

REDUNDANCY BOARD

RB/RN/42/2021

ORDER

Before:	Rashid Hossen	- President
	Suraj Ray	- Member
	Christ Paddia	- Member
	Saveetah Deerpaul (Ms.)	- Member
	Yashwinee Chooraman (Ms.)	- Member
	Shirine Jeetoo (Mrs)	- Member

Mrs Sumantee Gunpath

and

Sumida Ltd

trading under the name Food Lover's Market

Mrs Sumantee Gunpath, hereinafter referred to as the Applicant is claiming severance allowance in breach of section 72 (1A) of the Workers' Rights Acts 2019 as amended, coupled with the Workers' Rights (Prescribed Period) Regulations 2020, as amended by Government Notice No.312 of 2020. The application is resisted by her employer Sumida Ltd trading under the name 'Food Lover's Market', hereinafter referred to as the Respondent.

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

In her Statement of Case, Applicant avers that she was in the continuous employment of Respondent since 18th of November 2014 as Kitchen Helper. She was last remunerated with a basic salary of Rs 10,552 plus an overtime of Rs 1,499. On 13th June 2021, Respondent verbally terminated her contract of employment on that day on the ground of reduction of workforce in the Human Resource Office at Bagatelle and without giving her any notice of termination. Applicant further avers that the Respondent being an employer of 15 or more workers terminated applicant's contract between 1st June 2020 and 30th June 2021 in breach of section

72 (1A) of the Workers' Rights Acts, coupled with the Workers' Rights (Prescribed Period) Regulations 2020, as amended by Government Notice No.312 of 2020.

The respondent filed a Statement of Case and the substantial averments of which are as follows:-

- While agreeing that Applicant has been in the employment of the Respondent, it denies that it terminated applicant's employment contract.
- A letter regarding mutual agreement dated 14.07.2021 was not a letter of termination; it was issued to her by mistake.
- On the 7th of June 2021, the CEO and the HR Manager met all staff concerned with respect to mutual agreement to be made.
- On Thursday 10th June 2021, the HR Manager met all staff again together with the Applicant regarding the compromise agreement to be made and informed them that the payroll would close on the 13th of June 2021 and as such their agreement would be made with effect from 13th June 2021.
- On the 10th of June 2021, the Applicant was granted enough time up to the 13th of June 2021 to decide thereupon and to inform the company of her decision as to whether she is agreeable to the proposal or otherwise.
- The Applicant, after having been granted enough time for a decision, did not resume duty on the 14th of June 2021 and remained unreachable.
- The Applicant came back on the 19th of July 2021 and informed the HR Manager that she is not agreeable to the proposal and left.
- A letter dated 19th July 2021 was sent to the Applicant requesting her to resume duty with continuity of service failing which it would be considered that she had abandoned her work.
- At no point in time was the employment of the Applicant terminated.
- The Applicant failed to resume work as requested.
- Given that in the above circumstance there was no termination of the employment of the Applicant, 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 Board.

The Applicant deposed briefly in chief. She was employed by Respondent as Helper since 18th November 2014 and she was called to the office to be informed that her contract would come to an end. She was eventually handed over an agreement document which was produced. It is entitled 'Discharge Agreement'. She understood it to be that her contract has come to an end. She was not agreeable to Respondent's proposal. She denied that she was offered to continue working at the company. On the 19th of July she informed the management of her disagreement regarding the proposal.

Applicant's colleague, Mr Alain Hip Kam testified to the effect that Respondent terminated their employment contract on the 11th June.

In her deposition, Respondent denied having terminated the employment contract of Applicant. She informed Applicant that the kitchen is being closed and if the latter is willing to continue working at the Respondent, there are other shops within the company where she could do so. On the 21st of June, she remitted a compromise agreement to Applicant who was allowed up to the end of the month to decide. In the meantime, she was also to seek advice at the labour office regarding that matter. Applicant disappeared for a while and Respondent tried to get hold of her. It was only on the 19th of July that Applicant turned up stating that she was advised by her son not to sign the agreement. Respondent by mistake forwarded a document of mutual termination of contract. The witness denied that the particular document was meant to mislead the Board.

The evidence purporting to establish a unilateral act of termination on the part of the employer is barely sufficient. Thus, the Board cannot safely conclude on a balance of probabilities that a termination of employment actually took place in accordance with the provision laid down in Section 72 Subsection 7(1A). We have reached that conclusion for the reasons that will follow:

- 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. (*Mr.Hip Kam Hip San Fah (Applicant) And Sumida Ltd trading under the name Food Lover's Market (Respondent)*[RB/RN/40/2021])

In a vague remembrance of her last days at her place of work, Applicant seems to have knowledge of only one thing: that she was sacked by her employer. We reproduce an extract of her testimony:

Mr Bansoodeb: Et ou pé dire ti mette ou dehors, comment ça ine passer, explique ene ti peu?

Mrs Gunpath: Ene jour li ti appelle moi.

Mr Bansoodeb: Qui jour ça? Ou capave dire qui jour?

Mrs Gunpath: Mo pas pou capave dire ou qui jour, qui date, seulement li ti appelle moi.

Mr Bansoodeb: Après?

Mrs Gunpath: Li ti dire qui li pé arrête moi pou travail, pena travail.

Mr Bansoodeb: Pena travail?

Mrs Gunpath: Oui.

Mr Bansoodeb: Li dire ou qui faire pena travail?

Mrs Gunpath: Li dire moi coumsa pena travail parce qui pas pou prend dimoune astere.

Mr Bansoodeb: Et lerla ti ena banne négociation avant qui dire ou ça?

Mrs Gunpath: Non.”

Indeed, as rightly pointed out by Mr. Ajodah, Counsel for the Respondent the evidence emanating from the Applicant herself shows that there was some kind of negotiation between Applicant and her employer. This is explained by the fact that the Applicant turned up at the Respondent on the 19th of July to inform the manager of her disagreement regarding proposal made to her. Clearly, this in itself shows that there has been some sort of negotiation between the parties. It is not denied by the Applicant that she was asked to contact the labour office before signing any ‘compromise agreement’.

- Applicant denied that Respondent ever requested her to resume work. Her statement under oath is in contradiction with the proceeding before the Board of 05th October 2021:

“President asks the parties if a settlement has been reached.

Mr. Bansoodeb states that no offer has yet been made.

Mr. Ajodah states that the company is willingly to maintain their request, that the employee resumes work, without losing her continuity of her contract of employment.

The applicant refused to resume work there. Mr. Ajodah further states that, if he is given some time, an offer might be considered.”

- Regardless of the fact that the unsigned Mutual Agreement termination (Document B) was sent presumably by mistake, it in no way suggests a unilateral termination by the employer. If any weight is to be attached to such document, it only supports the version of the Respondent who was seeking all along for a mutual agreement. We reproduce here the substantial part of that document: *‘This is to certify that **Mrs. GUNPUTH SUMANTEE** bearing ID number G1002620700612 has been terminated by mutual agreement effective as from 13th June 2021. Termination due to closure of kitchen /Garden Café / Bakery / Pastry.’* We believe that it was inappropriate of Counsel for the Applicant, Mr. K. Bansoodeb to cast aspersions on witness Mrs. Rawat during the course of her submission in insinuating that she made up such evidence with a view to mislead the Board. Counsel could not confirm that he had instructions to that effect.
- Witness Alain Hip Kam’s testimony cannot be said to support Applicant’s contention regarding the termination of Applicant’s contract. All he knew was that the Applicant was sacked on a Friday and no option was given to her.
- We note that the Applicant was requested to resume work eventually but failed to do so.

Indeed, the ongoing *pourparlers* between the Applicant and the Respondent regarding the termination of the employment contract does not and cannot constitute a unilateral termination by the Respondent. The argument of the Applicant that the Respondent terminated her contract seems to fly in the face of common sense. A negotiation between the parties is no doubt reflected in the overall evidence of the case.

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).

- The sequence of events is such that the version of the Respondent appears to be more plausible.
- For the reasons stated above, the application for severance allowance is set aside.

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Rashid Hossen
(*President*)

(SD)

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Suraj Ray
(*Member*)

(SD)

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Christ Paddia
(*Member*)

(SD)

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Ms. Saveetah Deerpaul
(*Member*)

(SD)

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Ms. Yashwinee Chooraman
(*Member*)

(SD)

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Mrs. Shirine Jeetoo
(*Member*)

Date :23 December 2021