

**ASHVINI KUMAR ROY JUGESSUR VS AURS**

**2025 IND 20**

**ASHVINI KUMAR ROY JUGESSUR VS AURS & CO LIMITED**

Cause Number : 360/20

**THE INDUSTRIAL COURT OF MAURITIUS**

(Civil Division)

In the matter of:-

**ASHVINI KUMAR ROY JUGESSUR**

Plaintiff

**VS**

**AURS & CO LIMITED**

Defendant

**JUDGMENT**

*Introduction*

This case concerns a claim for an alleged unjustified dismissal of the Plaintiff by the Defendant in the sum of Rs 953,656.35.

*The facts*

The Plaintiff was in the continuous employment of the Defendant as a technician since the 01<sup>st</sup> November 2004. He was employed on a 6-day week basis for and in consideration of a last monthly remuneration of Rs 21,035, consisting of a basic rate of Rs 17,035 and a fixed allowance of Rs 4,000 per month. The Plaintiff testified that by way of letter the 02<sup>nd</sup> September 2019, he was suspended from duty. By way of another letter dated the 13<sup>th</sup> September 2019, the Plaintiff was convened to appear before a disciplinary committee on the 23<sup>rd</sup> September 2019 to answer to the charges mentioned in the said letter. On the 23<sup>rd</sup> September 2019, the Plaintiff attended the disciplinary committee and denied the charges against him. The Defendant terminated his employment on the 26<sup>th</sup> September 2019 with immediate effect.

The Plaintiff produced the abovementioned letters in Court and considered the termination of his employment to be without notice and justification and contended that as at the 26<sup>th</sup> September 2019, the Defendant failed to refund to him 9 days outstanding annual leave. He is therefore claiming from the Defendant the sum of Rs 953,856.35 made up as follows: one month's wages as indemnity in lieu of notice amounting to Rs 21,035, severance allowance for 176 months of continuous service amounting to Rs 925,540 as well as the refund of 9 days outstanding annual leave amounting to Rs 7,281.35, making a total of Rs 953,856.35, together with interests at the rate of 12% per annum on the amount of severance allowance payable from the date of termination of employment to the date of payment together with such amount by way of compensation for wages lost or expenses incurred in attending Court.

The Defendant denied being indebted in the sum claimed or any sum whatsoever. It averred that the Plaintiff's suspension, disciplinary committee and eventual termination of employment was made in strict accordance with the provisions of the law and the Plaintiff's claim is misconceived and devoid of any merits.

#### *Observations*

I have assessed the evidence on record. This is a case where the termination of employment being the cause of action and giving rise to the present case, occurred in September 2019. The Workers' Rights Act came into force on 24<sup>th</sup> October 2019, hence the prevailing law applicable to the present offence is the Employment Rights Act.

In a case of unjustified dismissal like the present one, "*the plaintiff need only aver that his employment was terminated without any cause or justification because the burden of proof on that issue rested on the defendant employer (RE: HAREL FRÈRES LTD V. VEERASAMY [1968 MR 218])*".

At the outset, I have taken note that a disciplinary committee was held in this case in relation to 2 charges levelled against the Plaintiff as follows:

1. On Friday 30<sup>th</sup> August 2019, you took a TV (TCL, 55 Inch Smart TV, Ref: 55S62, SN: 1805ELL135187C00045) from the premises of the company using your personal vehicle (GWM Steed, white colour, matriculation no. 2793 AP 12) without the approval or authorization of Management.
2. On Friday 30<sup>th</sup> August 2019, Management requested for all employees to abide by a verification and control procedure of all vehicles leaving the premises. You did not abide to this control procedure, and instead of stopping for the verification, you

accelerated your vehicle, and the right side mirror hit against the left wrist of Mr Roojee, thus hurting him.

I am fully aware that the findings of the disciplinary committee are not conclusive and ultimately it is for the Court to determine whether an employee has been unjustifiably dismissed. (**RE: DROUIN J A VS LUX ISLAND RESORTS LTD (2014) SCJ 255**). However, the importance of a disciplinary committee lies on the fact that the duty on the Industrial Court to consider whether a dismissal by an employer is justified or not, rests on an assessment of the facts which were available to the employer at the time of the disciplinary committee.

In the case of **BISSONDYAL R VS THE NATIONAL TRANSPORT CORPORATION (2018) SCJ 86**, the Court held: *"It arises out of all the principles alluded to that in considering whether or not the decision to dismiss an employee was justified, the Industrial Court has to be satisfied that the facts which the employer had before him at the material time justified his decision. These facts should be those on which the charges preferred against the employee were based and in relation to which the latter has been given an opportunity to give his version. The disciplinary committee is in the normal course the formal platform afforded by the employer to the employee to answer the charges against him and give his version of the facts".*

I shall therefore consider the charges levelled against the Plaintiff as well as the version of each party in the present case.

#### THE CHARGES

I have noted that in the letter of suspension addressed to the Plaintiff, three charges were levelled against the Plaintiff prior to an investigation being carried out. When the Plaintiff was officially convened to attend the disciplinary committee by way of letter dated the 13<sup>th</sup> September 2019, 2 charges were levelled against him. Be that as it may, I find the charges to be similar and to arise from the same set of facts. Also, at the time of termination of the Plaintiff's employment, the Defendant duly notified the Plaintiff that the charges as levelled against him by way of letter dated the 13<sup>th</sup> September 2019 have been proved, which means that the Defendant discharged the statutory obligation to notify a worker of the termination of his employment by stating the reason of the termination. (**RE: BERLINWASSER INTERNATIONAL AG MAURITIUS v BENYDIN L.R (2017) SCJ 120**).

I will deal with the charges levelled against the Accused in turn. In relation to the first charge levelled against the Accused which reads - *On Friday 30<sup>th</sup> August 2019, you took a TV*

*(TCL, 55 Inch Smart TV, Ref: 55S62, SN: 1805ELL135187C00045) from the premises of the company using your personal vehicle (GWM Steed, white colour, matriculation no. 2793 AP 12) without the approval or authorization of Management – I have paid special attention to the version of Mr Issur who was called as a witness by the Defence.*

Mr Issur testified that on the 30<sup>th</sup> August 2019, he was working for the Defendant company as a storekeeper in company of the Plaintiff. Their job consisted in transporting materials for disposal of same, but at the request of the Plaintiff who pretended having been duly authorised, they loaded some articles in the Plaintiff's vehicle, including a television set in a television box make TCL. It was also brought to light in cross-examination of the Plaintiff by the Defendant's Counsel that he conceded before the disciplinary committee having carried a television box to his lorry.

The Plaintiff denied that he took away a television set from the Defendant. However, I find that it will be a strange set of affairs if the Plaintiff loaded a television box of the same brand as the missing television without a television set in the box.

This leads us to the second charge against the Plaintiff which reads - *On Friday 30<sup>th</sup> August 2019, Management requested for all employees to abide by a verification and control procedure of all vehicles leaving the premises. You did not abide to this control procedure, and instead of stopping for the verification, you accelerated your vehicle, and the right side mirror hit against the left wrist of Mr Roojee, thus hurting him.* In relation to this charge, I have considered the version of Mr Roojee.

Mr Roojee testified that on the 30<sup>th</sup> August 2019, he was working for the Defendant company as a sales manager, conducting an inventory for an impending transfer to Cassis. He had to sort out the articles which needed repairs and those which had to be sent to Cassis. Amongst the articles to be transported was one television set which was eventually found missing. In the circumstances, he headed an exercise to stop and search vehicles as the items in question were of high value.

As a result, Mr Roojee asked the Plaintiff to stop his vehicle when the latter was leaving. The Plaintiff heard Mr Roojee and slowed down before saying that he was leaving. Mr Roojee again asked the Plaintiff to stop, to which the Plaintiff accelerated and knocked against his hand. Despite this, the Plaintiff again failed to stop his vehicle. Mr Roojee contended being sure that the Plaintiff had the television in his possession in the vehicle as there was a hump in the shaft of the lorry.

In Court, the Plaintiff conceded that he failed to stop when asked to do so by Mr Roojee. He agreed that he accelerated and knocked against the latter's hand and even then, failed to stop.

In view of the conduct of the Plaintiff, I find credence in the version of the Defendant in relation to the charges levelled against the Plaintiff. Although there is no direct evidence that the Plaintiff took the television set from the possession of the Defendant, his conduct gives him away. Mr Issur confirmed that he loaded a heavy television box in the Plaintiff's vehicle, a fact which the Plaintiff did not deny before the disciplinary committee. Moreover, the Plaintiff failed to adhere and comply with a stop and search. Instead, he reacted aggressively by driving off, knocking on his way, the hand of Mr Roojee and injuring him. I find that if the Plaintiff had nothing to hide, there is no reason why he would escape from the stop and search exercise and evade facing the Defendant. In the circumstances, I find that there was sufficient evidence to establish the charges levelled against the Plaintiff at the disciplinary committee.

## GROSS MISCONDUCT

I find the acts and doings of the Plaintiff to abstract a property belonging to the Defendant, to refuse to obey an order for stop and search, to defy the management of the Defendant by failing to stop his vehicle and by acting contrary to orders by driving away and injuring another employee to amount a gross misconduct on the part of the Plaintiff. His justification for his actions to the effect that he had to take his sons to tuitions fall foul of his contractual obligations towards the Defendant, namely his obligation to "abide by the rules and regulations of the Company, namely those pertaining to the organization of work, discipline, health and safety measures and hours of work", as laid down in his contract of employment.

I consider the misconduct of the Plaintiff to be a "faute grave". Instances of 'fautes graves' have been referred to in **Camerlynck, Traité de Droit du Travail, Contrat de Travail, p. 416, note 243** as follows :

*« 243. Ainsi ont été considérés comme constituant une faute grave privative de l'indemnité de licenciement:*

*.... les multiples absences irregulières et retards;*

*.... l'intempérence;*

*.... l'insubordination du salarié qui se rend coupable d'une infraction de droit commun en quittant son travail sans autorisation et en injuriant publiquement son employeur;*

.... le défaut de surveillance d'un contremaître ayant entraîné la détérioration du matériel;

.... l'incapacité et l'incurie d'un cadre telles qu'il devait être dangereux de le maintenir dans son emploi;

.... le fait de quitter l'usine sans autorisation régulière, muni d'une pièce signée d'un directeur suspendu de ses fonctions pour assister à une réunion dont l'objet était précisément les mesures prises par la société contre ce dernier;

.... le refus de rejoindre son nouveau poste, à la suite d'une mutation justifiée par l'intérêt du service et ne constituant pas une modification essentielle ni une aggravation appréciable des conditions d'exécution du contrat de travail;

.... le versement habituel de ristournes clandestines par un client la copie frauduleuse de documents secrets;

.... la concurrence déloyale;

.... le fait pour un directeur de s'opposer systématiquement à la réorganisation de l'entreprise en refusant de communiquer les renseignements nécessaires, négligeant de transmettre les instructions et de tenir les réunions de contrôle prévues.

*Les insultes ou injures ou la diffamation d'un salarié à l'égard de l'employeur, d'un responsable hiérarchique, d'un autre salarié, d'un client de l'entreprise, ou d'un tiers constituent, le plus souvent, des fautes graves. »*

In the present case, the Plaintiff was insubordinate, defiant, aggressive leading to an injury on another employee. I find it apt to cite the decision of the **Chambre Sociale of the Cour de Cassation (Soc. 26 février 199, 88-44.908, Bulletin 1991 V No 97 p.60)** : "faute grave" was defined as "une faute résultant d'un fait ou d'un ensemble de faits imputable au salarié, constituant une violation des obligations du contrat de travail ou des relations de travail, d'une importance telle qu'elle rend impossible le maintien du salarié dans l'entreprise pendant la durée du préavis".+

In light of the above, I find the attitude of the Plaintiff at work to amount to a 'faute grave'. In the circumstances, I have considered whether according to the evidence adduced, the Defendant could in good faith take any other course of action but to terminate the employment of the Plaintiff. "The legal obligation for him to show good faith imposes upon him the duty to make certain that he is choosing the right course and one possibility of doing so is suggested by the law itself [section 7(1)] which provides that an opportunity should be given to the worker to exculpate himself". (**RE: BATA SHOES (MAURITIUS) LTD vs . MOHASSEE (1975) SCJ 146**).

Mr Domah who represented the Defendant gave evidence in this case that the charges against the Plaintiff were so serious that the Defendant had to stop him. I have borne in mind what was said in the case of **UNITED DOCKS LTD VS DE SPEVILLE (2018) PRV 48** to that effect:

*“A question whether the company had a valid reason to dismiss the respondent is obviously different from a question whether it could not in good faith take any other course than to dismiss him. The former asks only whether the misconduct was a ground for dismissing him. The latter asks whether in all the surrounding circumstances the only course reasonably open to the employer was to dismiss him. In other words, was it, as the Board said in para 17 of its judgment in Bissonauth v The Sugar Fund Insurance Bond [2007] UKPC 17, “the only option”?”*

I find that the misconduct of the Plaintiff in this case amounts to a “cause réelle et sérieuse” which held a bearing on the employer-employee relationship to the extent that it brought “un trouble profond dans le fonctionnement et la marche de l’entreprise”. (**JURISCLASSEUR TRAVIAL, FASC 30, NOTE 163**). In the circumstances, the Defendant could not in good faith take any other action, except than a dismissal, (**SBI (MAURITIUS) LTD VS ROUSSETY J B (2021) SCJ 420**), whilst following all necessary procedures within the parameters of the Law.

### *Conclusion*

In light of the above, I find that the Plaintiff has failed to prove its case on a balance of probabilities and the Defendant has discharged the burden of justifying the dismissal. I dismiss the case against the Plaintiff.

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

Judgment delivered on: 25<sup>th</sup> March 2025