HARAPAN RAMAI SDN. BHD., JOHOR
v.
YAJADESAN RAMAN

Jabatan Perhubungan Perusahaan, Johor Bahru
Tan Kim Siong
[Award No. 473 Of 1997 4/4-67/96 (30 December 1995)]
7 October 1997

The parties to the dispute are Harapan Ramai Sdn. Bhd. (hereinafter referred to as 'the company') and Encik Yajadesan Raman (hereinafter referred to as 'the claimant'). Subsequently Mados Sdn. Bhd. was joined as party (hereinafter referred to as the 2nd company).

The claimant first commenced his employment as a general worker on 10 March 1981 with Jabatan Kerja Raya, Johor, at Kuari Pusat Lunchu. As a result of privatisation the claimant joined the company on 16 January 1993 and at the time of dismissal the claimant was drawing a salary of RM735.60 per month as a Pemandu Kenderaan Bermotor.

The dispute is over the dismissal of the claimant by the company on 5 April 1994. The claimant contends that the dismissal was without just cause or excuse and prays for reinstatement to his former position without loss of benefits.

The company has adduced evidence before this Court to show that the claimant was absent from work without leave being approved on three separate occasions. On each occasion the claimant proceeded to go on leave despite being told his application for leave had not been approved. The company had treated his absence from work as absence without leave and on each occasion it had issued a warning letter to the claimant.

It is the company's case that the authority for approving leave application was the executive director, COW1, after the recommendation of the supervisor, COW5. COW1 told the Court the claimant's application for leave commencing 14 November 1993 to 18 November 1993 had been sent to him directly for approval. He discussed with COW5, the claimant immediate superior and due to exigency of service he disapproved the application. The claimant was duly informed by COW5. The claimant did not turn up for work from 14 November to 18 November 1993. When the claimant was issued a show cause letter he refused to acknowledge receipt. COW1 subsequently called the claimant to his office for an explanation and the claimant did not give any explanation.

The claimant again applied for leave from 25 February to 28 February 1994. COW1 approved two days out of the four days applied for and duly informed the claimant but he did not return to work from 1 March 1994 to 5 March 1994. When

COW1 confronted the claimant after his return the claimant said he had informed the telephone operator about his leave. The managing director was briefed on this incident and decided to issue a second show cause letter to the claimant who did not give any explanation. A second warning letter was sent to him.

The claimant again asked for leave from 16 March 1994 to 17 March 1994 and the leave was not approved by COW1. The claimant was informed on the refusal of his leave but he, nevertheless did not turn up for work from 16 March to 18 March 1994, in excess of his disapproved leave. The claimant again refused to give any explanation and was issued a final warning letter.

The board of directors made a decision to dismiss the claimant and a letter of dismissal dated 5 April 1994 was sent to the claimant. The company contended that it has done more than required to be fair to the claimant before deciding to dismiss him.

The claimant's case is a complete denied of being absent without leave. He denied he had applied for leave on all three occasions. He denied the signature on the leave forms. He challenged the accuracy of the punch cards. The impression is that the company went out of the way to forge those documents produced as exhibits in Court and concocted the whole story in order to mislead the Court.

The claimant, however, did not put his case on the authenticity of the leave forms when cross examining the company's witnesses. The claimant, in fact, cross examined at great length and in minute details the particulars contained in the leave forms including whether COW1 was the proper authority to approve or disapprove leave in the company.

The claimant also questioned the genuineness of his punch cards saying that the February 1994 punch card and March 1994 punch card were not his.

The claimant also complained that he was not given an opportunity to be heard by the company before the decision to dismiss him. This is a breach of his fundamental right guaranteed in s. 14 of the Employment Act 1955 .

The claimant further contended that there was no cogent evidence produced before the Court that the misconduct alleged was in fact, committed to justify the punishment of dismissal.

It is also the claimant's contention that the company's stand that it was unnecessary for a charge sheet to be given to the claimant for the reason of dismissal under s. 15(2) was a wrong statement of law. The law lays down the procedure for employer to impose disciplinary action after due inquiry.

The claimant in his testimony denied he had received the several warning letters and had no knowledge of their contents. His defence is that he was framed for the three applications for leave on three separate occasions and his signature on the leave forms was forged.

It is true that in a dispute for unfair dismissal the burden is on the employer to prove the employee's misconduct to justify its action of dismissal. The Court has thoroughly scrutinised the documentary and oral evidence of the company as against that of the claimant's and has come to the finding that the company has established its case against the claimant. The company has adduced evidence to show that an employee had to fill up the application form for leave prior to going on leave and submitted it for approval by the executive director. That was a definite procedure for employees to apply for leave.

The company called five witnesses to give evidence that the claimant was absent without leave on three occasions when his application for leave was rejected. The witnesses included two senior executives of the company, the managing director and the executive director besides the executive from Mados Sdn. Bhd, the assignor of the quarry operation. The claimant admitted in his evidence he had no problem working with COW1 and had never walked out from his job. COW1, COW2 and COW5 had personal knowledge of the claimant's absence when they communicated with each other, when the claimant was absent, not one occasion but on all the three occasions. Their evidence was not rebutted and their corroboration remained intact. The claimant's forgery defence had failed miserably. His own witness, CLW1 stated in evidence that the claimant was warned once orally and twice in writing for being absent without leave. He specifically said p. 55 of COB was one of the written warnings which is self-explanatory as follows:

Kepada Encik Yajadesen A/L Raman Pemandu Dumper.

AMARAN TERAKHIR TIDAK HADIR BERTUGAS

Berhubung dengan perkara di atas, dimaklumkan bahawa Yajadesen A/L Raman k/p No. 5530485 telah tidak hadir bertugas pada 16 Mac, 1994 hingga 18 Mac, 1994 iaitu selama 3 hari.

2. Buat pengetahuan, amaran pertama dan amaran kedua pihak kami telahpun kemukakan tetapi tiada apa-apa tindakan dan perhatian yang diambil.

3. Saya berharap perkara ini dapat perhatian daripada pihak tuan. Segala kerjasama yang diberikan diucapkan terima kasih. Sekian.

Yang menjalankan tugas,

signed ... (MANAGING DIRECTOR) HARAPAN RAMAI SDN. BHD. 13 M.S., JALAN MASAI 81750 MASAI, JOHOR. TEL: 274670/274671

The claimant has not produced evidence to substantiate his allegation that his leave application forms and punch cards were forged. The company had produced all the documents the claimant disputed before the Court. The company also had 5 witnesses to substantiate its allegation against the claimant. Their evidence had withstood the cross examination by the claimant. There is no reason for them to jointly concoct the story of absence without leave and to lie before this Court. The

Court accepts their evidence as true.

An employee's entitlement to annual leave cannot be claimed as of right and he must obtain permission from his employer relieving him from duty of attending work. Unless the leave sought is granted an employee cannot absent himself from duty and if he does, it is absence without leave, a fundamental breach of the employee's contract of employment.

In the present case the claimant failed to obtain approval before proceeding on leave. The claimant, in fact, defiantly went against the company's wishes when his leave was rejected, and went on leave. He did not only do it once but he did it 3 times.

The claimant could not justify his defiant attitude towards the question of his absence without leave. Therefore in his evidence before this Court he denied the whole affair. In the Court's view this is an afterthought so clumsily presented and so untenable.

It is unthinkable to suggest that the managing director, the executive director, the supervisor and all those down the line conspired to get rid of the claimant who was just a driver by forging all the documents. Such a suggestion sounds hollow and unbelievable.

The conduct of the company towards the claimant has been one of extraordinary patience and forbearance. The standard of fairness demonstrated by the company in this instant case far exceeds the reasonable standard expected of an employer before dismissing an employee for absence without leave. The company had in fact bent backwards to accommodate the claimant but he went over the limit of tolerance. He was absent without leave on three occasions and he also exceeded the leave he applied for by overstaying after his leave.

The claimant contends that the company failed to conduct an inquiry. It is the opinion of this Court that the case of dismissal for misconduct is different from committing a fundamental breach of the contract of employment. There is no need for an inquiry in the case of fundamental breach as compared to a case of dismissal for misconduct. Section 15(2) of the Employment Act states follows:

(2) An employee shall be deemed to have broken his contract of service with the employer if he has been continuously absent from work for more than two consecutive working days without prior leave from his employer, unless he has a reasonable excuse for such absence and has informed or attempted to inform his employer of such excuse prior to or at the earliest opportunity during such absence.

In the case of Gissco Sdn. Bhd. and Jagjit Singh Mahinder Singh (Award No. 36/88) , it was stated:

Furthermore, Section 15(2) of the Employment Act 1955 does not require an inquiry - it is for the employee to give an explanation to the satisfaction of the employer why he was absent.

The claimant was dismissed because he breached the provision of s. 15(2) of the Employment Act 1955 , that is to say, he absented himself on the three occasions. I am satisfied from the evidence adduced by the company that it was justified in its action against the claimant.

For the above reasons this Court finds that the dismissal of the claimant is with just cause and excuse. The claimant's claim is dismissed.