

Soopaul v United Basalt Products Limited

2023 IND 19

CN52/16

THE INDUSTRIAL COURT OF MAURITIUS
(Civil Side)

In the matter of:-

Judex SOOPAU

Plaintiff

v/s

The United Basalt Products Limited

Defendant

RULING (NO. 1) (Is the Defendant Company's Plea a general denial, and if so, can questions be put to the Plaintiff in cross-examination on matters not averred in the Plea?)

As per the Proceipe, the Plaintiff is claiming from the Defendant Company the total sum of Rs2 292 886/- with Interests from the date of entry of the Proceipe until the date of payment and Costs for his summary and unfair dismissal, without any good cause or justification.

The Defendant Company denied the said Claim in its Plea.

Each Party was assisted by Learned Counsel.

The Proceedings were held in English for the purposes of the present Arguments.

In the course of the Plaintiff's cross-examination, Learned Counsel for the Plaintiff objected to Learned Counsel for the Defendant Company putting questions to the Plaintiff, on matters relating

to the justification for the termination of the Plaintiff's employment, as same had not been pleaded in the Plea, which was a general denial, and hence by canvassing issues not averred in its Plea the Defendant Company was travelling outside its Plea.

Learned Counsel for the Defendant Company did not agree with the objection taken by Learned Counsel for the Plaintiff, and the matter was set for Arguments.

Case for the Plaintiff

In essence, Learned Counsel for the Plaintiff submitted that if there was a justification for the Plaintiff's employment being terminated, same should have been pleaded in detail in the Plea, in order to pin the Defendant Company down to its version, instead of putting up a general/blanket denial.

It was not sufficient to aver in the Plea that the dismissal was justified for gross misconduct and breach of Trust, as this amounted to not pleading facts at all.

Therefore, when Learned Counsel for the Defendant Company was putting questions to the Plaintiff on matters which had not been pleaded in the Plea, the Defendant Company was travelling outside its Pleadings, when the Parties are bound by their Pleadings.

There being a blanket denial on Record, the Defendant Company should not be allowed to adduce evidence in relation to matters not averred in its Plea and travel outside its Plea.

Learned Counsel for the Plaintiff therefore moved for the Defendant Company to be disallowed to pursue its line of cross-examination, and for the evidence which has been elicited from the Plaintiff in cross-examination on matters not pleaded in the Plea to be disregarded.

Case for the Defendant Company

Learned Counsel for the Defendant Company submitted in essence that the Defendant Company had denied that the Plaintiff's employment had been summarily and unjustly terminated, and had

averred in its Plea the material facts that the Plaintiff was dismissed for gross misconduct and breach of Trust.

There was no need to plead evidence.

Hence the Defendant Company was not travelling outside its Plea, bearing in mind also that the Defendant Company bears the burden of proving that the termination of employment was justified.

Analysis

The Court has duly considered the Proceipe and the Plea on Record, the Submissions of each Learned Counsel, and the Authorities, cases, and extracts of the authoritative texts submitted by each Learned Counsel.

The Court has also given due consideration to the Written Submissions of Learned Counsel for the Plaintiff.

Learned Counsel for the Plaintiff confirmed that the objection was based solely on the Plea (pages 16-18 of Transcript of 19-01-22), and Arguments were offered by both Learned Counsel on the basis of the Proceipe and the Plea, and not the Demand of Particulars and the Answer to Particulars.

Is the Defendant Company's Plea a general/blanket denial?

Paragraph 3 of the Proceipe, reads as follows:

By letter dated 15th December 2015, the Defendant Company unfairly and summarily dismissed Plaintiff from his aforesaid employment, without any good cause or justification.

And paragraph 3 of the Plea reads as follows:

The Defendant denies paragraph 3 of the Proceipe and puts the Plaintiff to the proof thereof. The Defendant avers that following the findings of the disciplinary committee to the effect that the Plaintiff had committed a gross misconduct,

Plaintiff's employment was terminated by way of the letter dated 15th December 2015. The said letter also referred to a breach of trust. The Defendant further avers that it could not in good faith take any other course of action.

The Court finds the following passage from the Authority of **Bheekarry v Jageshwar** [\[2008 SCJ 180\]](#) relevant as to what constitutes a blanket or general denial:

[...] [A] defendant who in a civil case chooses to put in a general denial, to just deny each paragraph of the averments of a plaintiff and to put him to the proof thereof runs the serious risk that if the plaintiff comes up to proof, there is next to nothing that the defendant may do. [...] He denies himself the benefit of having his version considered by the court and he denies himself the possibility of having that version tested against that of the plaintiff through cross-examination.

Applying the above principles to the present matter, far from merely denying paragraph 3 of the Procipe, without more, the Defendant Company has averred in paragraph 3 of the Plea that the Plaintiff's employment was terminated for gross misconduct and breach of Trust.

These are the facts upon which the Defendant Company intends to rely to support its case that it was justified in terminating the Plaintiff's employment.

The present matter can therefore be distinguished from *inter alia* **Aldridge v Mordaunt Estates Ltd** [\[2018 SCJ 237\]](#) and **Bheekarry (supra)**, given the Defendant Company has gone beyond merely denying the Plaintiff's averments as per the Procipe, and has averred at paragraph 3 of the Plea, that the Plaintiff's employment was terminated for gross misconduct and breach of Trust.

In light of all the above, the Court is of the considered view that the present Plea does not amount to a blanket denial.

Particulars

True it is that no particulars/indication/averment has been provided in the Plea as to what alleged gross misconduct had been committed by the Plaintiff and how the alleged breach of Trust had occurred, as rightly submitted by Learned Counsel for the Plaintiff.

Asking the Defendant Company however, to give details or particulars of what constituted the alleged gross misconduct and the alleged breach of Trust, would in effect amount to the Defendant Company saying “how it is proposed to prove [...] [the said facts which are] merely evidence [...] and “Evidence shall never be pleaded, because it tends to prove matter in fact, and therefore the matter in fact shall be pleaded”¹”. (**Odgers’ Principles of Pleadings and Practice 22nd Edition, page 107**) (emphasis added).

It cannot be said in the present matter that the Defendant Company “has worded [...] [its] plea[...] so vaguely that [...] [the Plaintiff] cannot be sure what [...] [its] line of attack or defence will be at the trial [...] [and] [that the Defendant Company cannot be] pin[ned] [...] down to a definite story.” (**Odgers’ (supra), page 152**), its case being that the Plaintiff’s employment was terminated for gross misconduct and breach of Trust.

These averments “mark out the parameters of the case that is being advanced by [...] [the Defendant Company and] [...] identify the issues and the extent of the dispute between the parties.” (“**as per Lord Woolf MR in McPhilemy v Times Newspaper Ltd [1999] 3 All ER 775**”² cited with approval in **Jowaheer & Ors v The Director General, Mauritius Revenue Authority & Ors [2021 SCJ 150]**).

Learned Counsel for the Plaintiff submitted further that Particulars were required because the Defendant Company had made imputations on the Plaintiff’s character, but failed to specifically say what such imputations were.

It stands to reason that the Court cannot determine this said issue in the abstract.

If the Plaintiff required Particulars or precisions as to any matter averred in the Plea, including the alleged gross misconduct and alleged breach of Trust, it was open to the Plaintiff to apply for Particulars pursuant to **Rule 27 of the District, Industrial And Intermediate Courts Rules 1992**.

This, the Plaintiff failed to do.

For all the reasons given above, the Court finds that the Plea is sufficiently precise and clear, and that there is no justification for Particulars.

¹ Dowman’s Case (1586) 9 Rep. 9b cited in **Odgers’ (supra), page 107**

² **Jowaheer & Ors (supra)**

Is the Defendant Company travelling outside its Plea?

It is settled Law that the Parties are bound by their Pleadings, even before the Industrial Court, as held in **Ramen v Désiré** [\[1986 MR 216\]](#):

Parties, even before the Industrial Court, are bound by their pleadings, the more so when they are, as in the present case, represented by counsel.

It is further trite Law that Parties are not to travel outside their Pleadings, as authoritatively set out in **Aldridge (supra)**:

The learned trial Judge rightly refused to allow the appellant to travel outside his plea and to make an abuse of the process of the court.

Bearing all the above in mind, it is beyond dispute that a “certain amount of detail is essential to ensure clearness and precision” (**Odgers’ (supra), page 111**), and in the present Plea, at paragraph 3, the Defendant Company has averred clearly and precisely that the Plaintiff’s employment was terminated for gross misconduct and breach of Trust, and hence, it cannot reasonably be said that by putting questions to the Plaintiff to try to establish gross misconduct and breach of Trust, the Defendant Company is travelling outside its Plea, specifically paragraph 3 thereof.

Conclusion

In light of all the material placed on Record, all the above, and for all the reasons given above, the Court finds no merit to the objection taken by Learned Counsel for the Plaintiff, which objection is therefore overruled, and the Defendant Company is allowed to proceed with its cross-examination of the Plaintiff on the basis of its Plea, and the evidence which is already on Record will not be disregarded.

[Delivered by: D. Gayan, Ag. President]

CN52/16 – Industrial Court (Civil Side)

[Intermediate Court (Financial Crimes Division)]

[Date: 29 March 2023]