

**DANILO THEODORE VS SOPACK LTD**

**2024 IND 70**

**DANILO THEODORE VS SOPACK (MAURITIUS) LTD**

Cause Number: 287/20

**THE INDUSTRIAL COURT OF MAURITIUS**

(CIVIL DIVISION)

In the matter of:-

**DANILO THEODORE**

Plaintiff

**VS**

**SOPACK (MAURITIUS) LTD**

Defendant

**JUDGMENT**

*Introduction*

The Plaintiff was initially employed with Mauriflex (Flexco Printing & Packaging) Ltd, as plate maker/mounter since the 01st June 2013. On the 29th June 2018, the Plaintiff was informed in writing by Mauriflex Ltd that with effect from the 01st July 2018, the Defendant has accepted to take over the business of Mauriflex Ltd. Further, in the aforesaid letter, Mauriflex Ltd had proposed to transfer the Plaintiff's terms, conditions and continuity of service to Defendant, which proposal was accepted and duly signed by him. By virtue of a claim backed by the Plaintiff's testimony in Court, he is claiming from the Defendant the sum of Rs 692,880/- representing one month's notice in lieu of wages, unpaid salary for June 2020, unpaid sick leave, unpaid bonus and severance allowance.

*The facts*

The Plaintiff was employed with Defendant as Product Development Officer drawing a monthly salary of Rs 29,335 (which comprises of his basic salary in the sum of Rs 26,835 and Rs 2,500 as other allowance as per the contract of employment thereof) which was signed between Plaintiff and Defendant.

The Plaintiff averred that, following suspension of work, by letter dated 18th May 2020, the Plaintiff was informed therein to appear before a disciplinary committee on the 09th June 2020 to answer the following charges levelled against him:

1. Use of Company car without authorization

Particulars

‘On the 18th of February 2020, on or about 19 08 hours, you took the keys of Company car bearing registration number without the permission and authorization of the Management. You used the said car and returned the car at around 21.53 hours’;

2. Breach of Trust

‘Your action on the 18th February 2020 has caused the management to lose trust in you in as much as the Company cannot leave its property with you anymore’.

On the 11th June 2020, the Plaintiff was informed by the Defendant that he was found guilty on Charge 1 only and as a result of which, his said employment was terminated with immediate effect as from 11th June 2020.

The Plaintiff has denied charge 1 and avers that such termination was unwarranted, unjustified, unfair, and unreasonable, the more so as charge 2 had not been taken into consideration and therefore was not an issue. The Plaintiff further averred that at all material times, since he joined employment with the Defendant, he had a clean record.

The Plaintiff averred that in the year 2019, he contracted a personal loan with the Defendant in the sum of Rs 60,000 payable on an agreed term of Rs 2,000 per month, i.e for a period of 30 months; However, the defendant has unlawfully caused to deduct more than Rs 2,000 from his salary and caused the said loan to be settled before the end of the agreed term.

According to the Plaintiff, in view of the reasons stated above and considering the general difficulty post covid, the Plaintiff considered that severance allowance at punitive rate should apply. The Plaintiff therefore claimed from the Defendant the sum of Rs 692,880 made up as follows: severance allowance at the punitive rate, one month’s notice in lieu of wages, unpaid salary for June 2020, unpaid sick leave, unpaid bonus.

In the present case, the Defendant has left default despite being personally represented on previous occasions.

### *Observations*

I have assessed the evidence on record . It is to be remembered that “*making out a case does not mean that one has got to jump both feet all over the principles of evidence and all the matters required in order to make out a case...*”. **(VELVINDRON VS NOORDALLY (1979) MR 243).**

In the present case, the Plaintiff has undisputedly established that the Defendant has terminated his employment without notice and without any justification. The version of the Plaintiff has remained credible, unchallenged and unshattered. In the circumstances, I find that the Defendant has unlawfully terminated the contract of employment and such termination was unwarranted, unjustified, unfair and unreasonable in breach of **THE WORKERS’ RIGHTS ACT 2019**. The Defendant is therefore indebted to the Plaintiff in the sum of Rs 692,880/-representing one month’s notice in lieu of wages, unpaid salary, unpaid sick leave, unpaid bonus and severance allowance.

### *Conclusion*

In light of the above, I find that the Plaintiff has established her case on a balance of probabilities. I order the Defendant to pay to the Plaintiff the sum of Rs 692,880/- together with interests at the rate of 12% per annum on the amount of remuneration due from the date of non-payment to the date of payment.

Judgment delivered by: M.GAYAN-JAULIMSING, Ag President, Industrial Court

Judgment delivered on: 25<sup>th</sup> November 2024