness, Mr. S.Ganga as follows:

"On Sunday 01 November 2015, at about 11.54 hrs, while you were on duty as Conductor in bus bearing no. 4183 DC 05 along route 52 A, proceeding from Albion to Immigration, Port Louis, you collected exact fare of Rs.40.00(1 x Rs.12 + 4 x Rs.7) from 5 passengers, 1 adult and 4 children travelling from Albion beach to Camp Creole but you failed to issue tickets for the equivalent sum collected, thereby pilfering a sum of Rs. 40,00 at the detriment of the NTC."

That incident happened on 1.11.2015 meaning that while he was travelling along Route 52, while on duty, he collected Rs.40.00 from five passengers consisting of one adult and four children at Route Albion Beach at Camp Creole and he did not issue tickets to them and he received a document in relation to that incident dated 5.11.2015 as per Doc. B. He forwarded his explanations to the management in writing after about one week and meanwhile he continued to work normally until he received a letter from the management to appear before a disciplinary committee. He appeared before the disciplinary committee alone although he was informed by management that he could be accompanied. As per Doc. B it was reported by the same Traffic Officers, P. Moocheet and S. Ganga wherein he was requested to submit his written explanations in relation to a charge of Pilferage namely: *"On Sunday 01.11.2015 at 11.54 hours while you were on duty in bus 4183DC05 on route 52A, you collected exact fare value of Rs. 40(1x12&4x7) but did not issue tickets to five passengers (one lady and four children) travelling together from Albion Beach to Camp Creole. You are please requested to submit your written explanations to the above irregularity/ies, over leaf i.e on the verso of this form. You may annex additional sheets should your explanations require same. Your written explanations should reach the undersigned within seven days of the date of this letter. Should your explanations to the above irregularity/ies not be satisfactory, you may be sanctioned or be convened before a Disciplinary Board/Committee. If no written explanation is submitted, a decision will be taken on the basis of the above report. Your explanation may be submitted in creole."*

However, he departed from what he said before the disciplinary committee in relation to the charge in Court when he said that he did not take the cash from those persons given his gastric

problem as he was eating a piece of bread at the rear of the bus. He did not accept the charge leveled against him at the committee on 9.3.16.

After the disciplinary hearing, he received a letter from the management who deposited the letter to him at his place on 15.3.16 wherein he was summarily dismissed as per Doc. C. meaning on the 6th day following the disciplinary hearing. He did not commit a *faute grave*. The Defendant was already aware of the incident in November 2015 but only notified him about the disciplinary committee in March 2016 not within 10 days of the incident.

He accepted that he received a few warnings from Defendant in the past and some were verbal and some in writing. In relation to the failure of the Defendant to notify him within a delay of 10 days of the charge leveled against him, he gave his explanations in November 2015. Then he did not hear anything until March 2016 about 4 months later to appear before the committee. He appealed before the Ministry of Public Infrastructure and it was only after about 4 months that he was informed that his appeal was set aside. He maintained his claim as he had been working for the Defendant for 30 years. In relation to Doc. B, a notification of irregularity dated 11.11.2015, he signed at the bottom as being the date on which he received it. It was on 1.11.15 that two said traffic officers got into his bus and they made a report to the Defendant on 3.11.2015. Consequently, he received a notification letter of irregularity on 11.11.2015 which was dated 5.11.2015. He was suspended from duty in the past but could not remember how many times. Then, he said that he was suspended for 4 days in December 2012.

Defendant's witness, Mr. R.K.Hurchand gave evidence in Court in his capacity as HR Manager of Defendant. He had a copy of the letter dated 1.3.2015 in his possession which bore the signature of Plaintiff and which was in his possession as the original was in possession of Plaintiff and he produced the copy as per Doc. D. The disciplinary hearing took place on the 9.3.16. The act of misconduct was committed on 1.11.2015. It was on the 3.11.15 that Defendant took cognizance of the report of Mr. P. Moocheet and Mr. S. Ganga as per Doc. E. Then, as per letter dated 5.11.2015 as per Doc. B. the charge was put to the Plaintiff and the latter signed that he received it on 11.11.2015 and he signed as well as per the original document namely Doc. F. Within 10 days the Defendant became aware of the report, it notified the Plaintiff of the irregularity or of the charge. Plaintiff had accepted having the letter to appear before the disciplinary committee on 1.3.2015 and there were 7 days before 9.3.2015 for the Plaintiff to prepare his case. After having been heard by the committee on 9.3.2015, he

admitted having received his letter of dismissal on 15.3.2016. The Plaintiff had several problems in the past as per Doc. G. Based on the findings of the disciplinary committee and his past record of previous misconducts, Defendant had no alternative but to summarily dismiss him. Defendant's convocation letter for Plaintiff to appear before the disciplinary committee was dated 1.3.2016 to answer the specific charge before that committee. On 11.11.2015, he was informed of the notice or irregularity containing the particulars of the charge against him in relation to which he had 7 days. He received that letter dated 5.11.2015 on 11.11.2015. He was already notified about the charge in November 2015 and in relation to which he signed and which was produced in Court.

Mr. T. Ramlagun in his capacity as Traffic Officer gave evidence in Court. He remitted the letter to Plaintiff on 1.3.2016 and which he received on that day itself and which he signed on that day as per his signature as per Doc. D. He remitted another letter to Plaintiff as per Doc. F. which was a notice of irregularity and which Plaintiff signed at the bottom and which Plaintiff received on 11.11.2015.

The testimonies of the remaining witnesses for the Defendant namely Mr. P. Moocheet and Mr. S. Ganga concerned the issue of misconduct.

I have given due consideration to all the evidence put forward before me and the submissions of learned Senior Counsel appearing for the Defendant. A useful starting point is to reproduce Section 38 of the Employment Rights Act 2008, Act No. 33 of 2008 replacing the Labour Act 1975 which reads as follows:

“38. Protection against termination of agreement

(1) (...)

(2) No employer shall terminate a worker's agreement-

(a) for reasons related to the worker's misconduct unless –

(i) (...);

(ii) the worker has been afforded an opportunity to answer any charge made against him in relation to his misconduct;

- (iii) he has within 10 days of the day on which he becomes aware of the misconduct, notified the worker of the charge made against the worker;
- (iv) the worker has been given at least 7 days' notice to answer any charge made against him, and
- (v) (...)."

As clearly illustrated and confirmed by the Judicial Committee of the Privy Council in **Mauvilac Industries Ltd v Ragoobeer**[\[2007 MR 278\]](#)[\[2006 PRV 33\]](#), that the labour legislations have adopted a policy of laying down a fixed time limit in line with the International Labour Organisation with the aim of ensuring that both the employer and employee know where they stand as quickly as possible an extract of which is given below:

*"Nevertheless, the legislature has adopted a policy of laying down a fixed time limit – clearly, with the Recommendation of the ILO in mind and with the aim of ensuring that both parties know where they stand as quickly as possible. See *Mahatma Gandhi Institute v Mungur P*[\[1989 SCJ 379\]](#) where the Supreme Court described the time-limit as being based on sound principles and added: "Both from the point of view of the worker and that of the employer, it is in their best interest that the contractual bond be severed within a definite period of time when the continued employment of the worker becomes impossible through his proven misconduct."*

(...) The courts must respect the policy which lies behind the time -limits that the legislature has imposed".

Now, neither the date of the incident nor the day on which the Defendant was made aware of the misconduct by virtue of that incident has been averred in the plaint. At this stage, it is significant to note that the tenor of the evidence adduced has to be imperatively within the bounds of the pleadings for it to be of any weight as highlighted in the Supreme Court case of **Tostee J.Y. v Property Partnerships Holdings (Mauritius) Ltd** [\[2015 SCJ 41\]](#) as follows:

*"The case of *Ramjan v Kaudeer*[\[1981 MR 411\]](#)[\[1981 SCJ 387\]](#) may also be referred to whereby the court had relied upon cases of *Chetty v. Vengadasalon*[\[1901 MR 22\]](#), *Deena**

v. Malaiyandee 1940 Pt.II MR 156 and **Ramdharry v. Dhumun**[1942 MR 108] as being examples of judgments which have been quashed on appeal on the ground that the decisions were based on issues which did not appear in the pleadings.

The case of **Ramjan v Kaudeer** (*supra*) further referred to certain passages of Bullen and Leake, and Jacobs *Precedents of Pleadings 12th Ed.* which were quoted in the judgment of **Jagatsingh and Walter v. Boodhoo** (*supra*) and explained that once a party has stated the facts on which he relies, these facts are binding and the Court cannot ground its judgment on other facts which may come to light in the course of the trial" (**emphasis added**).

Furthermore, a "cause of action" comprises of "every fact which is material to be proved to enable the plaintiff to succeed; in other words, every fact which, if traversed, the plaintiff must prove to obtain judgment" (- see **Heera v Ramjan & Ors.**[1976 MR 220]).

Therefore, the evidence adduced to the effect that the delay of 10 days for the Defendant to notify the Plaintiff of the charge made against him after it has been notified of the misconduct of Plaintiff has not been complied with in order to infer that the 10 days delay has not been respected would be clearly travelling outside the averments of the plaint and as such it cannot be invoked by Plaintiff as a ground for unjustified dismissal. Obviously, the first ground fails.

As regards the second ground, it has not been averred in the plaint that Plaintiff was informed of the charge namely of Pilferage on 11 November 2015 when he was requested to give his written explanations within 7 days in relation to the incident that happened on 1 November 2015. Thus, the evidence adduced in that respect is bound to be outside the averments of the plaint which I will not give any weight. Now as averred in the plaint, he was informed of the charge by way of a letter dated 1 March 2016 which he obtained by post on 3 March 2016 to appear before the disciplinary committee of Defendant on 9 March 2016 to answer that charge while in Court he departed from those averments by candidly admitting that he obtained that letter dated 1 March 2016 by hand from Defendant's *prepose* on that same date to appear before that disciplinary committee which is in line with the plea of Defendant. Thus, by travelling outside his plaint, Plaintiff has failed to establish that he was not heard within seven days following the day the charge was made against him by Defendant.

Therefore, as per the evidence adduced on behalf of Defendant in line with its plea, it has remained unchallenged that Plaintiff was notified by hand of the charge made against him on the 1 March 2016 by way of a letter dated the 1 March 2016 itself as per Doc. D to appear before a disciplinary committee on 9 March 2016. Hence, he was given at least 7 days' delay so that the second ground invoked namely that he has not been given at least 7 days' notice to answer the charge leveled against him for unjustified dismissal fails.

For the reasons given above, I find that the case for the Plaintiff should fail and the case is accordingly dismissed.

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

10.6.2020