

OSHI VS TAYELAMAY & SONS ENTERPRISE LTD

2024 IND 64

**MINISTRY OF LABOUR, INDUSTRIAL RELATIONS, EMPLOYMENT
AND TRAINING (OSHI) VS TAYELAMAY & SONS ENTERPRISE LTD**

Cause Number: 254/18

THE INDUSTRIAL COURT OF MAURITIUS

(Criminal Division)

In the matter of:-

**MINISTRY OF LABOUR, INDUSTRIAL RELATIONS, EMPLOYMENT
AND TRAINING (OSHI)**

VS

TAYELAMAY & SONS ENTERPRISE LTD

JUDGMENT

Introduction

The Accused stands charged with an offence of locating a lodging accommodation in the same building as the place of work in breach of Regulation 8 of the Occupational Safety and Health (Employees' Lodging Accommodation) Regulations 2011, section 94(1)(i)(vi) and section 94(3)(b) of the Occupational Safety and Health Act – Act No.28 of 2005. The Accused company as duly represented pleaded not guilty to the charge and was assisted by Counsel.

The facts

On the 1st June 2018, Mrs Seetohul, an Occupational Safety and Health Officer carried out a routine inspection at the construction site of the Accused company in Roches Brunes. She took 8 photographs which were duly bound in a booklet and produced in Court. She explained that the photographs were taken between 9 am and noon, during normal working hours at a time when employees were on site.

The version of the Accused is contained in the statement given by the representative of the Accused company to the labour inspector as well as his testimony in Court. It is the version

of the defence that the Accused had granted the first floor of the building on the construction site to 9 Bangladeshi guest workers to rest, pray and refresh during the course of the day.

Observations

I have assessed the evidence on record. The Accused has been prosecuted under the Occupational Safety and Health (Employees' Lodging Accommodation) Regulations 2011, for having caused a lodging accommodation to be located in the same building as the factory or place of work of the employee. A "*lodging accommodation*" has been defined in the Regulations as "*a dwelling place provided by an employer to an employee*". According to the normal Oxford dictionary meaning, a dwelling place is defined as a place where somebody lives.

In the present case, the undisputed evidence has established that the Accused company held a lodging accommodation permit at Tayelamay building, in Curpen Lane at Valentina, Phoenix. The Occupational, Safety and Health Officer, whilst acknowledging this, could not tell if the workers involved in the present case were living at Tayelamay building at Valentina, Phoenix. Be that as it may, to all intents and purposes, the Accused company had a lodging accommodation which was used by its employees as a dwelling place at Tayelamay building in Curpen Lane at Valentina, Phoenix. In fact, I have been favoured with a lodging accommodation permit for the Accused company evidencing that the accommodation for 120 guests workers was at Valentina, Phoenix. This means that the construction site of the Accused company in Roches Brunes was not used as a lodging accommodation. In the circumstances, I find credence in the defence version that the 9 Bangladeshi employees were in fact residing at the lodging accommodation of the Accused company and were transported thereat after a day's work.

I have also perused the photographs produced in Court. I take note that the photographs show a rest place with beds, fans and clothes. The question to be answered is whether these photographs establish that the location was used as a lodging accommodation, that is a dwelling place? On this score, I have noted that the Prosecution is relying solely on the photographs, without any supporting evidence from witnesses. On the other hand, the defence version, through the statement of the representative of the Accused and its testimony in Court, is that the Accused company provided the workers with metal beds for them to rest during breaks. They were also given a spot to eat, rest, refresh and to break the fast after a day's work which could include overtime.

After considering the real evidence, I find credence in the version of the defence. Indeed, the photographs, in line with the version of the defence, show that the temporary rest area was not equipped with a bathroom, refrigeration or locker facilities. The Occupational Safety and Health Officer stated that the employees would use toilet facilities in the bathroom of a temple opposite the construction site. However, same was closed at night. Therefore, I find, that the rest place as evidenced by the photographs cannot establish that the location was used as a lodging accommodation as it lacked the basic necessities and general requirements of a dwelling place. It would be difficult to believe that the guests' workers could live in an environment with no storage, cooking or toilet facilities.

I find that the photographs are reflective of the version of the defence, to the effect that the Accused company provided the guests workers with a rest place. It is to be noted that the 01st June 2018 fell during the holy month of Ramadan at a time when the Bangladeshi workers were fasting.

I have found the version of the defence to be credible and reliable, namely that the Accused company provided a rest place to 9 Bangladeshi workers for them to rest, refresh, eat and break their fasting day during the holy month of Ramadan. This is why the workers came to work with their suitcases in which they carried their belongings, including clothes or food. The version of the defence has remained unimpeached, the moreso that no statement could be recorded from any of the guests' workers due to a language barrier. I find that there is no evidence to establish that the Accused company has located a lodging accommodation at the place of work, as there is no evidence that the spot in site was used as a dwelling house where the guests' workers could live. Rather, the spot seemed to be a temporary measure for rest, refresh, pray and eat.

Conclusion

In view of the above, I find that the Prosecution has failed to prove its case beyond reasonable doubt. I dismiss the case against the Accused.

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

Judgment delivered on: 20th November 2024