BALA CHANDRA PAPIAH VS REHM GRINAKER CONSTRUCTION CO LTD

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Cause Number: 348/23

THE INDUSTRIAL COURT OF MAURITIUS

(Civil Division)

In the matter of:-

BALA CHANDRA PAPIAH

Plaintiff

VS

REHM GRINAKER CONSTRUCTION CO LTD

Defendant

JUDGMENT

Introduction

The Plaintiff was in the continuous employment of the Defendant as an unskilled employee, more particularly as a helper, since the 19th April 2011. He was employed on a 5-day week basis and was posted at Clinic Darne site in Floreal. The Plaintiff averred that the Defendant has failed to pay to him the equivalent of his return bus fare during 142 days for the period of the 13th April 2022 to the 20th September 2022.

The bus journey of the Plaintiff ranged from Tyack to Curepipe to Floreal and back on a daily basis with a bus fare amounting to Rs 92 made up as follows – from Tyack to Curepipe: Rs 34, from Curepipe to Floreal: Rs 12 and a return journey of the same bus fare as at the 07th May 2022. As from the 08th May 2022, the new return bus fare was Rs 122 made up as follows: from Tyack to Curepipe: Rs 44, from Curepipe to Floreal: Rs 17 and a return journey of the same bus fare.

The return bus fare for the period of 13th April 2022 to the 07th May 2022 amounted to Rs 2,024 and the bus fare for the period of 08th May 2022 to the 20th September 2022

amounted to Rs 14,640, making a total of Rs 16,664, which the Plaintiff claimed from the Defendant.

The Defendant denied being indebted to the Plaintiff in the sum claimed or in any sum whatsoever. In its plea, the Defendant averred that the Plaintiff turned 60 since the 12th August 2018 and as from that date, the Plaintiff had free transport on the national public bus transport service network. As such, the Plaintiff did not incur any expense and/or cost when travelling by bus from his residence to his place of work and back. The Defendant contended that, accordingly, it was under no legal obligation, statutory or otherwise, to pay to the Plaintiff the equivalent of his return bus fare as claimed by him.

Observations

I have assessed the submissions of both Learned Counsel in the present case. The issue to be determined is whether there was any legal obligation on the part of an employer to pay the equivalent of the return bus fare of an employee whose distance from his residence to his place of work exceeds 3 kilometres, who travels by bus, when the employee has reached 60 years of age, is a senior citizen who benefits from a free travel pass allowing him to travel on a bus without paying any fare.

According to the Plaint before me, the Plaintiff is an unskilled employee who operates in the construction industry. It is not disputed that his employment is governed by the BLOCKMAKING, CONSTRUCTION, STONE CRUSHING AND RELATED INDUSTRIES (Remuneration) REGULATIONS 2019. I agree with the submissions of the defence that Regulation 3(1) provides that the conditions of employment of the Plaintiff shall be governed by the Regulations and the WORKERS' RIGHTS ACT. Given that the regulations are silent on the issue of transport to workers, and the Plaintiff is a worker within the ambit of the WORKER'S RIGHTS ACT, his claim for unpaid travel expenses will be couched under section 59 of the Act which reads:

Transport of workers

(1) An employer shall, where the distance between a worker's residence and his place of work exceeds 3 kilometres, provide the worker with free transport from his residence to his place of work and back, or pay him the equivalent of the return bus fare where he travels by bus, or light rail fare where he travels by light rail.

(2) An employer shall, irrespective of the distance between a worker's residence and his place of work, provide the worker with free transport from the worker's

residence to his place of work and back, where the worker is required by his employer to attend or cease work at a time when no public transport service by bus or light rail is available.

(3) (a) Subject to subsection (1), where a worker attends work by his own means of transport with the approval of his employer, the employer shall pay him the equivalent of the return bus fare or light rail fare, as the case may be.

(b) Where, in the course of his employment, a worker is called upon to attend duties from a site of work to another site of work at the request of the employer, the worker shall be paid the return bus fare or light rail fare, as the case may be, and if no bus or light rail service is available, the amount actually spent on transport.

(4) Where an employer provides a worker with free transport in this section, the employer shall pay to the worker wages at the basic rate in respect of any waiting time exceeding 30 minutes after the worker has stopped work.

(5) No employer shall transport a worker or cause a worker to be transported from his residence to his place of work or from his place of work to his residence in a goods vehicle.

(6) Any vehicle, other than a bus or a motor car, used to transport a worker to and from his place of work, shall be licensed for that purpose by the National Transport Authority under the Road Traffic Act.

(7) Where a worker is granted, on a monthly basis, an allowance for petrol, by whatever name called by his employer, the allowance shall, as from 1 July 2023, be paid at a rate of at least 10 per cent higher than the allowance paid in December 2021, provided that the monthly increase in the allowance is not less than 1,000 rupees and does not exceed 2,000 rupees

For the purposes of the present case, we shall first concentrate on section 59(1) of the WORKERS' RIGHTS ACT.

There are 2 conditions which must be fulfilled under section 59(1) of the WORKERS' RIGHTS ACT by the employer and they are as follows:

(i) The employer must provide the worker with free transport from his residence to his place of work and back; or

(ii) The employer must pay to the worker the equivalent of the return bus fare of the worker where he travels by bus, or light rail fare where he travels by light rail.

This is the case where the worker lives more than 3 kilometres from his place of work, as is the case for the Plaintiff. In the present case, the issue revolves on whether the Defendant ought to have paid the return bus fare of the Plaintiff who lives more than 3 kilometres from his place of work and who travelled by bus as there was no free transport provided.

It is to be noted that the present case concerns a claim for transport for the year 2022, such that the Law as it presently stands in the WORKERS' RIGHTS ACT applies. It is important to highlight that an amendment was brought to section 59(1) of the Act in August 2022, more specifically on the 2nd August 2022 through THE FINANCE (MISCELLANEOUS PROVISIONS) ACT 2022 by Act No. 15 of 2022. The law, prior to the amendment, read as follows:

Transport of workers

(1) An employer shall, where the distance between a worker's residence and his place of work exceeds 3 kilometres, provide the worker with free transport from his residence to his place of work and back, or pay him the equivalent of the return bus fare or light rail fare, as the case may be".

I have paid special attention to the wording of the statute. The word "shall" in section 59(1) of the WORKERS RIGHTS ACT before and after the amendment in 2022, must be read as *"imperative"* in line with the INTERPRETATION AND GENERAL CLAUSES ACT. Therefore, prior to August 2022, there was an obligation on the part of an employer to pay to any worker the equivalent of the return bus or light rail fare, the condition being that the distance between the worker's residence and his place of work ought to be more than 3 kilometres.

In August 2022, an amendment was brought to section 59(1) of THE WORKERS' RIGHTS ACT which now reads:

Transport of workers

(1) An employer shall, where the distance between a worker's residence and his place of work exceeds 3 kilometres, provide the worker with free transport from his residence to his place of work and back, or pay him the equivalent of the return bus fare where he travels by bus, or light rail fare where he travels by light rail.

The amendment concerns the words "*where he travels by bus, or light rail fare where he travels by light rail*".

I find that section 59(1) of the WORKERS' RIGHTS ACT as it presently stands delimits the payment of transport by the employer to a worker. Section 59(1) does not concern all workers, it concerns those who travel by bus or light rail fare. The relevance of this amendment is that the benefit of payment of transport is restricted to the category of workers who travel by bus or light rail.

I have borne in mind that the claim by the Plaintiff, in the present case, ranges from April 2022 to September 2022. I find that the amendment brought in August 2022 to section 59 of the WORKERS' RIGHTS ACT has no bearing on the claim of the Plaintiff as the issue in controversy, irrespective of the state of the Law prior to or after August 2022, is whether the payment of transport to a worker can be exonerated, depending on age and associated free public transport. Given that the Plaintiff travelled by bus to work from his residence being more than 3 kilometres away, he ought to be entitled to transport benefits provided that no exception would apply to him in view of the fact that he turned 60 and benefitted from free public transport.

This is where resides the bone of contention being the subject matter of the present argument. Learned State Counsel has argued that the payment of transport is for all workers, irrespective of age. Learned Counsel for the Defendant disagrees.

Learned Counsel for the Defendant has qualified the term "equivalent" as mentioned in section 59(1) of the WORKERS' RIGHTS ACT. According to the Merriam-Webster Dictionary and the Oxford Learners Dictionaries, the work "equivalent" is described as "equal in value". Therefore, according to Learned Counsel for the Defendant, if the Plaintiff has not incurred travel bus expenses, then the equivalent of the return bus fare is zero.

On this score, I have found it pertinent that the Plaintiff did not incur travel expenses as he is a senior citizen entitled to a *"free travel bus pass"* which allows *"him to travel on a bus without paying any fare"*. (RE: ROAD TRAFFIC (BUS FARES) REGULATIONS 2016). The question is whether the payment of transport pertains to a general benefit to a worker or pertains to payment of expenses incurred by a worker.

In the WORKERS RIGHTS ACT, the entitlement to transport of workers falls within the section of benefits attributable to workers. Having said that, it is clear that the ratio decidendi in section 59(1) of the WORKERS' RIGHTS ACT is the obligation on the employer to provide free transport to a worker where the latter lives more than 3 kilometres from his place of work. In the alternative, the employer must pay the value of the return bus or light rail fare. Bearing in mind that the decisive factor is the notion of free transport for the worker, it is clear that the purport behind the legislation is to ensure that any worker is not incurring an

expense in addition to his salary. Therefore, any worker availing himself of public transport, should be refunded the equivalent of the sum incurred.

Let us take an example of an employer who provides free transport to a worker who is below 60 years of age and living more than 3 kilometres from his place of work. If free transport is not available, the employer will be under an obligation to pay the equivalent of the bus or light rail fare if, and only if, such worker travels by bus or light rail. If this worker who is below 60 years of age decides to walk or does not incur the costs of travelling by bus or light rail, there is no obligation on the worker to pay the equivalent of the bus or light rail fare, the point being that the value of the bus or light rail fare is zero.

In the same vein, if a worker turns 60, it automatically means that he is not incurring the costs of travelling by bus or light rail. For a payment of transport costs by an employer, the onus is on the worker to show the value of a return bus or light rail journey incurred by him. If such value is quantified as zero, the employer has to pay an amount of zero rupees. In other words, if no cost is incurred, there is no obligation for payment of transport under section 59(1) of the WORKERS' RIGHTS ACT.

This leads me to section 59(3) of THE WORKERS' RIGHTS ACT. I find that section 59(1) cannot be read in isolation, it must be coupled with section 59(3) for a comprehensive understanding of the enactment. Section 59(3)(a) of the WORKERS RIGHTS ACT reads –

> *(a) Subject to subsection (1), where a worker attends work by his own means of transport with the approval of his employer, the employer shall pay him the equivalent of the return bus fare or light rail fare, as the case may be.*

In relation to section 59(3) of the Act, I have given anxious consideration to the submissions of Learned Counsel for the State to the effect that the equivalence of the bus or light rail fare in section 59(3) is equal to zero as the worker is not travelling by bus or light rail, but according to the State Law Officer, a worker is still entitled to the payment of the bus or light rail fare when he attends work by his own means of transport in section 59(3) of the Act.

I agree that the equivalent of a bus fare in a scenario envisaged by section 59(3) of the WORKERS RIGHTS ACT, is zero as the worker does not travel by bus or light rail. However, it is important to note that where the equivalent of the bus or light rail fare is zero because the worker uses an alternative means of transport, there is no obligation on the employer to pay the bus or light rail fare, as section 59(3) as it presently stands includes the words "with the approval of the employer", creating a discretion to the employer. The employer may refuse to pay the equivalent of the return bus or light rail fare. The discretion lies with the employer to accept or refuse to pay such fare.

Hence, section 59(3) does not create a situation where the employer has to pay the equivalent of the return bus or light rail fare when the value of same is zero. If the value is zero, there is no obligation on the employer to pay for the transport costs. It depends on the approval of the employer.

It is interesting that prior to 2022, the Legislator used the work "corresponding" in section 59(3) of the WORKERS' RIGHTS ACT in relation to the bus fare. It read:

> *"Subject to the distance limit specified in subsection (1), every worker who attends work by his own means of transport shall be entitled to an allowance equivalent to the corresponding return bus fare or light rail fare, as the case may be."*

On this score, I have paid special attention to the submissions of Learned Counsel for the Defendant that if the legislator wanted an employer to pay for the return bus fare of a pensioner, in circumstances where the senior citizen worker does not pay for the return bus fare, then the legislator in his wisdom would have used the word "corresponding" in section 59(1) as well.

I agree with the argument of Learned Counsel for the Defendant. The word "corresponding" in section 59(3) of the WORKERS' RIGHTS ACT prior to the 2022 amendment pertains to a notion of a general prescribed payment of a traveller undertaking the return journey. If the same word was used in section 59(1) of the Act, it would mean that the employer would have to pay to the worker the prescribed sum matching a distance covered by anyone travelling from one place of another. Instead the word "equivalent" has been used. It is different from the meaning of "corresponding" as it pertains to the sum which a worker has incurred personally when he has travelled from one place to another by bus or light rail.

In the same vein, Learned Counsel for the Defendant has drawn the attention of the Court that the Plaintiff used the words "his" bus fare instead of "the" bus fare in the pleadings, the point being that the Plaintiff did not incur any bus fare as he is beyond 60 years of age and hence cannot claim the bus fare. This again pertains to the notion that section 59(1) of the WORKERS' RIGHT ACT, as it presently stands, pertains to a personal expense incurred when a worker travels by bus or light rail. It does not cover the general prescribed corresponding amount which a traveller would have incurred when travelling from one place to another.

I have considered what Learned Counsel for the State submitted on the right of a worker as protected by section 27(4)(a) of the WORKERS' RIGHTS ACT which reads:

> *No employer shall, in respect of the payment of remuneration –*
>
> *(a) restrict, by agreement or otherwise, the freedom of a worker to determine where and how his remuneration is to be spent;*

I find that this enactment does not find its application in the present case. True it is that the Plaintiff would be free to choose where and how he will spend his remuneration. This does not derogate from the fact that the transport benefit in this case is zero.

"*It is a well-known principle that the legislator does not legislate in vain*". **(RE: MUNGUR A. A. v. THE MUNICIPAL COUNCIL OF QUATRE BORNES 2023 SCJ 77).** Bearing this in mind, if we were to import the reasoning of Learned Counsel for the State that the Plaintiff should be paid the equivalent of a bus or light rail, it would mean that a worker above 60 years of age would be entitled to a return bus fare journey although he is not incurring the costs of such transport. I find that this will discriminate against a worker below 60 years of age as the worker above 60 will benefit from an undue payment.

Learned Counsel for the State also referred to the WORKERS' RIGHTS (WORKING FROM HOME) REGULATIONS 2020 where the legislator opted to use the word "refund" in section 4 to read:

(*1) Subject to subparagraph (2), an employer shall refund to a homeworker —*

(a) any costs incurred for the use of electricity, water, telecommunication or any other facility in connection with work performed at home;

(b) expenses incurred for the maintenance of tools and equipment provided to the homeworker for the performance of his work;

(c) the equivalent of the return bus fare for travelling —

(i) to and from the employer's business premises;

(ii)to meet customers or any other persons in relation to his work; or

(iii)for such other purpose, in relation to his work, as may be agreed with his employer;

(d) such other expenses incurred as may be agreed between the homeworker and his employer; and

(e) any other costs or expenses incurred in relation to his work.

(2)The employer and the worker shall agree on the amount to be refunded to the worker in respect of work-related expenses specified in subparagraph (1) and the refund shall be made on a monthly basis

It is noteworthy that the refund envisaged under section 4 of the WORKERS' RIGHTS (WORKING FROM HOME) REGULATIONS 2020 pertains to payment of work-related

expenses. He made distinction between the word "refund" and the word "pay" in relation to an expense and an entitlement.

According to the Oxford dictionary, "refund" means a sum of money which is given back. "Pay" means to give money to someone for work or services. In the present case, I find that the word "pay" in section 59(1) to hold all its significance as it means that the remuneration to a worker will include the payment of a salary together with such equivalent amount of money which a worker has incurred when travelling by bus or light rail, when he lives more than 3 kilometres from his place of work. It is not a refund but it is a payment of a sum incurred under specific circumstances, the point being that any expense incurred beyond a salary to attend work, must be met by the employer. In the present case, the Plaintiff, although living more than 3 kilometres and taking the bus, is not entitled to the payment as there is no expense incurred.

The notion of the obligation of an employer to pay the travel costs as an expense incurred instead of a general inclusive entitlement of employment is accentuated by the wordings of section 59(3)(b) of the WORKERS' RIGHTS ACT. It reads:

> *(b) Where, in the course of his employment, a worker is called upon to attend duties from a site of work to another site of work at the request of the employer, the worker shall be paid the return bus fare or light rail fare, as the case may be, and if no bus or light rail service is available, the amount actually spent on transport.*

This section makes it clear that what should be paid is the return bus fare or light rail fare and in the event that a worker cannot use the bus or right rail, the employer will have to pay the amount which was incurred by the worker on transport. The work "paid" sufficiently covers the meaning of receiving the amount of money spent on transport.

The provision for free transport or refund of the bus fare is statutory based, of mandatory nature and is of public order. **(RE: MARIO DESIRE TOPIGE VS FOOD CANNERS LTD (2013) IND 27).** However, this is subject to a worker incurring a travel cost by bus or light rail fare. In the present case, the Plaintiff, being above 60 years of age, under the Law as it presently stands, cannot benefit from a payment of the equivalent of the bus fare when the bus fare in his case is zero. It would be an undue payment, contrary to the spirit of employment law where a worker should benefit from his employment rights within a regulatory framework subject to his entitlement. *"La cause est illicite quand elle est prohibée par la loi, quand elle est contraire aux bonnes moeurs ou à l'ordre public"*, as laid down in section 1133 of the Code Civil.

I have considered the submissions of Learned Counsel for the Defendant to the effect that payment of transport benefits to workers beyond 60 years of age would have a negative public policy as employers would not wish to employ such workers. I am of the considered view that this goes beyond the ambit of the present case. In the same vein, I open a parenthesis to observe that in a scenario as the present case where a worker beyond 60 years old is attending work by using free public transport, there is an ensuing benefit to the employer as the transport expense of the worker is incurred by the State. However, it is to be noted that this is a matter of public policy which should remain in the realm of the Legislator.

I deem it fit to refer to the case of **L. C. LAMARQUE & ANOR V THE TOURISM AUTHORITY &ANOR[2023 SCJ 391]**, which concerns a judicial review but which contains a dicta in relation to the Court and policy decisions:

> *"...it is not the role and function of this Court to decide on policy or try to influence it. The formulation of policy is a matter depending essentially on political judgment or is shaped by politicians. It is in a forum other than a court of law that it is properly debated, approved or disapproved on its merits, (seeR v. Ministry of Defence, Ex parte Smith [1996] QB 517). It is no part of the Court's function to look further into its merits."*

Public policy cannot obliterate the rules of statutory interpretation. It has been laid down in the case of **S.JOOMUN AND ANOR VS THE GOVERNMENT OF MAURITIUS AND ANOR (2000) SCJ 234**, that:

> *"one of the basic rules of statutory interpretation is that it is taken to be the Legislator's intention that an enactment (1) should be read as a whole, (2) be construed to implement, rather than defeat the legislative purpose, and (3) should be coherent and self consistent".*

I find that what transpires from a holistic reading of section 59 of the WORKERS RIGHTS ACT 2019, is that if free transport is not provided by an employer, payment of a return bus or light fare for a worker living more than 3 kilometres from his place of work, is a mandatory payment, so long that the worker is travelling by bus or light rail, with the understanding that the cost incurred by the worker can be quantified to a value being more than zero.

Conclusion

In view of the above, I find that there is no legal obligation on an employer to pay transport benefit to a worker equivalent to the bus or light rail fare, where the distance between a worker's residence and his place of work exceeds 3 kilometres, when such worker is above 60 years of age and not incurring transport costs. In the circumstances, I find that the Plaintiff has failed to establish his case on a balance of probabilities. I dismiss the case against the Plaintiff.

Ruling delivered by: M.GAYAN, Ag President, Magistrate

Ruling delivered on: 25th March 2025