

1971/69/02

JOINT CASE OF THE DEFENDANTS

W. H. KIMPTON v. CORAL TOURS FIANESSIE

JUDGMENT

These are proceedings brought by one W.J. KIMPTON against CORAL TOURS FIANESSIE under the Joint Labour Regulation as a result of a trade dispute arising between the plaintiff, the employee, and the defendant, the employer. Mr. B. SMITH of Council appeared for the plaintiff and Mr. C. LEONARD, General Manager of CORAL TOURS FIANESSIE, appeared for the defendant.

By an agreement dated the 15th January, 1971 the defendants engaged plaintiff as Social Manager in the Hotel Le Lagon. The contract was for a period of 15 months commencing on the 16th January, 1971 at a monthly salary of \$400 with other perquisites. There is a provision in the contract which, though very difficult to follow, has been accepted by the Court as meaning that there was to be a trial period of three months. The contract where dealing with this trial period reads as follows :

"The trial period starts from the date the employee begins work. During this trial period his contract may be broken by either of the parties without notice or indemnity. In the case of sickness, the trial period may be prolonged by the number of days sickness the trial period may be prolonged by the number of days of sickness." (sic)

On the 15th April the General Manager of the defendant company wrote to the plaintiff :

"Dear Sir ... Following our conversation I have to inform you that the company has decided to renew your trial period."

This was followed by another letter of the 10th July, 1971 which reads :

"Dear Sir ... Following our conversation of this morning I am confirming hereby that our company is cancelling your contract following the report made by the French Gendarmerie dated 3rd April, 1971. Your employment with our company will end officially on the 14th July, 1971 but we are giving you a few weeks extra to allow you to find another accommodation and position, up to the 14th August. Yours faithfully Ch. LEONARD General Manager."

In reply to that letter the defendant wrote :

"Dear Sir ... I am in receipt of your letter of the 10th July, received on the 12th July, cancelling the contract made between CORAL TOURS and myself on the 16 (sic) January, 1971 as Social Manager on the grounds of a report made by the French Gendarmerie on the 3rd April, 1971. I object to these grounds for the cancellation of this contract and intend to follow this matter up with the French Gendarmerie and also the Labour Department and, if necessary, take this matter to Court. ... Yours faithfully, ... W.J. KIMPTON."

There is a further letter dated the 11th August from the defendants which reads :

"Following our letter of dismissal dated 10th July, 1971 and your recent approach to the Inspecteur du Travail

"From the British and French Residencies, we regret to
 "have to say that we maintain your dismissal from your
 "work as Social Manager from the 11th July, 1971 for
 "the following reasons:
 "1. Prejudicial regard be avowed to the interest of the
 "Hotel Le Lagon, and in particular to the good relation
 "with its clientele, as shown by the incident occurred on
 "the evening of the 1st to 2nd April, 1971.
 "... Yours faithfully ... Ch. LEONARD .. Manager."

In reply to that letter the plaintiff wrote on the 13th August :-

"Dear Sir ... I am in receipt of your letter of 12th August,
 "1971. As stated in my letter of 14th July I still maintain
 "that the reason for my dismissal is insufficient, and that
 "the charges made are untrue. I have always acted in the
 "best interests of the hotel and its clients.
 "Also, as stated in my letter, I intend to put this matter
 "before the Labour Court. ... Yours faithfully .. Wm.H.KIMPTON."

The plaintiff, in evidence, established the contract and the terms thereof, but having regard to the decision of this Court it is not intended to dwell on his evidence. He maintained that as far as he was aware, his work with the hotel was perfectly satisfactory. He said, however, that some time about the 5th April he was approached by Mr. LEONARD who told him that the hotel management had been told that the French Gendarmerie had received a report that he, the plaintiff, was inciting political subversion and had made derogatory remarks of French people who were present at a dance held in the hotel on 1st April.

Mr. LEONARD told him that the incident was considered to be very serious and that the plaintiff could be deported; that in fact this was under consideration but would have to await the return of the British Resident Commissioner. According to the plaintiff that was all that was discussed in the conversation, except that Mr. LEONARD said it was considered to be so serious a matter that the plaintiff might in any case lose his job. There was no mention of a suspension or extension of the trial period. Mr. HUGHES, vice-President of the Company, had a somewhat similar conversation with the plaintiff. No details of what the plaintiff was alleged to have done were given, he said, and no specific accusation was made.

The plaintiff said that at a dance on the 1st April an incident did take place. He said that for this dance he had engaged a band and was told that at the beginning and at the end of the night it wished to play its signature tune. He had also been told by Mr. LEONARD that he, Mr. LEONARD, would like the dance to end early so that the sleep of the guests in the hotel would not be unduly disturbed. The plaintiff said that in order to terminate the dance he made an announcement at 1 a.m. The effect of the announcement was that the band liked to finish the night with their signature tune, and he suggested that, as a tribute to the band, those present would stand up while they played it. He said his primary idea in making the suggestion that the people should stand up was that having done so they would be more disposed to leave the dance hall and so end the night early as Mr. LEONARD had suggested.

He said many people stood up when the band started to play this tune, but some did not. He said that some of those who were standing objected to the others remaining seated and that he intervened to smooth the ruffled feelings. That, he said, was the incident of the 1st April as he understood it.

Evidence was given by Mr. LEONARD. He substantially confirmed the evidence of the plaintiff but was in no position to give

the Court details of the affidavits complaints about the accused. He said he had been informed that a complaint had been lodged with the Gendarmerie about Mr. HIMPON but he personally was not present at the dance on the 1st April.

The persons who made the complaint, though known, at least one of whom is in Vila, were not summoned; neither was any member of the Gendarmerie called to give evidence.

The issue before the Court turns on the following points:

1. Was there a trial period in the contract of employment?
2. If so, when did it commence, and was it renewable?

Mr. SMITH for the plaintiff concedes that there was, but argued that it commenced on the 24th December, 1970. In support of this, the plaintiff gave evidence to the effect that he commenced working with the defendants in a part-time capacity on that date and was paid at the agreed monthly rate of salary, \$400. This contention was rebutted by the defendants and having regard to the decision at which the Court has arrived it is not considered necessary to go into the merits of the argument of each side.

The Court is of the opinion that a trial period was agreed to between the parties, and that it commenced on the 16th January, 1971.

The provisions of the contract dealing with the trial period made no reference to a renewal of it. All that is provided for is that such period may, if the employee has been sick, be prolonged by the duration of the sickness. No suggestion has been made that the plaintiff was sick, and that as a result his trial period was prolonged. There is the reference in the letter of the 15th April, 1971 to the renewal of the trial period, but there is no evidence whatever to indicate that the plaintiff agreed to the contract being amended to this effect. This letter purports, therefore, unilaterally to change the contract, a result which it cannot legally achieve.

The trial period fixed by the contract terminated on the 15th April, 1971. Prior to the termination the plaintiff might have been dismissed without notice or compensation, but this was not done. Therefore when the letter of the 10th July purporting to dismiss Mr. HIMPON was sent, the trial period referred to in the contract had long since expired, and Mr. HIMPON was entitled to look forward to unbroken employment for the period of the contract, i.e. 15 months from the 16th January.

There was, however, a provision in the contract - clause 9 - which made provision for the termination of the contract in certain circumstances. This clause reads:-

"Capture of contract.

" a) - on the part of the company:

" The company will be able at any moment to cancel the contract in the case of a serious (sic) of the employee:-
" to warn the latter three months in advance or to guarantee him a remuneration equal at least to the one fixed in his contract for a period of three months.

" - to assure his repatriation.

" - to give him his holiday indemnity calculated on the time spent with the company."

There is an obvious typographical error after the word "serious" in the first sentence of this clause, and it is by common consent accepted that the word "offence" or some similar word had been omitted.

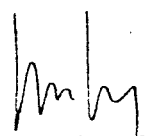
sub-clause (c) of Clause 9 sets out what might be considered as serious offences on the part of an employee. This list, though not exhaustive, might be summarised as ; a serious dereliction of duty ; the employee being prohibited from staying in the territory ; or refusal to submit to certain medical examinations. Mr. LITTLE has contended that if a misinterpretation of the contract was made with regard to the renewal of the trial period then Clause 9 is applicable, and all that the plaintiff is entitled to is the three months notice and such other benefits (if any) as to which he might be entitled under that clause.


No evidence whatever has been produced to suggest that the plaintiff had been guilty of such an offence as contemplated by clause 9. There were references made during the hearing to complaints to the gendarmerie, a gendarme report, and complaints of a Resident Commissioner based on these reports, but no witness was called, or a scintilla of evidence adduced to establish any offence, serious or otherwise, on the part of the plaintiff. The position then is that on the 10th July the plaintiff was no longer subject to the clause of the contract pertaining to a trial period, and therefore could not be dismissed unless for a serious offence. No serious offence by the plaintiff has been established and therefore the Court finds that his dismissal was unlawful.

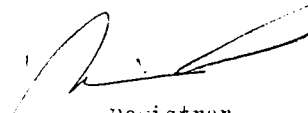
The Court, having announced its conclusion on this point, was informed of an agreement between the parties. The terms of the agreement are that the defendants will cancel the purported dismissal of the plaintiff and restore the terms of the contract of the 10th January, 1971, and that the plaintiff agrees to this.

The Court accepts this agreement and makes it a rule of Court.

DATED at Vila, the 7th day of September, 1971 ./.


French Judge


British Judge


Registrar