

REDUNDANCY BOARD

RB/RN/56/2021

ORDER

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

Mr Jean Luc Didier Uppiah

and

Sea Lord Fishing Ltd

This is an application lodged by Mr Jean Luc Didier Uppiah, the Applicant, for an order directing Sea Lord Fishing Ltd, the Respondent to pay to Applicant severance allowance for having terminated his employment contract in breach of Section 72 of the Workers' Rights Act 2019, as amended.

The Applicant was assisted by Mr Reeaz Chutoo, a trade unionist. Mr Yash Bhadain, of Counsel appeared for the Respondent.

In the application, it is averred that: -

-Applicant worked at Sea Lord Fishing Ltd as welder since 21 June 2011.

-The Respondent has established its office address at Riverside Lane, Pailles. Respondent has more than 15 employees.

-Respondent terminated the employment of Applicant on 21 September 2021 on economic grounds, disregarding the amendments brought in the Workers' Rights Act 2019 due to Covid-19 pandemic which stipulated as follows:

“for the purpose of section 72(1A) of the Act, an employer shall, during the period starting on 1 June 2020 and ending on 31 December 2020, not reduce the number of workers in his employment neither temporarily or permanently or terminate the employment of any of his workers” which was subsequently extended until 31 December 2021.

-Applicant is praying the Redundancy Board for an order directing Respondent to pay to him severance allowance at the rate of 3 months per year of service.

In its statement of case, the Respondent averred the following: -

-Respondent was founded in 1995 and its main activity is bank fishing and it has a fleet of two deep sea fishing vessels.

-Applicant started employment at Respondent Company on June 2011 as welder until September 2021 when the Respondent was not in a position to continue to pay his wages of Rs25300 due to financial constraint.

-Respondent had been operating successfully until March 2020 when the country went through its first lockdown.

-As a direct consequence of the lockdown the amount of fishing trips organized by the Respondent had to be curtailed drastically, with the last fishing trip being held in January 2021.

-In the month of June 2021, the Mauritius Commercial Bank cut off its credit line and as a result there was no cash flow.

-So far only for year 2021 Respondent has amassed a debt of over Rs100m to the Mauritius Commercial Bank and around Rs50m to other creditors.

-It is only a question of days before Respondent is put under administration and the Mauritius Commercial Bank has already informed the directors of the company that it is in the process of appointing an administrative manager.

-Respondent and its directors are well aware of the contents of the Workers’ Rights Act 2019 and concedes that they have not followed the enactments of the law in relation to the termination of employment of the Applicant.

-On a separate note, a complaint by the Applicant has also been made to the labour office of Quatre-Bornes.

-Both the Respondent and the Applicant are in negotiations through the Labour Office to find an amicable solution in the present case and in the interest of all parties.

The Applicant deposed to the effect that he was working as welder at the Respondent and was fixing boats. He had been in Respondent’s employment for more than 10 years. The Respondent

terminated his employment contract on the ground that his services will no longer be required following the economic crisis. He was the only one being dismissed. He was not aware whether it is the lockdown that has affected the company. It is to his knowledge that the Respondent was importing fish.

Mr Kishore Lall Ghina, Director at the Respondent, stated that Sea Lord Fishing Ltd has been in existence since 1995 as a fishing vessel with a capacity of operating two vessels. Since March 2020, there has been no fishing expedition as a result of Covid-19. The company was operating with 80 men among whom 10 were on a full-time basis. The Applicant was a welder at the company. There has been a reduction of some 20 persons in the workforce as a result of bank account being frozen. The company is indebted in the region of 100M rupees to banks. The witness confirmed that there has been no issue with the Applicant regarding his work performance. He further confirmed that the company has been employing more than 15 persons. He admitted that the company has not respected the law in relation to the termination of the employment contract of the Applicant.

During the course of his submission, Counsel for the Respondent stated at the very outset that the law regarding the termination of employment in the present matter has not been abided to. He made reference to Applicant's statement of case.

The Law

The principle in relation to the notion of *aveu judiciaire* is contained in article 1356 of our Civil Code which reads as follows:

« L'aveu judiciaire est la déclaration que fait en justice la partie ou son fondé de pouvoir spécial.

Il fait pleine foi contre celui qui l'a fait.

Il ne peut être divisé contre lui.

Il ne peut être révoqué, à moins qu'on ne prouve qu'il a été la suite d'une erreur de fait. Il ne pourrait être révoqué sous prétexte d'une erreur de droit. »

According to Juris-Classeurs of 1990 on contract and obligation, "l'aveu est la déclaration par laquelle une personne reconnaît pour vrai, et comme devant être tenu pour averé à son égard, un fait de nature à produire contre elle des conséquences juridiques". Les principaux éléments constitutifs de l'aveu sont :

1. Une déclaration judiciaire ou extrajudiciaire ;
2. Une déclaration portant sur un fait ;
3. Une déclaration reconnaissant comme exact un fait de nature à produire des conséquences juridiques contre l'auteur de l'aveu."

In **BERESFORD TRUST & CORPORATE SERVICES LIMITED v/s GRAHAM DALTON, SCR No. 103542 (1/742/09)**, it was held that to constitute an « aveu » within the meaning and intendment of article 1356 of the Civil Code, the admission should not be one in a general sense, it should be an admission of fact averred by its opponent which the plaintiff would be conceding to or expressing agreement with.

In **MOUTOU A.A.L v MOONEERAM A.2017 SCJ 196:**

“L’aveu judiciaire fait pleine foi contre celui qui l’a fait et ne peut être divisé contre lui (Chambre sociale 22 mars 2011, pourvoi no.09-72323, BICC no746 du 15 juillet 2011 et Legifrance)”. Plaintiff had confirmed under oath in Court the correctness of her divorce petition and her Notice of objection in which she had unequivocally admitted that she was married to the defendant under the legal system of separation of goods.”

In **ASEDOR FINANCE LIMITED v WESTON INTERNATIONAL ASSET RECOVERY COMPANY LTD 2021 SCJ 339**, the following was cited: “In Charles Aubry et Charles Rau, Droit Civil Français, t.XII,6e éd: Librairies techniques, 1958, §75,p91,par P. Esmein “l’aveu” is defined as “la déclaration par laquelle une personne reconnaît pour avérer à son égard, un fait de nature à produire contre elle des conséquences juridiques”. The Cour de Cassation in Cass.2eciv.,4 dec 1953, no8.094: Bull.civ. II,no 338 held that –“...les juges du fond après avoir justement observé que l’aveu est une déclaration par laquelle une personne reconnaît pour vrai un fait de nature à produire ,à son détriment, des conséquences juridiques, à condition pour qu’elle puisse former aveu, que cette personne ait pu se rendre compte que cette déclaration était susceptible de former preuve contre elle...”

Section 72(1A) of the Workers’ Rights Act 2019 and the Workers’ Rights (Prescribed Period) Regulation 2020, Government Notice No 126 of 2021 dated 11 June 2021, which came into operation on same date provides: -

“for the purpose of Section 72(1A) of the Act, an employer shall, during the period starting on 1 June 2020 and ending on 31 December 2021, not reduce the number of workers in his employment either temporarily or permanently or terminate the employment of any of his workers.”

The *aveu judicare* of Respondent as averred in his Statement of Case and confirmed by him under oath and reiterated in Counsel submission lead us to the inevitable conclusion that the termination of Applicant’s employment was unjustified.

The Board orders the Respondent to pay to Applicant severance allowance at the rate specified in Section 70(1) of the Worker's Rights Act 2019, as amended.

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Mr Rashid Hossen
(President)

(SD)

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Mr Suraj Ray
(Member)

(SD)

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Mr Christ Paddia
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(Member)

Date: 22 February 2022