

GILBEYS (MAURITIUS) LTD. VS PAUL

1975 MR 215

1975 SCJ 209

Garrioch, S.P.J.*, and de Ravel, J.

In an action entered before the District Court of Port Louis the respondent claimed Rs 3,000 from the appellants for breach of contract. The respondent averred in his plaint that he had been employed by the appellants as bottling room supervisor at a salary of Rs 600 per month; that it was a condition of his contract with the appellants that the initial duration of his employment would be for a trial period of six months to be reckoned from June 1, 1972; that he did work for the appellants as bottling room supervisor from June 1, to June 30, 1972, when he was notified that his services would no longer be required as from the latter date; and that such summary dismissal constituted a breach of contract.

The appellants' plea was, in substance, that the respondent had been employed on a trial basis ("*à l'essai*") for a period of six months and that the respondent had in fact worked on that basis until the end of June, 1972, when his services were dispensed with.

At the hearing before the Magistrate the respondent deponed in terms of his plaint but with a material variation. After stating that he worked for a period of one month with the appellants as averred in his plaint, he went on to qualify his statement by saying that the factory was not in operation at the time; that he had been asked to attend in order to get used to the machinery but was never given the opportunity of showing his abilities as a bottling room supervisor.

No evidence was adduced on behalf of the appellants. Their counsel submitted, with French authorities in aid, that there had been, in law, no breach of contract.

The learned Magistrate gave judgment for the respondent and awarded to him the full amount claimed (Rs 3,000). The ground upon which she appears to have founded her decision is that the respondent was not afforded an opportunity of showing whether he was capable of performing the job of a bottling room supervisor as he ought to have been under the contract.

The Magistrate's judgment is challenged in this appeal both as regards the legal obligations arising out of the contract between the parties and as regards the amount of damages allowed.

We shall begin with an examination of the nature and scope of a "*contrat à l'essai*" which, it is agreed on both sides and results clearly from the terms of the appellants' offer of employment, the contract concerned in this case was). Our common law, as embodied in the Code Napoleon does not specially provide for that species of convention, which has grown out of labour practice. Employers and employees will often decide, before binding themselves definitely, to agree about a trial period during which the employers will have the opportunity to

ascertain whether the employees possess the required qualifications for the job in question, and the employees that of finding out if the working conditions are to their liking. That form of agreement is in common use in France whose law in this respect is materially the same as ours. We consequently propose to look for guidance and assistance in French decisions and text-book writers. The rules applicable to a "*contrat à l'essai*" are these: The duration of the trial period is left to be fixed discretionally by the parties but, if the length of the period or other conditions are such as to indicate an intention on the part of the employer to avoid paying the compensation provided by law in the case where a workman employed under a contract of indeterminate duration is unjustifiedly dismissed (as, for instance, under our own Termination of Contracts of Service Ordinance, 1963), the Court may decree that the clause relating to the trial period is of no effect. But where the clause is held valid, either party may, at any time during the trial period, until its last day, put an end to the contract without notice, and such termination of the agreement cannot form the basis of a claim for indemnity. If, however, it results from the terms of the agreement that the intention of the parties was that the relation employer-employee would last the whole trial period, then any premature termination of the agreement may entitle the party wronged to damages. The same consequence would follow if the trial is put an end to by the employer with a view to causing prejudice to the employee ("*avec l'intention de nuire au salarié*") or without due reflection ("*avec une légèreté coupable*")-[Camerlynck, *Traité pratique de la rupture du contrat de travail*, pp. 71 et s.; Voulet, *la rupture du contrat du travail*, 4e edn. B1-B3].

Applying those principles to the case in hand we find, in the first place, that there was no expressed or implied condition in the agreement between the parties that their relations would extend throughout the whole of the trial period. There remains to be considered whether, as was submitted on behalf of the respondent, the appellants have been guilty of "*légèreté coupable*". We agree with the appellants' counsel on this issue that there was nothing to satisfy the learned Magistrate that such was the case. First, there is the respondent's own averment in his plaint, which constitutes by itself an admission and which he could not recant without amendment, that he had actually worked as bottling room supervisor during a whole month. Secondly, we do not think that the mere fact that the factory was not in operation prevented the appellants from assessing the respondent's suitability for the job. At any rate, there is no evidence on record from which the learned Magistrate could have found that fact established. After all, unless there is an evident intention on the part of an employer to do wrong, he must be left a wide margin of discretion in deciding whether the employee is possessed of the required qualifications or not [Voulet, *op. cit.*, B3].

We, accordingly, hold that the learned Magistrate has erred in forming the opinion that the respondent's termination of employment was wrongful.

Having reached this conclusion it is not necessary for us to enquire into the question of damages.

We allow this appeal, reverse the judgment of the lower court and in substitution therefor order that the respondent's action be dismissed with costs. The respondent shall pay the costs of this appeal.

Appellants	Attorney G A Robert R Montocchio, of Counsel
Respondent	Attorney S Lallah S Lallah, of Counsel

Record No. 2557.