

MONTERRAT

IN THE COURT OF APPEAL

TRADE DISPUTE 1 OF 1995

BETWEEN:

MONTERRAT ALLIED WORKERS UNION

Appellant

and

JOAN RYAN

Respondent

Before:

The Hon. Mr. C.M. Dennis Byron

Chief Justice [Ag.]

The Hon. Mr. Albert J. Redhead

Justice of Appeal [Ag.]

The Hon. Mr. Albert N.J. Matthew

Justice of Appeal [Ag.]

Appearances:

Mr. K. Allen, Q.C. for the Appellant

Mr. D. Brandt for the Respondent

1996: October 17;
 November 11.

Industrial Law – Unfair dismissal – Award of compensation by Labour Tribunal – Whether respondent in fact guilty of gross misconduct – Whether Union President competent to dismiss respondent – Employment Ordinance. Appeal dismissed.

JUDGMENT

MATTHEW, J.A. [AG.]

Mrs. Joan Ryan was in the employment of the Montserrat Allied Workers Union which was formed in 1973 as an Executive Secretary for the period October 1, 1990 to July 2, 1992 when she was dismissed by the President of the Union, Mr. Charles Nick Ryan for alleged gross misconduct. The gross misconduct referred to centred around two letters written by Mrs. Ryan, one to the President and another to the General Secretary complaining of irregularities by the General Secretary. During Mrs. Ryan's employment her immediate supervisor was Mrs. Vereen Thomas Woolcock, the General Secretary of the Union.

The Labour Tribunal established by Section 36 of the Employment Ordinance, No. 19 of 1979, on April 10, 1995 found that Mrs. Ryan was unfairly dismissed and awarded her compensation in the sum of \$15,394.00.

The Appellant was not satisfied with the decision of the Tribunal and in accordance with Section 41 of the said Employment Ordinance appealed by way of case stated from the decision of the Tribunal to this Court.

Learned Counsel for the Appellant in his presentation of the Appellant's case filed on August 8, 1995 stated that the four questions to be determined are as follows:

1. Whether the writing and publishing of the two letters together with the conduct of the Respondent prior to the writing and publishing of the said letters all of which are admitted by the Respondent amounted to gross misconduct and if so whether it was incumbent on the Tribunal to so state.
2. Whether in all the circumstances of the case the President of the Montserrat Allied Workers Union was competent to dismiss the Respondent in the way that he did.
3. If the Respondent is guilty of gross misconduct and the President was not competent to dismiss her [and the Appellant contends otherwise] whether in the light of such conduct the Respondent is entitled to the award which was made.
4. Whether the Tribunal by their finding understand or appreciate the meaning of unfair dismissal.

Before this Court learned Counsel for the Appellant read in full two rather lengthy letters written by the Respondent, one dated June 15, 1992 to the President and copied to the General Secretary and the members of the Executive Committee of the Union and another dated June 17, 1992 to the General Secretary and copied to the President and the members of the Executive Committee.

Counsel submitted that the letters were rude, vicious, scandalous and unbecoming of an Executive Secretary. Counsel further submitted that the writing of these letters and the circulation of them to a select group within the Executive Committee of the Union amounted to gross misconduct and therefore the Respondent was not dismissed unfairly.

Counsel made reference to Section 12 of the Employment Ordinance which deals with compensation for dismissal and in

particular to sub-section [1] and paragraphs [b] and [d] of subsection [2].

Counsel also made reference to the Constitution of the Union and in particular to Rule 8[6] [d] and submitted that nothing in that provision says that the President could not dismiss the Respondent, and it was common sense that the head of an organisation must be able to dismiss an employee.

Learned Counsel for the Respondent made extensive reference to the Constitution of the Union. He referred to Rule 5[1] which vests the supreme authority of the Union in the Annual General Conference and to Rule 8[1] which places the government of the Union in the Executive Committee in the periods between Annual Conferences.

He also referred to three other paragraphs of Rule 8. Paragraph 2 states the composition of the Executive Committee to be the President, three Vice Presidents, General Secretary, Treasurer, and seven members elected by the Annual Conference. Paragraph 5 states that the Executive Committee shall give instructions to the General Secretary and the other officers of the Union. Paragraph 10 states that the decisions of the Executive Committee shall be binding on all members of the Union.

Counsel submitted that Joan Ryan in her letters was not making spurious allegations but specific complaints and she brought witnesses in support of her allegations and the Tribunal believed her.

Counsel submitted that the President upon receiving those complaints should have commended her rather than dismiss her despite a decision of the Executive to the contrary.

After hearing the submissions of Counsel we dismissed the appeal and indicated that we would reduce our reasons into writing. I shall proceed to do just that.

Section 12 of the Employment Ordinance, No.19 of 1979, is as follows:

"[1] From the date this Part of this Ordinance comes into force any employee who has been continuously employed by an employer for thirteen weeks or more and who is dismissed by his employer for any reason other than one or more of the

reasons specified in sub-section [2] of this section shall be entitled to compensation as assessed by the Tribunal.

- [2] The reasons for dismissal which shall not give rise to a right to compensation are:
- [a] the incapability of the employee to do the work he is employed to do;
 - [b] misconduct: provided that no employee shall be dismissed for a first breach of discipline except in the case of gross misconduct;
 - [c] subject to the provisions of Section 16 of this Ordinance, where the employee is redundant;
 - [d] any other reason which in the opinion of the Tribunal makes it unreasonable for the employer to continue the employer - employee relationship.

It is clear that the Appellant is relying principally on the provision of paragraph [b] of sub-section [2] of section 12 and to a lesser extent on paragraph [d] of the said sub-section.

The President of the Union in his letter of dismissal stated that he was doing so because of the two letters already referred to above written by the Respondent. He said the same thing when he gave evidence before the Tribunal.

It therefore becomes imperative to make an assessment of the letters. I could not possibly refer to everything in the letters. They are very detailed on a host of matters. Learned Counsel for the Appellant said the first letter contains 4,000 words and I have no reason to dispute that. Perhaps the letters were harsh as was stated by Paul Llewellyn Ryner when he gave evidence before the Tribunal on behalf of the Respondent. In the letter to the President the Respondent stated with reference to the General Secretary on the first page:

"She only did this because of the accusations against her, that is all the forgery and stealing."

On the second page she stated:
"I can say to her that she is a good liar."

On the third page she wrote:
"Mr. President, forgery is a very serious offence and that is what the General Secretary is doing in the office. I know for a fact that when seminar monies come into the union, she keeps a part for herself then destroys the receipts."

On the fourth page she said:

"Mr. President, the facts are before you in black and white, are you so blind that you cannot see?"

The letter to the General Secretary makes similar accusations. There are many detailed and specific complaints of irregularities which would cause a reasonable recipient to set in train some investigative process.

When the matter came before the Tribunal between November 30, 1994 and April 10, 1995 evidence was given by the Respondent and she called three witnesses in Valerie Romeo, Joseph Buffonge and Paul Llewellyn Ryner. The President of the Union was the only witness for the Union. The allegations made in the letters were properly adjudicated upon by the Tribunal in their consideration as to whether the Respondent was fairly dismissed.

One of the allegations made by Joan Ryan is that while she was filing away documents in January 1991 she came across a receipt which indicated that Joseph Buffonge had received \$8,000 from the Union on April 25, 1990. She stated that some time after she had seen the receipt Buffonge came to the Union Office asking for the General Secretary who was to pay him for work he had done for the Union. Buffonge spoke to her on the matter. In his testimony before the Tribunal Buffonge stated that the agreed price for the job was \$8,000 but the total amount he received was \$4,200. He said he never received the balance. The witness was shown a receipt for \$8,000 and he said that was not his writing and it was not his signature on the receipt.

When the President of the Union was shown the receipt allegedly from Joseph Buffonge for \$8,000 he said he recognised the handwriting and it looked like Mrs. Woolcock's handwriting although he said he could not recognize all of the signature. The President went further to state under cross-examination:

"I knew that that forgery was going onI agree that during the 8 years forgery was going on in the Union. Forgery is writing somebody's name that the person did not write. As far as I can remember no other Secretary ever made a complaint."

Strangely enough the only Secretary who made a complaint of forgery gets dismissed.

Charles Ryan also stated before the Tribunal:

"I know the definition of a lie: that is to tell something that is not true. When Mrs. Woolcock wrote on a receipt that she paid Buffonge \$8,000 I know that that was not true. I would say that that is a lie What is written in paragraph 4 of the letter is not true. The General Secretary wrote this letter. What she wrote is a lie. I would call a person who tells a lie a liar. When Mrs. Joan Ryan called the General Secretary a liar in her letter it was true."

It seems to me that one could easily come to the conclusion that the most serious allegations against the General Secretary had some semblance of truth.

Valerie Romeo, the Manager of Romeo's Wayside Store who gave goods on credit to the Union gave at least two examples where original receipts differed from the copies. On original receipt No.036089 there was indication that the Union took on credit 60 screws at 20 cents amounting to \$12.00. A copy receipt No.036089 was shown to her which called for 60 red wood blades at \$15.00 = \$900.00; 260 square feet panel glass at \$35.40 = \$9,204.00 **total = \$10,104.00** paid 22nd February, 1990. Mrs. Romeo stated that all that was taken from her store were the screws amounting to \$12.00. Another original receipt No.036449 called for louvre blades amounting to \$431.10. The copy receipt was for 8 toilet sets and Mrs. Romeo stated in respect of that receipt that she delivered only louvre blades. She said further:

"We did not deliver any toilet sets to Montserrat Allied Workers Union. We did not receive \$3,440.00 on receipt No.036449."

There is no doubt that alot of irregularities were occurring in the Union. It is important to note that the person who went for the things at Romeo's Wayside Store was the same Buffonge referred to earlier who had been dealing directly with the General Secretary.

It seems to me that if an employee is writing to her overall boss and making serious allegations against her immediate supervisor, allegations which the boss supports to be true, that cannot amount to gross misconduct within the provisions of Section 12[2][b] of the Employment Ordinance.

And if the employee has done nothing wrong how can it be said that her conduct could make it unreasonable for the employer

to continue the employer - employee relationship within the provisions of Section 12 [2][d] of the said Ordinance?

I think our reasons can safely rest here but there was a subsidiary question as to whether the President of the Union was competent to dismiss the Respondent and I should touch on that as well.

Rule 8[611 of the Constitution of the Union states that the Executive Committee may suspend or dismiss from office any officer of the Union or Section or member of the staff for neglect of duty, dishonesty, incompetence, refusal to carry out the decision of the Executive or for any other reason which it deems good and sufficient in the interest of the Union.

Learned Counsel for the Appellant submitted in that context that the provisions do not say that the President cannot dismiss a staff member.

Assuming Counsel is right that common sense dictates that the President as the head of the Union has power to dismiss, the question to be addressed in this case is whether he could still exercise that power when the Executive Committee had taken a decision to act otherwise. When he gave evidence in chief before the Tribunal the President stated:

"The Executive agreed that we would not dismiss her because she was making the allegations."

Just before that the President said that Ryner had called him from Washington to ask him why he had dismissed Joan for gross misconduct and to tell him that he should not have done it because earlier they had agreed not to do so.

When Ryner gave evidence before the Tribunal he stated that at the relevant time he was the third Vice President of the Union and had occasion to be in Washington on a Union course and while there he called the President and told him he was surprised to learn that Mrs. Ryan was dismissed because they had not decided to dismiss her and that she should be given back her job.

If the Executive Committee of which the President is part, takes a decision, it seems to me that the President by himself cannot later take a decision contrary to that which the Committee has taken.

Rule 8[1] states:

"The government of the Union in the periods between Annual Conference and the conduct of its business shall be vested in the Executive Committee."

Rule 8[10] states:

"The decisions of the Executive Committee shall be binding on all the members of the Union."

I am of the view that the President was not competent to dismiss the Respondent in the way that he did. This would be the answer to the second of the questions advanced by the Appellant for determination. I would answer the first part of the first question in the negative thus holding that the writing and publishing of the two letters to members of the Executive did not amount to gross misconduct.

It is unnecessary to determine the third and fourth questions.

The appeal is accordingly dismissed with no order as to costs.

ALBERT N.J.MATTHEW
Justice of Appeal [Ag.]

I Concur.

C.M.DENNIS BYRON
Chief Justice [Ag.]

I Concur.

ALBERT J. REDHEAD
Justice of Appeal [Ag.]