SUNGUTH Rajesh v/s FRANKIPILE MAURITIUS INTERNATIONAL LTD

2020 IND 22

THE INDUSTRIAL COURT OF MAURITIUS

(CIVIL JURISDICTION)

C N 66/13

In the matter of:-

SUNGUTH RAJESH

Plaintiff

V/S

FRANKIPILE MAURITIUS INTERNATIONAL LTD

Defendant

JUDGMENT

This is a case in relation to a constructive dismissal as alleged by the Plaintiff against the Defendant.

The Plaintiff has been employed as a truck driver by the Defendant since the 16th August 2004 for and in consideration of a daily wage of Rs 458. Plaintiff contended that he was earning a terminal weekly salary of about Rs 7,800, including overtime. He averred that in or about October 2010, he was ordered to work on a goods vehicle No. 1525 AP 06 which did not have any fitness certificate and was in March 2011, requested to contribute for the loss of a grass cutting machine on a site of work, which he refused to do, resulting in the Defendant not paying him the performance bonus of Rs 916.

He further averred that on or about Sunday the 3rd April 2011, he was injured at his site of work and was ordered by a manager of the Defendant, that is, Mr Malcolm, to work even though he was not well. He was refused permission to leave and go to the hospital. He had to comply. On Monday the 4th April 2011, which was a public holiday, the Plaintiff had to

report to work because other drivers did not work on that day. On Tuesday the 5th April 2011, the Plaintiff reported for work and requested Mr Malcolm to grant him a day's leave in order to go to the hospital on the next day but the said Mr Malcolm refused and according to the Plaintiff acted out of retaliation to order the Plaintiff to work on the following Sunday, that is, the 10th April 2011. The Plaintiff attended work on the 6th, 7th, 8th and 9th April 2011.

On the 10th April 2011, the Plaintiff could not go work to work as he was bedridden. On Monday the 11th April 2011, the Plaintiff informed the office of the Defendant that he would not work and had to go to Sir Seewoosagur Ramgoolam National Hospital (SSRN) where he was given 5 days sick leave. The Plaintiff averred that when he returned to work on Saturday the 16th April 2011, the foreman of the Defendant, Mr Revin Mootoosamy, told the Plaintiff that there was no work for him as a driver.

It is the plaintiff's contention that Mr Mootoosamy ordered him to cut grass and to work as a lorry helper. When the Plaintiff complained, he was told that there was no work for him. On or about the 18th April 2011, Mr Mootoosamy ordered the Plaintiff to work as a lorry helper and the Plaintiff had to comply.

The Plaintiff further averred that on the 19th April 2011, he was ordered to work as a lorry helper and as he was sick, he requested the said Mr Mootoosamy to grant him a half day sick leave on the same day and for half a day local leave for the next day, which the latter agreed to. However, on the 20th April 2011, in the morning, the Plaintiff phoned and requested a full day as local leave and Mr Mootoosamy told the Plaintiff to address his request to Mr Malcolm. The Plaintiff averred that when he addressed his request to Mr Malcolm, the latter insulted him.

According to the Plaintiff, the Defendant did not pay his wages for the 20th April 2011. On the 21st April 2011, the Plaintiff was told to report to work at Pailles and a week later was sent to Le Suffren site of work.

The Plaintiff contended that on or about a week following his posting at Le Suffren site of work, he noticed that his boots had been stolen when he reported to work. Upon complaining to the foreman of the Defendant, the Plaintiff was told that the Defendant would look into the matter. The Director then told the Plaintiff that he had to buy another pair of boots. It is the averment of the Plaintiff that he wanted to make a complaint at the Office of the Labour Inspector but the representative of the Defendant refused to let him go. Therefore, the Plaintiff took a half day local leave in order to go and make a complaint. However, the foreman construed that day as a day of absence and the Plaintiff was not paid for the day.

The Plaintiff contended that on or about the 13th June 2011, he obtained a letter from the Defendant that he would have to pay for a new pair of boots to be supplied to the Defendant. The Plaintiff reported the Defendant at the Labour Office. On the 22nd of June 2011, the Plaintiff met a representative of the Defendant, that is, Mr Mongelard, at Triolet Labour office. The Plaintiff was requested to resume work on the following day. On that day, the Plaintiff contented that when he reported for duty at the site of Le Suffren, the site was closed.

On the 24th June 2011, the Plaintiff again called at the Labour Office of Triolet. On the 4th July 2011, the Plaintiff received a letter from the Defendant and a meeting was scheduled by the Labour Inspector on or about the 12th July 2011. On that day, the Manager of the Defendant, that is Mr Malcolm, stated that he could not take any decision and had to talk to his boss. A few days later, the Plaintiff contended that he was informed by phone by a lady worker of the Defendant, that the latter only allowed Plaintiff back to work not as a driver but as a helper and without continuity of years of service.

The Plaintiff averred that he refused and informed the Labour Inspector accordingly. He further averred that in these circumstances he verily believes that he has been constructively dismissed and claims the following:-

(a) Unpaid bonus for October 2010	Rs 916
(b) Unpaid wages for the 20th April 2011	Rs 458
(c) Unpaid wages for the 28th April 2011	Rs 458
(d) Unpaid bonus for 3 months, Rs 916 x 3	Rs 2,748
(e) 3 months wages in lieu of notice Rs 11,908 x 3	Rs 35,724
(f) Pro rata end of year bonus, 7/12 x 11,908	Rs 6,946
(g) Severance allowance at the punitive rate i.e Rs 11,098 x 3 x 7	Rs 250,068

	Rs 297,318

The Plaintiff therefore prayed from the Court for a judgment condemning and ordering the Defendant to pay him the sum of Rs 297,318 made up as above. Subsequently, the figure Rs 250,068 was amended to be replaced by Rs 252,479.50 and the final figure of Rs 297,318 was accordingly amended and substituted by the figure Rs 299,729.50.

In its plea, the Defendant admitted that the Plaintiff has been employed as a truck driver by the Defendant since the 16th August 2004 for and in consideration of a daily wage of Rs 458. The Defendant further admitted that on the 21st April 2011, the Plaintiff was told to report to

work at Pailles and a week later, was sent to Le Suffren site of work. All the other averments of the Plaint have been denied. The Defendant has averred that the Plaintiff was in receipt of daily wages of Rs 458 on a 6 day week.

The Defendant further averred that all its vehicles are issued with fitness certificates and are road worthy and the vehicle bearing number 1525 AP 06 had a fitness certificate at all material times. The Plaintiff refused to drive same without any valid reason. According to the Defendant, the Plaintiff has always been driving vehicle number 1525 AP 06 and there was never any performance bonus payable or to be paid.

In relation to the grass cutting machine on the site of the Defendant, the latter averred that same was unlawfully withdrawn from his premises. It is the version of the Defendant that the latter never forced any employee to work if the said employee was not enjoying a good health or was unwell and at no time, prohibited the Plaintiff from attending the hospital. The Defendant added that the Plaintiff voluntarily attended work and absented himself without any valid reason from the 11th to the 15th April 2011.

The Defendant therefore had to recruit a casual/relief driver for the days on which the Plaintiff was absent, otherwise the lorry would have remained idle. It was unaware when the Plaintiff would resume work and hence the casual/relief worker attended work on the 16th April 2011 when the Plaintiff also resumed work. Therefore in order for the Plaintiff not to remain idle and the casual/relief driver was on duty, the foreman of the Defendant directed the Plaintiff to perform grass cutting and to act as a lorry helper, which the Plaintiff voluntarily agreed to do.

The Defendant averred that the Plaintiff used to absent himself regularly and in order not to be taken by surprise and in order for the lorry not to remain idle, it recruited a relief/casual driver to cater for the regular absences of the Plaintiff. In case of the absence of the Plaintiff, he would not be paid for the day, as it occurred on the 20th April 2011.

According to the Defendant, the Plaintiff was always remunerated for his day's work and was handed a pair of boots for work, which was under the exclusive 'garde' of the Plaintiff. When the Plaintiff lost his pair of boots, he was told to go buy another pair of boots and was never prohibited from lodging a complaint at the labour office.

The Defendant averred that the Plaintiff always found excuses and flimsy grounds not to work and was reprimanded by the labour office for his flimsy complaints. The labour office requested the Plaintiff to attend work and the Defendant even agreed before the labour officer to supply at its costs a new pair of boots to the Plaintiff.

It is the contention of the Defendant that since the 23rd June 2011, the Plaintiff absented himself and abandoned his employment without any reason or justification. On the 4th July 2011, the Defendant wrote and notified the Plaintiff that he had been absent from work since the 23rd June 2011 for no valid reason. The Plaintiff was called upon to resume work but failed to do so. Therefore the Defendant averred that the Plaintiff is deemed to have abandoned his place of work and as such has himself unlawfully and illegally put an end to his employment. At a meeting held on the 12th July 2011 at the labour office, there was a request to re-instate the Plaintiff but such request was not acceded to.

The Defendant averred that the Plaintiff was never dismissed from his employment and abandoned his employment despite being called upon to attend work. The Defendant contended that it was not indebted to the Plaintiff in the sum claimed or at all and therefore moved that the action be dismissed with costs.

ANALYSIS

I have assessed the evidence on record and the evidence of all parties in Court.

The issue to be determined by the Court is whether the plaintiff has been constructively dismissed by the defendant-employer or whether he himself abandoned work as per the defendant's contention.

Constructive dismissal is defined as *"une rupture prise sur l'initiative de l'employé mais dont l'employeur est malgré tout responsable"* **(RE: Introduction au droit de travail Mauricien, 2nd Edition, DR. D. FOK KAN)**.

In the case of **JOSEPH VS REY & LENFERNA LTD (2008) SCJ 342**, the Court held that:

> *"constructive dismissal occurs when an employee is entitled to put an end to his contract of employment by reason of his employer's conduct. Although the employee terminates his employment, it is the employer's conduct which constitutes the breach of contract. It is therefore imperative that the employee clearly indicates, by word or by conduct, that he is treating the contract as having been terminated by his employer and if he fails to do so, he will not be entitled to claim he has been constructively dismissed".*

The Plaintiff in this case has testified about the employer's conducts which are alleged to have constituted a breach of contract and same have been denied by the Defendant. In order to determine whether there has been constructive dismissal the Court proposes to deal with the following issues:

The certificate of fitness

In his plaint, the Plaintiff has averred that in or about October 2010, he was ordered to work on a goods vehicle number 1525 AP 06 and the said vehicle did not have a fitness certificate. In relation to this issue, Mr Jabbar, a management support officer of the NTA, deputed by the Chairman of the NTA, was called to give evidence. He testified that the Defendant became the owner of the vehicle on the 7th May 2009. According to the records at the NTA, the Defendant holds a private B carrier licence in respect of the said vehicle, first issued on the 29th March 2010, which means that the vehicle could carry specific materials up to a tonnage of 7000 kg. A licence is for one vehicle only.

Mr Jabbar produced a fitness certificate for vehicle number 1525 AP 06 which contained handwriting annotations (Doc.C). The Defendant was the owner of the vehicle from May 2009 until it was sold to Mr Moolkeea in August 2012. The fitness certificate evidences that the vehicle was examined on the 2nd October 2008 and was certified fit until the 1st October 2009, it was examined again on the 5th October 2010 and was certified fit until the 4th October 2011, it was further examined on the 27th October 2011 and was certified fit until the 26th October 2012.

Therefore, according to the annotations in the fitness certificate, between the 2nd October 2009 and the 4th October 2010, there was no fitness on the vehicle. However, when Mr Jabbar was confronted with the B carrier's licence for vehicle number 1525 AP 06, he confirmed that the vehicle was granted a licence valid from the 19th May 2010 until the 18th May 2011 (Doc.A). In cross-examination, Mr Jabbar conceded that the NTA would only give a licence after confirmation that the vehicle has a fitness certificate. The motor vehicle licence could extend after the expiry of the fitness certificate as it could be during the time the fitness certificate was granted.

In view of the above, there is a shady area about whether the vehicle number 1525 AP 06 was endowed with a fitness certificate between the 2nd October 2009 and the 4th October 2010, which is a time of concern in the present case. Be that as it may, the Plaintiff averred in his Plaint that he was ordered by the Defendant to work on the vehicle which had no fitness certificate.

In Court, he testified that 15 days prior to the expiry of the fitness certificate, he informed his superior officer, Mr Revin Mootoosamy that there was a need for renewal of the said certificate. When Mr Mootoosamy told the Plaintiff that he had not scheduled an appointment for the renewal of the fitness certificate, the Plaintiff testified that he told Mr Mootoosamy that in the absence of a fitness certificate, he would not be able to drive the lorry. He was then

given another lorry to work in on the next day, until lorry number 1525 AP 06 got a fitness certificate and was returned to the Plaintiff.

In view of the Plaintiff's own version, I find that he was not ordered to work in a lorry which did not hold a fitness certificate. He notified his superior officer and was given another lorry to work in until the needful was done. The Plaintiff conceded in cross-examination that he never drove a vehicle without fitness and hence, I do not find any improper conduct on the part of the Defendant.

The bonus payable

In Court, the Plaintiff explained that he was entitled to an attendance bonus and a performance bonus which was about Rs 9,000 to Rs 10,000 monthly. He contended that he was not paid a performance bonus in October 2010 when he refused to work in the lorry without fitness and in March 2011, when he was requested to contribute for the loss of a grass cutting machine at the site of work (Vide Doc.D). He therefore claimed unpaid bonus for the month of October as well as unpaid bonus for 3 months.

In relation to the claim for unpaid bonus for 3 months, the Plaintiff conceded in cross-examination that he could not give details about the unpaid bonus for the 3 months. He agreed that in case of an absence from work, no attendance bonus would be paid. It is clear that the Plaintiff could not perform his work in October 2010 and March 2011. In relation to the non-performance of the job in October 2010, there is a shady area about whether the lorry held a fitness certificate when the Plaintiff refused to carry on the job. In relation to the non-payment of the bonus in March 2011, I have taken note that same amounted to a policy decision from the Defendant and concerned all site employees, casual workers and watchpersons, following the loss of a grass cutter from the site of work. Therefore, it cannot be said that the non-payment of the bonus for March 2011 was an abusive conduct from the Defendant directed to the Plaintiff alone.

Moreover, Mr Mongelard, the branch Manager at the Defendant's company explained that the payment of the performance bonus was discretionary, upon the performance of an extra job. Therefore, if the Plaintiff did not perform his task, was allocated another task or did not perform any additional task, there is no reason for the payment of the bonus.

Conditions of work

In respect of the above issue the testimony of the Plaintiff was as follows: The Plaintiff averred that he worked on a 6 day week from 07 00 hours to 15 30 hours. He would do additional hours when he worked beyond the normal hours. A day's work on a Sunday would remunerate him the double rate. On the 3rd April, he felt a blow when he bent to get water to

wash his lorry. The next day, he informed the foreman Mr Huberto about his state of health and at night, started to feel suffocated. The latter asked him to see Mr Malcolm who refused to allow the Plaintiff to attend hospital. The Plaintiff worked from the 4th to the 9th and on Sunday the 10th April 2011, left the lorry in the yard and went to hospital where he was granted 5 days leave. He resumed work on the Saturday the 16th April 2011.

Upon resumption, the Plaintiff went to see Mr Revin Mootoosamy, who was in charge of the yard and the latter asked him to cut grass at Bambous Geoffroy which the Plaintiff agreed to do. On the following Monday, that is the 18th April, when the Plaintiff went back to work, he was again told that there was no work for him and was asked to work as a lorry helper.

On the next day, the Plaintiff did not feel well and went home after a half day's work. He also applied for 2 days local leave. On the 20th April 2011, the Plaintiff effected a complaint at the labour office of Triolet. He went back to work on the 21st April and was transferred to the site of work at Pailles at Le Suffren where the plaintiff worked as a helper as he did not have a licence to drive a bumper. At Le Suffren, the plaintiff lost 1 boot. He took a half day local leave to report the matter to the labour office because he was asked to buy another pair of boots. However Defendant did not pay him his day of work for that day. Thereafter Plaintiff received a letter from the Defendant dated the 13th June 2011 (Doc.E). A meeting was held at the labour office on the 22nd June 2011. Mr Mongelard attended the meeting. It was decided that the Plaintiff would resume work on the next day. However, when the Plaintiff reached Le Suffren, the site was closed and the Plaintiff returned to the labour office. The Plaintiff received another letter dated the 4th July 2011 (Doc.F) wherein he was informed that he was absent for 3 days without notifying his site office. The said letter referred to the meeting of the 22 June where he was requested to resume work on the next day. The letter also made mention that he did not resume work and requested him to do so as soon as possible.

The Plaintiff returned to the labour office on the 12th July 2011 where he met with Mr Malcolm who informed him that a decision would be taken about his job. After a few days, he received a phone call from a lady asking him to resume work on the next day as helper. According to the Plaintiff, his conditions of work would change and he would be considered as a new employee. Hence he considered that the manner in which he was being treated at work constitute indirectly a means to terminate his employment.

In cross-examination, the Plaintiff conceded that whenever he did not attend work, there was a need for a replacement driver to collect workers, to transport materials and to work in the lorry. He admitted that the defendant company relied on him to pick up all the workers. And whenever he was absent and the lorry was kept at his place the workers would not get a

means of transport to attend work. Hence the need for another driver. He further conceded that although he was employed as a truck driver, he also did other jobs, including administrative or dispatch work. Plaintiff also admitted that the two trucks available did not do the same work – the big one was used to transport diesel and equipment needed at work whilst the small one, in which he was working as driver, was used to transport the workers and materials to the work site. It may happen that the two trucks are needed at the same time hence there must be two drivers. And therefore if one driver is absent there is need to have another driver. It further came out that the letter dated 10 March 2011(Vide Doc.D) was addressed to all workers on site.

In support of the Defendant's case, Mr Mongelard the representative of the defendant deposed as follows: He explained that the company was engaged in construction works. There was a yard at Coromandel which was the primary spot where all workers have to report to and to call upon whenever the work was completed at different sites. The Plaintiff and the Defendant were bound by a contract made in the year 2016. However, the Plaintiff was employed by the Defendant prior to the year 2016. Mr Mongelard defined the responsibilities of the Plaintiff as a truck driver, transport of materials and workers and whenever there would be no work at the site, the Plaintiff would be called upon to do other jobs. Mr Mongelard had to organize for a back up driver in the absence of the Plaintiff as this would cause a halt in the operations at work.

Mr Mongelard was confronted with the days leave taken by the Plaintiff. In relation to the 3rd April 2011 when the Plaintiff averred that he sustained a blow, Mr Mongelard could not find any evidence of same in the record of the Defendant company, save and except that the Plaintiff worked on the 3rd April 2011 and continued to work until the 9th of April. On the 10th April, the Plaintiff did not come to work and on the 11th April, he applied for a sick leave. According to Mr Mongelard, the Plaintiff was paid for the sick leaves taken. On the 16th April 2011, the Plaintiff was asked by Mr Mootoosamy to cut grass. Mr Mongelard could not tell for which specific activity the Plaintiff was paid when he worked after the 16th April 2011. Mr Mongelard produced a copy of the time sheet of the Plaintiff's attendance at work showing the number of days plaintiff was absent from work (Docs.L, L1 – L3).

In cross-examination, Mr Mongelard explained that all workers would do different jobs when their specific job was not available and there was nothing degrading to do so. In the case of the Plaintiff, Mr Mootoosamy assigned a job to the Plaintiff depending on the activities of the company when there was no truck to drive.

In view of the above, I find that the Defendant acted in compliance with the policy of the company, that is, they caused a relief driver to drive the lorry assigned to the Plaintiff when

the latter was absent. Not knowing when the latter would resume work, the Defendant continued to engage the relief driver and as per established rules and practice, gave the Plaintiff an alternative job to perform.

It is to be noted that the Plaintiff never complained about the execution of the alternative jobs. Therefore, the Defendant's conduct in engaging a relief driver at the time the Plaintiff was off duty cannot be considered as abusive. Moreover, given that it was in the Plaintiff's normal scheme of duties to do odd jobs other than working as a truck driver, the Defendant cannot be blamed to have offered the Plaintiff an alternative job temporarily. I find that there is no evidence that there was a substantial modification of the original conditions of work of the Plaintiff. As held in the Privy Council case of **SAINT AUBIN V FRANCOIS DOGER DE SPEVILLE [2011] UKPC 42** which was cited in the Supreme Court case of **SREGH (ILE MAURICE) LIMITEE V EMILIEN MTRD [2012] SCJ 293** *"constructive dismissal occurs if an employer imposes on an employee unilaterally, that is without the employee's consent, a substantial modification of the original conditions: Adamas Limited v Cheung [2011 UKPC 32]. The employer is entitled, though not bound, to treat such a change so imposed as a constructive dismissal."*

The Boots and absences at work

After some days leave taken, the Plaintiff went back to work on the 21st April 2011. There, Mr Mootoosamy asked him to report to the site at Le Suffren where the Plaintiff noted the loss of his shoe. When he reported the loss, he was asked to buy another pair of shoes but the Plaintiff elected to go to the labour office on the 28th April.

On the 13th June 2011, the Plaintiff received a letter from the Defendant company asking him to resume work as the boot, being an item of personnel protective equipment was handed to him as per labour law requirement and he was responsible until it was renewed (Vide Doc.E). The Defendant agreed to supply the Plaintiff with a new pair of safety shoes but on the condition that the Plaintiff would reimburse the Defendant. The Plaintiff went to the labour office to report the Defendant.

At the labour office, Mr Sanassee, senior labour officer, handled the Plaintiff's complaint dated 15 June 2011 which was to the effect that he was not provided with work as he had no shoes and same was lost at his site of work. As per the latter's testimony in Court, he fixed a meeting with the Plaintiff and the Defendant as represented by Mr Mongelard for the 22 June 2011. Same was then postponed to 28 September 2011. But prior to that, on the 13 July Mrs Purday from the Defendant company phoned him and informed that the company will not pay any wages for days Plaintiff did not work but was agreeable to reinstate him on the same work conditions. Same was communicated to the plaintiff on the same date. It came

out that Plaintiff asked for a postponement of the meeting to 23rd September but on which date he did not turn up.

During cross examination it came out that on 20 April 2011 plaintiff gave a precautionary measure (Doc.J). Mr Sanassee confirmed what he stated in chief concerning the other meetings which he had between the two parties. He explained that at the meeting of the 22 June 2011 Mr Mongelard asked for some time to speak to the management. On the same day, he phoned Mr Sanassee and informed him that the Defendant company has agreed to give a new pair of shoes to the Plaintiff who had to report to work the next morning and that he would not be paid for the days off. Mr Sanassee phoned the plaintiff and informed him of same.

It further came out that on the next day, the Plaintiff went to Le Suffren but the site was closed. The Plaintiff returned to the labour office. Mr Sanassee was in another office on that day and met the Plaintiff on the 24th when he scheduled another meeting with the Defendant on the 1st July 2011 which as he stated above was postponed and Mr Sanassee confirmed the phone conversation he had with Mrs Purday. It further came out that on the 4th July 2011, the Defendant sent a letter to the Plaintiff following the meeting held at the Labour office on the 22nd June 2011 requesting the Plaintiff to resume work as he has failed to resume work on the 23rd June 2011 as agreed between the parties.

In view of the above, I find that although the Defendant initially asked the Plaintiff to come back to work and buy a new pair of protective shoes, the Defendant subsequently agreed to give the Plaintiff a new pair of shoes, as evidenced by a letter sent by the Defendant to the Plaintiff on the 4th July 2011 (Vide Doc.F). This version has also been credited by the version of Mr Sanassee who maintained that the Defendant was agreeable to offer the Plaintiff a new pair of shoes.

The Plaintiff contended that on the 23rd June 2011, he reported to a site called Le Suffren when he was asked to resume duty but upon seeing no one, he went back to the labour office and never resumed work.

I find that there was no reason for the Plaintiff to go to Le Suffren on the 23rd June 2011 since it has been clearly established by Mr Mongelard that the Defendant company had a yard in Coromandel. This yard was the main spot of the Defendant company where equipment, containers and machines were stored. It was the spot to report to when navigating between different sites. Le Suffren was a site of work and given the nature of works carried out by the Defendant being a construction company, there was no reason why the Plaintiff did not report to the main yard of the Defendant. In fact, the Plaintiff conceded in

cross-examination that following his absence in April 2011, he resumed work at the yard in Coromandel, which suggests that this was the established practice.

Be that as it may, even after the 23rd June 2011, the Defendant sent a letter to the Plaintiff asking the latter to resume work, failing which the absences would be considered as a breach of contract. This letter was sent on the 4th July 2011 (Vide Doc.F). Both Mr Mongelard and Mr Sanassee representing the Labour Office who held corroborative versions, maintained that the Defendant was agreeable to reinstate the Plaintiff on the same conditions of work, which means that the Defendant never altered the contract of work of the Plaintiff. Mr Sanassee also confirmed the Defendant's version that on 13th July Mrs Purday from the Defendant company phoned him to communicate the company's decision to reinstate the Plaintiff on the same conditions of work. And it is on record that Mr Sannasse communicated same to the plaintiff on the same date.

CONCLUSION

In view of the above, I find that the Defendant never adopted a conduct which would cause the plaintiff to consider that his employment has been terminated. I find that the Plaintiff elected not to resume work despite the requests of the Defendant and such conduct on the part of the Plaintiff amounts to an abandonment of work. **(RE: DINDOYAL V/S GOURREGE (2015) SCJ 148)**. Furthermore in the light of all the evidence on record the Court considers that were no substantial modifications of the Plaintiff's conditions of work for plaintiff to construe that he has been constructively dismissed.

I therefore find that the Plaintiff has failed to prove his case on a balance of probabilities. I dismiss the case against the Defendant.

I make no order as to costs.

This 27th August 2020

K. Bissoonauth(Mrs)

President, Industrial Court