

Nanette P.A. v Evaco Holiday Resorts Ltd

2023 IND 77

Cause Number 322/15

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

In the matter of:-

Patrick Alec Nanette

Plaintiff

v.

Evaco Holiday Resorts Ltd

Defendant

Judgment

In this amended plaint, the admitted facts by Defendant are to the following effect-

Plaintiff was in the continuous employment of Defendant as Maintenance Manager since 30.7.2013. He was employed on a 6-day week basis and was remunerated at monthly intervals at the terminal basic rate of Rs 40,000 per month. He was also paid a monthly travelling allowance of Rs 12,000. The last day Plaintiff worked was on 7.8.2014.

The remaining averments are as follows:

"1. Plaintiff avers that: -

e. at his request to discuss a salary increase Mr. Philip Patrick Arnaud Mayer, Defendant's Chief Executive Officer, had convened a meeting on 07.08.14;

f. on 07.08.14, during the meeting Mr. Philip Patrick Arnaud Mayer told him:

"C'est pas une promotion qui me donne à toi, c'est une démission! Mo ne propose pas à toi une arrangement signé sa lettre là, nous finissons la même"; at this instant he was handed over a letter and when he took cognizance of its content he found that it was his resignation letter and he refused to sign it;

g. whereupon the said Mr. Philip Patrick Arnaud Mayer firmly said to him:

"to signer ou pas signer mon fini mette à toi dehors et moi en a tous preuve contre toi, to capave alle bureau travail ou bien coté pour aller moi pas peur moi, moi en a une panel avocat et le temps mon fini sont à toi, aucune place travail to pas pou gagner dans Maurice."

h. he felt threatened and helpless by the aggressive words of Mr. Philip Patrick Arnaud Mayer and could not do otherwise than to sign the resignation letter though he had already been dismissed by Mr. P P A Mayer;

i. he therefore considers that Defendant has terminated his employment on 07.08.14 without notice and without any justification.

Plaintiff is, therefore, claiming from Defendant the sum of Rs 208,000.00/- comprising of one month's wages as indemnity in lieu of notice (Rs 40,000 + Rs 12,000): Rs 52,000.00 and severance allowance for alleged unjustified termination of employment for 12 months' continuous service (Rs 40,000 + Rs 12,000) x 3 months x 12/12 years: Rs 156,000.00.

Defendant in its plea [for which there was no amendment pressed as only the words "The Permanent Secretary, Ministry of Labour, Industrial Relations, Employment and Training acting for and in the name of" have been deleted as the Plaintiff has retained services of Counsel of his choice] has denied liability. It has averred that Plaintiff in its plaint made a request for a meeting to discuss a salary increase which was not verbal as opposed to his 'Answer to Particulars' as at A5 and A6 but in writing as evidenced by his e-mail to Mr. Philip Patrick Arnaud Mayer dated 4.8.2014 wherein no mention whatsoever was made of the subject matter of the meeting. In reply to the said email, by way of email, Mr. P.P.A. Mayer told Plaintiff that they could have a meeting on the 7.8.2014. He had, at no time, and never

uttered those words to Plaintiff. During the said meeting, it was Plaintiff who informed him that he was resigning from his post, and thus handed over his signed resignation letter. Defendant did not object to his resignation and accepted his said resignation letter which he submitted to the Defendant on 7.8.2014. Plaintiff is merely acting in bad faith by making such false allegations for a frivolous claim after more than one year following his resignation of having allegedly felt threatened, helpless and forced to sign the resignation letter. Plaintiff had ample time to concoct a story and false allegations in order to make his claim.

The following Demand and Answer to particulars are reproduced below:

"Under Paragraph 1(e) of the Proecipe

Q.5 *How was the request made?*

- (i) *If in writing, Defendant moves for communication of same.*
- (ii) *If verbally, Defendant moves for communication of the name/s and address/es of the person present at the particular time.*

A.5 (i) *Verbally;*

(ii) *Plaintiff, Mr Arnaud Mayer and Mrs Severine D'Unienville.*

Q.6 *Defendant moves for full and detailed particulars of how the Defendant's Chief Executive Officer had convened a meeting on 07.08.2014.*

A.6: *Same was done verbally."*

Plaintiff gave evidence in Court. He testified as regards the undisputed issues and produced a copy of his pay slip for 31.5.2014 viz. Doc. A in relation to his basic salary of Rs 40,000 and his monthly travelling allowance of Rs 12,000. He also produced his employment contract as per Doc. J.

He went on to say the following-

He entered a plaint against Defendant on 9.6.2015 through the Ministry of Labour. At that time, he confirmed that he lost his job as Maintenance Manager at Evaco Holiday Resorts Ltd.

1. On 7.8.2014, he made a request to meet the Chief Executive Officer (CEO) who was also Director of Defendant, Mr. P.P.A. Mayer, as he wanted to have an increase in salary and a promotion.
2. When he got into his office, he met Mr. P.P.A. Mayer who was not alone as there were also his Personnel Manager namely Mrs. Severine D'Unienville and Mr. Philippe Mayer in his capacity as General Manager for the company Evaco Construction.
3. Reaching there, he felt that there was an attitude which was a bit tense as he sat down without any good morning greeting. Mr. P.P.A. Mayer hereinafter referred to as "Mr. Mayer" looked into his eyes and told him that it was not a promotion that he would give him but a punishment.
4. He was shocked and was scared as he thought that he would get an increase in salary. Then, he proposed an agreement to him by showing him a document asking him to sign it wherein it was only written that he was resigning. He looked at him in his eyes and he said the following to him:

"Guette ça, to signer right. De toute façon mone fini mette toi dehors, right. Alle kot to lé. Mo enan tou preuve contre toi. Mo enan ene panel avocat, mo pas peur toi. Alle bureau travail. Guette kot to pou aller. Mo enan tou preuve contre toi."

5. Then he told Mr. Mayer that he was shocked and what happened and asked him for more details as he could not just be asked to sign and leave. Then, Mr. Mayer told him that he was involved in a case of motorcycle without giving details despite his request and he asked him to sign that document and which he refused. He told him:

"Guette ça mo ena ene panel avocat moi, mo pas peur toi. Guetter ki to pou faire, right. To signer to pas signer, tone fini dehors toi." "Et quand mone fini are toi, aucaine place travaille to pas pou gagner dans Maurice."

6. He thought that he worked for about one year for Defendant. He did not want to destroy his career as for whatever job he would be doing, he would need a letter of recommendation. Because Mr. Mayer said those

words to him, he knew that it would have an impact on his career. He took a little time to think well about the pros and cons of his decision and at that time under threat, he signed his resignation letter as he thought of his future career given that he was 50 years of age and that in 10 years he would have turned 60 and being a family man having responsibilities and debts. Then, Mr. Mayer left the office. Therefore, his employment was unjustly terminated by Defendant on 7.8.2014 and which explains his claim in the sum of Rs 208,000 as detailed in his amended plaint.

7. On the following day namely on 8.8.2014, he went to the Labour Office. He also went to see a Doctor as he was suffering from a depression and was not well as per his medical certificate produced as per Doc. C dated 8.8.2014.

Under cross-examination, he admitted and confirmed that he did not make a request to Mr. Mayer on 7.8.2014 but on 4.8.2014 as per an email he sent to him as per Doc. D. Then, Mr. Mayer responded to his email wherein Plaintiff said:

“Dear Arnaud,

Can I have a meeting with you tomorrow.”

Mr. Mayer asked him to come on 7.8.2014 as per Doc. D.

He admitted that it was true that in the said email namely Doc. D. Plaintiff did not mention any increase in salary or promotion. He admitted that he signed a letter of resignation without any reasons given therein as per Doc. H. dated 7.8.2014 and that his plaint was dated 9.6.2015 which was about 10 months after he did that exercise. He said that on the following day on 8.8.2014, he was depressed and went to the Labour Office. However, he could not remember whether he went to the Labour Office on 11.8.2014 and not on 8.8.2014. But he admitted that it was on 11.8.2014 that the Labour Office contacted Defendant as Mr. R. Ramkurren, the representative of the Ministry of Labour, wrote to Defendant asking for certain details by way of fax and that letter was dated 11.8.2014 and not 8.8.2014 as per Doc. F. He further admitted that he said earlier that he wanted an increase in salary in August and that he started employment with Defendant in August 2013 with a basic salary of Rs 35,000 and he was confirmed in his post on 28 March 2014 and obtained an increase in salary in the sum of Rs 40,000 as per Doc. G. The increase in salary took effect as from 1.4.2014. About 3 months before the meeting of

7.8.2014, he had obtained an increase in salary. It was not excessive according to him after having a salary increase about 3 months ago. He did not agree that he resigned voluntarily and then tried to obtain money from Defendant. He admitted that he was a Manager and Mr. Mayer was the CEO and he addressed him as 'Dear Arnaud' and that was how he addressed him. He felt threatened to sign that resignation letter as he was aggressive in his tone and that there was no good morning nothing and he put up a lot of effort to get a promotion. He could not explain why as to his personal knowledge, there was a delay of about 10 months to enter his plaint.

The case for the Defendant unfolded as follows:

Mrs. Lorianne Palanee in her capacity as Head of Human Resource gave evidence in Court. She was not of much help to the Court as she joined employment with Defendant in April 2016 after Plaintiff had resigned on 7.8.2014 and was replacing Mrs. S. D'Unienville. She did not agree with Plaintiff's contention and maintained the version of the Defendant that the resignation of Plaintiff was voluntary and was not imposed upon him by anyone. Thus, there was no unjustified termination of his contract of employment by Defendant.

Mr. Mayer in his capacity as Chairman of the Evaco Group gave evidence in Court. On 7.8.2014, Plaintiff came to his office after having sent an email for a meeting with him. It was not specified in the email the reason why he wanted to meet him but apparently it was for an increase in salary. He thought that he wanted to meet him to see whether he would have accepted giving him an increase in salary.

He sent an email to Plaintiff following his request for a meeting. It was when Plaintiff got into his office that he confirmed that it was in relation to an increase in salary. He was alone when Plaintiff turned up. It appeared that he asked the HR Manager for an increase in salary and which was refused. Following Plaintiff's request for an increase in salary, he told him that his request was refused as he had already received a salary increase in March of that same year. He asked Plaintiff to revert directly to the HR Department.

Plaintiff wanted to meet him following a request made by Plaintiff through an email and which he did. He decided to leave the Defendant company namely to resign when he knew that he would not get a salary increase and he voluntarily submitted his letter of resignation to the HR Department as per Doc. H. He asked

him to submit his resignation letter to the HR Department although he would have given him the letter and which he did. He did not agree that he was the one who asked Plaintiff to sign his resignation. He did not ask Plaintiff to come and meet him in order to terminate his contract of employment at the level of the Evaco Group, as he was not the one responsible to have asked someone to come and see him in relation to that subject. He remained accessible to employees of the Evaco Group who wished to meet him as per Clause 15 of Plaintiff's contract of employment in his capacity as CEO namely Doc. J. He denied liability. Since Plaintiff resigned, the Defendant did not owe him any sum whatsoever. It was only when the plaint was entered that he got a feedback from the HR Department that the performance of Plaintiff was not satisfactory.

I have given due consideration to all the evidence put forward before me and the submissions of learned Counsel for the Plaintiff and learned Counsel for the Defendant.

I will not attach any weight to the evidence adduced by Plaintiff to the effect that he was holding a second post as Maintenance Manager for another Company for the Evaco Group for which he was on probation for 2 months namely Evaco Construction and for which he was promised a promotion by Mr. Mayer without having been confirmed first in the second post. This is because he travelled outside the averments of his plaint. Furthermore, I will not give any weight to the fact that Mr. Philippe Mayer was present at the meeting of 7.8.2014 as General Manager of Evaco Construction for Evaco Group as his name was not given as a delimitation to his plaint as per his answers to demand of particulars as per A5 above. Indeed, it is clear that as per his letter of confirmation to the post of Maintenance Manager at Defendant which was accepted by Plaintiff, the latter conceded therein that his probation period was extended by 2 months following which Defendant confirmed him to the said post with an increase in his basic salary to Rs 40,000 as per Doc. G.

At this stage, the point that I have to decide is whether Plaintiff was forced to resign through threat and pressure from his post of Maintenance Manager or he did so voluntarily.

I take the view that Plaintiff resigned voluntarily from his post of Maintenance Manager so that there was no unjustified termination of his contract of employment by Defendant for the following reasons:

- (a) It is uncontested that following a probation period, Plaintiff was confirmed in his post of Maintenance Manager so that he had an increase in his basic salary from Rs 35,000 to Rs 40,000 as per his letter of confirmation namely Doc. G so that it is beyond dispute that his performance at work was satisfactory enough for such a course to be adopted by Defendant. In fact, at no time, Defendant called the Plaintiff in its office through its representative in order to draw his attention to any alleged act of misconduct including one involving a motorcycle. Defendant through its representative, Mr. Mayer, only requested Plaintiff to come and see him for a meeting on 7.8.2014 through an email following Plaintiff's email sent to him on 4.8.2014 at the request of Plaintiff who did not specify the purpose of that meeting as admitted by Plaintiff himself as per Doc. D in line with the plea and evidence led by Defendant as opposed to the delimitation of Plaintiff's plaint pursuant to his answers to particulars that such request at his level and response by Defendant were verbal(see- A5 & A6). Therefore, I find no plausible reason why Mr. Mayer would have forced Plaintiff to resign given that he did not call Plaintiff for a meeting in the first place as he was satisfied with his work performance as Plaintiff was benefiting from a recent salary increase for about 3 months and when the issue was only for a request for a further increase in salary. It is quite farfetched on that score, that instead of refusing the request for a salary increase, Mr. Mayer would have threatened Plaintiff to resign or else he had to consider himself already dismissed and that he would not get any other job in Mauritius as he had a panel of Counsel bearing in mind that there is no provision of the law (namely the Employment Rights Act 2008 in force at that time) nor any term of his contract of employment(see- Doc. J) wherein it is stipulated that a salary increase is possible after about 3 months of such an increase following a confirmation in his post after having covered an accepted period of probation for the Defendant.
- (b) I find no valid reason within the stretch of ones own imagination why Plaintiff would not have been told by Mr. Mayer that his request for a salary increase has been refused but instead would have asked him in an aggressive tone to sign his resignation letter after having confirmed him in his post about 3 months ago and would have threatened him that he had already been dismissed no matter he signed or not and that he would not get any job in Mauritius if he did not sign his said resignation letter. Indeed, the testimony of Mr. Mayer remained unrebutted that such a request for a salary increase had

already been made by Plaintiff at the level of HR and which was refused and same was refused by him as well as he was granted an increase in salary about 3 months ago. It also remained unchallenged that following such refusal, Plaintiff signed his resignation letter voluntarily and was requested by Mr. Mayer to submit his said voluntary resignation letter to the HR department and that he was not the one concerned who dealt with the termination of contracts of employment of employees of Defendant.

- (c) It is abundantly clear that Plaintiff is of bad faith as he did not give any reason in his email as per Doc. D. for the meeting sought by him with Mr. Mayer knowing fully well that his request for such a salary increase had already been turned down by the Defendant's HR Department. Had he given the reason in his email, Plaintiff would have been directed to the HR Department by Mr. Mayer for such request through email itself.
- (d) Indeed, it is clear enough that he secured a meeting with Mr. Mayer without giving any reason pursuant to Clause 15 of Plaintiff's contract of employment in Mr. Mayer's capacity as CEO of Defendant namely Doc. J. and knowing fully well that Defendant had already refused such a salary increase for obvious reasons through its HR Department , he brought a resignation letter which he signed voluntarily on 7.8.2014 without giving any reason for his resignation in order to concoct the fact that he was forced to sign his resignation letter in the presence of 3 persons among whom one Mr. Philippe Mayer was not even mentioned in the delimitations found in his answer to particulars viz. A5 which lends support to the version of Defendant that Mr. Mayer was alone at that time. Furthermore, Plaintiff could not say for sure whether he went to the Labour Office on 8.8.2014 or on the 11.8.2014 when a fax was sent to Defendant by the said Labour Office as per Doc. F. It is clear enough that Plaintiff did not bother about his career as he started a new job after an accepted probation period for the post of Maintenance Manager with Defendant only at the age of 50 although he claimed he was a family man having responsibilities and debts including a loan repayment.
- (e) He further accepted that the 7.8.2014 was the date Mr. Mayer acceded to his request of 4.8.2014 for such meeting as opposed to his testimony in Court that it was on the 7.8.2014 that he requested such meeting with Mr. Mayer. Moreover, it remained unchallenged that he refused him an increase in salary or a promotion so that there was no valid reason to unjustifiably terminate his

contract of employment the way described by Plaintiff bearing in mind that he was confirmed in his post by Defendant about 3 months back with a salary increase and that the plaintiff is silent as to why he was jobless prior to being employed at the age of 50 with Defendant which stands to reason that he was already suffering from a "*moderate depressive illness & anxiety (work related)*" as at 8.8.2014 as per his medical certificate viz. Doc. C so that he found it difficult to carry on with any job for long because of his existing moderate work related depressive illness as per Doc. C. and thus, had signed his resignation letter voluntarily through no fault of Defendant let alone that it remained unrebutted that it was only when the plaintiff was entered by him that Mr. Mayer learnt from the HR department that Plaintiff's performance was not satisfactory.

At this stage, I find it apt to quote an extract which I find relevant from the Supreme Court case of **Georges Mahadeo Industries Ltd v Issory N [2010 SCJ 369]** relied upon by both learned Counsel as follows:

"As the authorities establish, a fundamental principle in an employee's resignation resides in the free exercise of her will to do so. The law regulates an employer's right to dismiss but leaves the employee's right to resign unqualified:

"La liberté de donner sa démission est posée comme un principe fondamental... Cette démission n'a pas à être motivé, le désir du salarié de quitter son emploi n'ayant pas à être justifié auprès de l'employeur." Dalloz, Droit du Travail. Janv. 1994, para 2.

(...)

However, no matter whatever be the form or the method, it must be shown that the resignation was, in substance, freely given: that the rift amounted to a resignation as such:

"Toutefois, il faut impérativement que cet acte de rupture soit bien constitutive d'une démission...."

The rationale behind the existence of this principle resides in the adverse consequences that flow from such an act in the case of a worker inasmuch as the objective of labour law is to protect the interests of the worker:

“.. compte tenu des conséquences qui s'y attachment: perte de tout droit à l'indemnité de licenciement; rupture instantanée ou à l'issue d'un préavis souvent plus court que celui qui est dû en cas de licenciement; exclusion de bénéfice des allocations de chômage puisque celles-ci sont en principe réservées aux salariés qui ont été “involontairement privés d'emploi”(V. infra, nos 122 et s.): Dalloz, Droit du Travail, janv.1994,para.3.

For that reason, it is the court's business to ensure that a resignation is given thoughtfully and freely:

“Mais au-delà de la forme que peut revêtir la démission, se pose une triple exigence; la démission doit être sérieuse, c'est à dire n' être pas irréfléchie; elle doit être libre, c'est à dire n'avoir pas été imposée par des manoeuvres ou des pressions; elle ne doit pas être assimilée à l'absence non autorisée ou non justifiée(qui ne traduit pas la volonté de quitter l'entreprise).”Dalloz, Droit du Travail, janv. 1994, para.20.

(...)

It is, therefore, a matter of appreciation from the particular facts of the case whether the employee submitted his resignation freely. In that regard, it becomes important to sound the intention of the worker in the given situation:

“On observera de manière générale que le juge s'attache à apprécier in concreto quelle fut l'intention du salarié; entendait-il ou non quitter l'entreprise de son proper chef? Le juge ira au-delà de l'apparence pour analyser autant que faire se peut l'intention réelle du salarié: quitter l'entreprise ou y demeurer.”Dalloz, Droit du Travail, janv.1994,para.34.

The post-event conduct of the worker is one of the many indications that help to find what that intention was. In one of the cases, the French Court held that account taken of the prompt and summary manner in which he drafted his letter of termination to finally protest against it the very next day, there was no free and informed decision of resignation(...).

That also means that if an employer has used devious means and exercised pressure upon the employee to submit his letter of resignation in conditions of physical, moral or other constraints, he should be adjudged as having been the author of the termination:

“Ainsi il a été jugé qu'un employeur qui a usé de manœuvres ou de pressions pour amener le salarié, dans des conditions de contrainte physique ou morale illégitimes, à écrire une lettre de démission devait être considéré comme auteur de la rupture (Soc.6 mars 1980, 2 esp., Dr. Ouvrier 1981.25, note N. Alvarez).”

Dalloz, Droit du Travail, janv. 1994, para.37.” (all the above underlining is mine)

After a very careful analysis in *concreto* of the evidence borne out by the record as explained above, I find that Plaintiff has not established on a balance of probabilities that his contract of employment was unjustly terminated by Defendant. A *contrario*, it has been established on a balance of probabilities that his resignation was thoughtfully and freely given knowing fully well that his said request for an increase in salary or a promotion was devoid of any merit and a bogus one and which would have necessarily been turned down by Defendant and that his post event conduct necessarily confirmed his voluntary intention to have resigned. Indeed, in relation to his post event conduct, it is relevant to note that he conceded that as to his personal knowledge he could not explain why it took him about 10 months after his resignation to lodge his plaint against Defendant and that he could not say for sure whether he went to the Labour Office on the following day of his resignation namely on the 8.8.2014 or on the 11.8.2014 to make his complaint against the said Defendant.

For all the reasons given above, the Plaintiff not having established his case on a balance of probabilities, I dismiss the amended plaint with costs.

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

31.10.2023

