

*Nutchaddy R. v The National Transport Corporation*

**2023 IND 18**

**Cause Number 94/16**

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

**In the matter of:**

**Mr. Rajcoomarsing Nutchaddy**

**Plaintiff**

**v.**

**The National Transport Corporation**

**Defendant**

**Judgment**

This is a plaint where Plaintiff was in the continuous employment of Defendant as Conductor since 28 October 1989.

The disputed averments are as follows:

- (i) Plaintiff was deriving an average terminal salary of Rs.16,491.20/- per month.

- (ii) On or about 12.8.2014, he was summarily and without any justification and or/valid reasons dismissed from his post without being paid any severance allowance, wages in lieu of notice and his *prorata* end of year bonus.

Plaintiff is, therefore, claiming from Defendant the sum of Rs.1,278,067.90/- representing wages in lieu of notice (Rs 16,491.20 x 3): Rs. 49, 473.60 and severance allowance at punitive rate (i.e.  $\frac{1}{2} \times 16,491.20 \times 298/12] \times 6$ ) viz. ( $\frac{1}{2} \times \text{salary} \times \text{date of entry (years)} \text{ up to date of dismissal}/12) \times 6$ ): Rs 1,228,594.30.

As per his answer to demand of particulars, Plaintiff did not have any document witnessing his contract of employment with Defendant and he failed to provide full and detailed particulars of how his average terminal salary of Rs 16,491.20 per month was arrived at.

Defendant, for its part, has denied that Plaintiff was deriving an average terminal salary of Rs.16,491.20/- per month and has denied liability by averring the following:

- (a) On Sunday 15 June 2014, Plaintiff, whilst he was working as Conductor in Defendant's bus, had failed to issue tickets to two passengers who had paid their fares.
- (b) He was convened to appear before the Central Disciplinary Committee on 5 August 2014.
- (c) He appeared before the Central Disciplinary Committee and was assisted by a Trade Unionist.
- (d) The Central Disciplinary Committee found him guilty of misconduct.
- (e) In the circumstances and in view of his various antecedents, Defendant had no alternative, but to dismiss him from his employment.
- (f) He appealed against Defendant's decision to the Appeal Committee of the Ministry of Public Infrastructure, National Development Unit, Land Transport and Shipping.
- (g) The Appeal Committee recommended to grant him a second chance as a fresh entrant on humanitarian grounds.
- (h) He has refused to accept the said offer.

Thus, Defendant has denied being liable to Plaintiff in the sum claimed or in any other sum whatsoever and has moved that his action be dismissed with costs.

Plaintiff gave evidence in Court which is to the following effect.

He was employed with Defendant as Conductor since 28.10.1989 and was earning about Rs 15,000 to Rs 16,000 per month. He was no longer working there as he was asked to leave after he was contravened by a Ticket Examiner meaning a Traffic Officer.

On 15.6.2014, he was on duty as Conductor doing route 68 in bus number 3446AG05 coming from Curepipe and proceeding to Edward VII, Rose Hill. As there was a constant flow of passengers coming in and going out, he informed them that he did not have change when payments were being made for the obtention of the bus tickets.

Subsequently, a lady passenger and her child passenger got into the bus and had only a Rs.200 note which he took from her and gave her 2 bank notes of Rs.100 back. He further asked her to look for Rs.36 meant for the total bus fare for two tickets viz. an adult for Rs 24/- and a child for Rs.12/- in her handbag in the meantime. However, he forgot about it. Then, two Ticket Examiners viz. Traffic Officers who were Mr. S. Gungah and Mr. P. Sookhoo entered into the bus at Vacoas near the Meteorological Station at his request. He asked Mr. S. Gungah whether he could give him change for a Rs.200 note and which he did not have.

Afterwards, Mr. S. Gungah showed him that lady passenger who stood up in the bus before alighting from it at CEB bus stop and who told Plaintiff that she did not receive her tickets and then she got out of the bus. He told Mr. S. Gungah that may be, he forgot as he returned to her the sum of Rs 200 in Rs 100 bank notes and she did not pay him for the tickets. But Mr. S. Gungah asked him to issue the 2 tickets giving a total amount of Rs 36/- and whereon he put his initials and took them from him although he told him that he would make a deficit of Rs. 36. He followed the guideline from Defendant not to argue with the Ticket Examiner, but he reported the matter to Mr. Brizmohun, the Manager.

He admitted that when both Ticket Examiners took his Electronic Ticket Machine from him and caused to be printed a ticket report wherein the 2 tickets for that woman and her child were not to be found as per Doc.D1 and when shown to him, he said that he did not take money from her for the bus fares and did not give her the tickets. But he agreed that he did issue the 2 tickets when asked by the said Ticket Examiner and that he did not claim the price meaning the

value of the 2 tickets from that woman. He was aware that bus conductors had a document called a waybill and it was written on it by those Traffic Officers that “*Collected exact fare value of Rs 36.00 (1x24 +1x12) Failed to issue any tickets*” as per Doc. D2. He did not agree that he took her Rs 200 note and gave her back Rs 164 as change and did not give her the bus tickets. He admitted that there were several cases of “Pilferage” including related offences against him in the past and in relation to which he did get several warnings and suspensions although for some others he could not remember as per Doc. P5.

Thereafter, he continued to work. On 24.6.2014, he received a notification of irregularity which was a D1 form and it was written on it “*Charge: Misconduct*”. He knew how to read as he provided his explanations at the rear of the notification of irregularity in relation to the misconduct he allegedly committed in relation to the present incident as per Doc. P1.

As per a letter dated 24.7.2014 which contained the charge levelled against him namely “*On Sunday 15 June 2014, at about 10.14 hrs, while you were on duty as Conductor in bus no 3446 AG 05, along route 68, you collected exact fare of Rs 36.00 (1x24.00 + 1x12.00) from one lady passenger and one child passenger traveling from Eau Coulée to CEB Vacoas but you failed to issue them tickets value of Rs 36.00(1x24.00 + 1x12.00). At the request of the Traffic Officer, you issued ticket value of Rs 36.00 to the passenger without collecting any fare.*”, he was convened to appear before a disciplinary committee on 5.8.2014 as per Doc. P2.

At the disciplinary committee, he was assisted by a Trade Unionist and then he was told that he could leave as there was nothing serious.

As per a letter dated 11.8.2014, he was dismissed by Defendant as per Doc. P3 which he received on the same day. He did not receive money in lieu of notice and he was not paid his *prorata* thirteenth month bonus. He made an appeal to the Ministry in order to reconsider his case and he was given a second chance but with the condition that he would have to start as if it was a new employment on a temporary basis of 3 months excluding his years of service as per Doc. P4 after having been accepted by Defendant but which he refused in writing. Then, he entered the present plaint against Defendant.

The case for the Defendant was as follows.

Mr. R.K. Hurchand, the representative of Defendant in his capacity as Human Resource Manager, gave evidence in Court. In relation to the incident that occurred on 15.6.2014, the

Traffic Officers made a report thereafter to Defendant which was one of irregularity which Management received on 17.6.2014 and which he also received.

Following that report, he issued a notice of irregularity dated 24.6.2014 wherein the charge of misconduct was well detailed concerning the incident that occurred on 15.6.2014 and which he gave to Plaintiff who gave his explanations on the verso on 25.6.2014 as per Doc. P1. Then, Plaintiff was convened to appear before a disciplinary committee on 5.8.2014 where he was heard in relation to the charge of misconduct levelled against him as per Doc. P2.

Thereafter, Plaintiff received his letter of dismissal on 11.8.2014. His contract of employment being terminated, he appealed as per the procedure following a dismissal by Defendant directly to the parent Ministry who would hear the appeal and impose conditions. Indeed, the parent Ministry informed Defendant that Plaintiff could be employed on a new contract of employment on humanitarian grounds for a period of 3 months by monitoring his performance and then Defendant would decide whether he could continue or not which he refused. When the decision was taken to dismiss Plaintiff, it was based on the facts what happened and also on his antecedents and Defendant had no other choice but to dismiss him.

Both Mr. P. Sookhoo and Mr. S.Gungah gave evidence in Court in their capacity as Ticket Examiners. In the year 2014, they were already working as Traffic Officers namely Traffic Examiners for Defendant.

Their testimonies boil down to the following:

1. On 15.6.2014 at about 10.04 a.m., they were at Vacoas waiting for a bus to come for checking purposes namely by way of punching of the tickets of passengers when they got into the bus number 3446AG05 coming from Curepipe and proceeding to Edward VII, Rose Hill along route no.68 as it stopped. It was not at the request of Plaintiff, the Conductor of that bus, that they stepped in.
2. They checked whether the passengers had their tickets in order to punch them when Mr. P. Sookhoo met a lady passenger and her child passenger who came from Curepipe and who told him that she gave Plaintiff a Rs 200 note and he gave her back Rs 164 but did not give her the tickets yet and in relation to which he called Mr. S. Gungah.
3. That lady passenger showed to them that she had paid Rs 200 and she had the change of Rs 164 as she paid Rs 36 for the 2 tickets which were not given to her by Plaintiff.

4. As soon as the passenger paid for her tickets, she should have been given same. She stepped into the bus at Eau Coulée to go to CEB Vacoas.
5. Plaintiff said that he gave her the tickets. She did not have the tickets and when there was such type of cases, in order to confirm, they took the ticket machine from the Conductor which they did and removed a ticket report print out therefrom. In fact, the report printout from that machine did not mention those 2 tickets for that woman and which confirmed that she did not get her tickets as per Doc.D1.
6. When the ticket report was shown to Plaintiff by them, he admitted that he did not issue the tickets to that woman. Then, Plaintiff issued the 2 tickets and gave them to that woman without collecting the cash from her.
7. Mr. P. Sookhoo made a remark *inter alia* in Plaintiff's waybill "*Collected exact fare value of Rs 36.00 (1x24 +1x12) Failed to issue any tickets*" in red as per Doc. D2. He deposed before the disciplinary committee and gave the same version he gave in Court.
8. Plaintiff ought to have change as it was his third trip meaning at least about Rs 971 at the material time.
9. Mr. S.Gungah did not depose before the disciplinary committee.

I have duly considered all the evidence put forward before me and the submissions of learned Senior Counsel for Defendant and learned Counsel for Plaintiff.

The testimonies of both Traffic Examiners namely Mr. S. Gungah and Mr. P. Sookhoo remained unrebutted as follows -

1. Plaintiff stated to them that he issued tickets to that lady passenger who was together with her child passenger on the material day which was not the case when checked from the print out report from Plaintiff's electronic ticket machine as per Doc. D1 as further admitted by Plaintiff himself when shown the report.
2. Furthermore, Plaintiff when he issued the tickets to her upon being asked by one of the Traffic Examiners, he did not claim her for the fares in the sum of Rs 36 and which was also admitted by him which lends support to the version of that lady passenger that she

gave Plaintiff a Rs 200 note and he gave her Rs 164 back as change and not 2 bank notes of Rs 100 as stated by him.

I do not believe Plaintiff when he said that after that woman had stood up in the bus and told him in front of at least one Ticket Examiner that she did not get her tickets, the said Ticket Examiner would have allowed her to leave and then to ask Plaintiff to issue the tickets concerning her and her child without having them punched by him.

Had Plaintiff really not received payment from her, he would not have taken the Rs 200 note from her in the first place and given her back two other notes as it cannot be plausible that the said Traffic Officer would have asked him to issue tickets concerning her without any payment on her part.

Thus, it is abundantly clear that Plaintiff gave her Rs 164 back after having taken the exact fare value of Rs 36 from her and he failed to issue tickets value of Rs 36 to her to the detriment of Defendant. Indeed, he admitted that he was subjected to several warnings and suspensions in the past in relation to cases of “Pilferage” and related offences some of which he could not remember as per Doc. P5.

Now, it is significant to note that Plaintiff did not say in Court, the case he had run before the disciplinary committee was on the basis of which facts in order to dissuade his employer namely the Defendant so that he could keep his job whilst he was represented by a Trade Unionist or whether he did not say anything at all at his hearing before that committee when gauged with the fact that Mr. P. Sookhoo did say that the manner he deposed in Court, he deposed before the disciplinary committee which means that the Defendant corroborated its version of facts which it had run before the said committee in relation to the charge of misconduct levelled against Plaintiff, in Court (see- **Moortoojakhan R. v Tropic Knits Ltd [2020 SCJ 343]** and **Smegh (Ile Maurice) Ltée v Persad D. [2011 PRV 91]**).

Furthermore, Plaintiff has robbed himself of his ability to succeed with his cause of action, because at no time he stated in Court that his dismissal by Defendant was unjustified and he did not even say in Court that he was making any claim in any sum whatsoever from Defendant as per the breakdown given in his plaint in relation to the sum total averred when all those material facts were traversed by Defendant in its plea (see - **Heera v Ramjan & Ors.[1976 MR 220]**).

It is apposite to quote an extract from Odgers' on High Court Pleading and Practice 23<sup>rd</sup> Edition at paragraph (iii) at page 143 which reads as follows:

*"The fact in issue between the parties is the factum probandum, the fact to be proved, and therefore the fact to be alleged. It is unnecessary to tell the other side how it is proposed to prove that fact; such matters are merely evidence, facta probantia, facts by means of which one proves the fact in issue. Such facts will be relevant at the trial, but they are not material facts for pleading purposes.*

*This was always a clear rule of the common law. "Evidence shall never be pleaded, because it tends to prove matter in fact, and therefore the matter in fact shall be pleaded."*"

Therefore, Defendant has compellingly discharged the burden of proof placed upon it in that at the time it dismissed the Plaintiff on the material it had and of which it ought to have been reasonably aware following the finding of its disciplinary committee, it could not in good faith have taken any other course of action so that his dismissal was not unjustified (see- **Smegh**(supra)). Needless to add that the suggestion of the Appeal Committee to have Plaintiff re-employed upon less favourable terms on humanitarian grounds on a temporary basis which was accepted by Defendant and which was refused by Plaintiff did not form part of the material that Defendant had or ought to have reasonably known at the time it dismissed the Plaintiff following the finding of its disciplinary committee and thus cannot be taken into account in relation to the discharge of the burden of proof that rested on Defendant (see- **Smegh**(supra)).

For the reasons given above, the case for the Plaintiff should fail. I, accordingly, dismiss the plaint with costs.

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

**17.3.2023**

