

REDUNDANCY BOARD

RB/RN/40/2021

ORDER

Before:	Rashid Hossen	- President
	Suraj Ray	- Member
	Saveetah Deerpaul (Ms.)	- Member

Mr. Hip Kam Hip San Fah (Applicant)

and

Sumida Ltd

trading under the name Food Lover's Market (Respondent)

On 22nd of June 2021 Mr. Hip Kam Hip San Fah, the Applicant filed an application for severance allowance by virtue of section 72 of the Workers' Rights Act 2019, as amended.

Sumida Ltd trading under the name Food Lover's Market, the Respondent is resisting the application.

Mr. K. Bansoodeb, Counsel appeared for the Applicant and Mr. M. Ajodah, Counsel appeared for the Respondent.

The application is based on the following averments:

- *The Applicant was in continuous employment of the Respondent company since 7th of April 2017 as Head Cook.*
- *He was last remunerated with a basic salary of Rs 26, 075 + an overtime of Rs 947.20, for the month of May 2021.*
- *His terms and conditions of employment were governed by the Workers' Rights Act 2019. – Act No. 20 of 2019.*
- *He was working on a six (6) day week basis.*
- *On 11 June 2021, the Respondent Company terminated Applicant's employment with immediate effect on the ground of reduction of workforce by*

informing him of same verbally in the Human Resource office of Respondent at Bagatelle and without giving him any notice of termination.

- *However, the Applicant considers the termination of his employment to be unjustified for the following reasons: -*
 - *The Respondent Company, being an employer of 15 or more workers terminated Applicant's employment between 1st June 2020 and 30th June 2021, in breach of section 72 (1A) of the Workers' Rights Act coupled with the Workers' Rights (Prescribed Period) Regulations 2020, as amended by Government Notice No. 312 of 2020.*
 - *In so doing, the Respondent Company has furthermore committed a criminal offence actionable under section 123 (1) (f) (2) of the Workers' Rights Act 2019.*
- *In light of the above, the Board is humbly prayed: -*
 - *To find that the termination of Applicant's employment on the ground of reduction of workforce in the present circumstances was wholly unjustified; and*
 - *For an ORDER, directing the Respondent Company to pay Applicant severance allowance at the punitive rate (3 months per year of service) together with payment of remuneration from the date of the termination of his employment until the Board gives a ruling in this case.*

In reply, the Respondent averred amongst others: -

- *On the 7th June 2021, the CEO and the HR manager met all staff concerned with respect to the mutual agreement to be made, except the Applicant who was off on sick leave.*
- *On Thursday 10th June 2021, the HR manager met with the staff again, including the Applicant, about the compromise agreement to be made and informed them that the payroll will close on the 13th June 2021 and as such their agreement will be made with effect from 13th June 2021.*
- *The Applicant verbally agreed to that on the 10th June 2021.*
- *The employees were convened on the 21st June 2021 for communication of the proposed drafts of the compromise agreement and in fact the respective drafts were communicated to each of the employees.*

- *The HR manager explained the contents to the employees together, save that the respective figures were explained to each employee separately.*
- *The Applicant verbally agreed on the 21st June 2021.*
- *The employees were invited to get the compromise agreements vetted as per the Workers' Right Act and to come back when they are ready.*
- *The Applicant came back on the 25th June 2021, handed over a letter dated on the same date to the HR manager and immediately left.*
- *A letter dated 25th June 2021 was sent to the Applicant to request him to resume work.*
- *At no point in time was the employment of the Applicant terminated.*
- *The Applicant failed to resume work as requested.*
- *That in the above circumstances there was no termination of the employment of the Applicant,*
- *That no severance allowance or remuneration or any sum whatsoever is due by the Respondent to the Applicant and no order ought to be made by the Honourable Board.*

TESTIMONIES

The Applicant testified to the effect that he has been in the employment of the Respondent since 7th April 2017 as Head Cook with a basic salary of Rs 26, 075 plus an overtime of Rs 947.20. He has been paid up to the month of June 2021. He was working on a 6-day basis per week. On 11th June 2021, he was working at the SKC branch when the Human Resource Manager Mrs. Nadjma Rawat held a meeting with all the employees at three in the afternoon. They were informed that their employment contract was coming to an end on that day and all account would be closed on the next day. They were told not to come to work on the next day and that they would be placed on leave. Prior to that, on 7th June 2021, a meeting had been held at eleven in the morning. One Mrs. Sumantee Gunputh an employee was present, amongst others. They were told that their employment contract would come to an end. Applicant added that he received a Discharge Agreement. The employees were told to proceed to the Labour Office for verification before affixing their signature, should they agree to the document. On 25th June 2021, Applicant having been informed by the Labour Office that the document was not in order wrote a letter to the Human Resource Manager declining the offer. Applicant was eventually requested to resume work which he refused.

Mrs. Sumantee Gunpath stated that at the 1st meeting with the Human Resource Manager the employees were informed that the department would close down and their services would no longer be required. According to her, Applicant was present at those meetings. The witness clarified that during the 1st meeting the Human Resource Manager explained the financial difficulties the company was going through. It was also said to them that some proposals would eventually be made to them. It was at the following meeting that the Human Resource Manager informed the company's intention to terminate their contract. Upon receiving the Discharge Agreement she was told to seek advice from a lawyer or the Labour Office.

The Human Resource Manager at the Respondent, Mrs. Nadjma Rawat deponed to the effect that a first meeting with the staff took place on the 7th June 2021. The idea was to explain to the employees what the difficult situation the department was going through and the intention of the company to make a compensation to them. It was a proposed explanatory plan and at no time the employees were informed that their contract would come to an end on that day or on the 10th of June. During the latter meeting, they were asked not to attend the workplace as there were no work to attend to. They were put on leave. With regard to the Applicant, he received a Discharge Agreement document on the 23rd June 2021 and he was asked to have it vetted either by a legal advisor or by the Labour Office. Applicant replied in the negative on the 25th June 2021. The Human Resource Manager added that the reason Applicant was put on leave is to allow him time to think about the termination of his contract. He was afterwards requested to resume work which he failed to do.

BOARD'S CONSIDERATIONS

The Board views that this application cannot succeed:

Section 72 (8) of the Workers' Rights Act 2019 as amended reads:

(8) *Where the employment of a worker is terminated in breach of subsection (1), (1A), (5) or (6), the worker may apply to the Board for an order directing his employer –*

(a) *to reinstate him in his former employment with payment of remuneration from the date of the termination of his employment to the date of his reinstatement; or*

(b) *to pay him severance allowance at the rate specified in section 70 (1),*

and the Board may make such order as provided for in subsection (10) or (11).

The onus of establishing that there has been a termination of the contract is on the Applicant. While the latter affirmed that his contract of employment came to an end on 11th

June 2021, this version is far from being buttressed by the witness employee who was present at the meeting *in lite*. According to Mrs. Sumantee Gunpath, the Human Resource Manager informed them that there is no more place for them at the company.

Mr. K. Bansoodeb: *Zotte pou termine ou contrat, ça même ou ti dire talère là?
Ou pas rappelle?*

Mrs. S. Gunpath: *Termine mo contrat, non.*

Mr. K. Bansoodeb: *Qui ou ti dire?*

Mrs. S. Gunpath: *Pas ti dire nous termine contrat li.*

Mr. K. Bansoodeb: *Qui li ti dire?*

Mrs. S. Gunpath: *Li dire qui pena place li pas pou capave prend nous dans
travail.*

Indeed, the witness could not firmly affirm that they were told that their contract would end on the 11th June 2021. The Human Resource Manager in return maintained that she never ended the contract of employment on 11th June 2021 and was in continuous discussion with the employees. We consider that Mrs. N. Rawat putting the employees on leave following the meeting of 11th June 2021 on the ground that the employees needed to ponder over their eventual termination of contract may not be a good example of dealing with redundancies. However, the undisputed fact of being placed on leave supports the view that the contract could not have come to an end on the 11th June 2021. The Applicant himself affirmed under oath that the leave following the 11th June 2021 was to be deducted from his casual leave. We find therefore that the sequence of events is more in favour of the Respondent in that it did not actually terminate the contract but was in a negotiation with the employees. Furthermore, the Applicant confirmed that after the 11th of June 2021, he received a “Discharge Agreement” document and he was to consult a lawyer or the Labour Office before deciding on it. He turned down the offer in a letter addressed to the Respondent on 25th June 2021. We note that the Applicant was requested to resume work eventually but failed to do so.

...

*In the matter of S. Nayandoa v. J. Kalachand & Co. Ltd, 1996 SCJ 35,
the Supreme Court held: -*

*“An employee who severs the link with his employer while his
protest is under consideration is not entitled to severance
allowance. We find support from **Camerlynck Droit de
Travail 2ème Ed. Vol. 1 para. 387.** « La rupture par le salarié
en cours de pourparlers lui en laisse la responsabilité. »
(Emphasis is ours).*

...

For the reasons stated above, the application for severance allowance is set aside.

(SD)

.....

Rashid Hossen
(President)

(SD)

.....

Suraj Ray
(Member)

(SD)

.....

Ms. Saveetah Deerpaul
(Member)

Date : 14 September 2021