

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE
(CIVIL JURISDICTION)

BETWEEN:

SARAWATTIE BEPOT

Plaintiff

-and-

GUYANA SUGAR CORPORATION

Defendant

The Honourable Justice Navindra A. Singh, Puisne Judge

Messrs. Arudranauth Goosai and Murseline Bacchus for the Plaintiff

Ms. Deena Panday for the Defendant

Delivered November 1st 2017

DECISION

The Plaintiff was employed by the Defendant on April 1st 2007 to work at the Blairmont sugar estate as a Staff Nurse.

The Plaintiff's employment was summarily terminated by the Defendant by letter dated June 13th 2014 for the following stated reasons; "1) *Abusive Behaviour*, 2) *Insubordination*, 3) *Making untrue statement against fellow employee* and 4) *Commission of an act striking at the foundation of employment contract*". The termination letter was tendered as an exhibit in this trial as **Exhibit "H"**.

The Plaintiff claims that the termination of her employment was unlawful.

The Defendant contends that the Plaintiff was dismissed for "*serious misconduct inconsistent with her terms of employment and her contractual obligations to the Defendant necessitating summary dismissal*" occurring between January 13th 2014 and April 24th 2014 and pleaded the particulars of such serious misconduct at paragraph 7 of its Statement of Defence, such particulars being;

1. *On various occasions during the period stated that the Plaintiff was abusive and insubordinate towards her supervisor, the Medex, in the presence of members of the public*".

2. *The Plaintiff changed the working hours of staff members without authority and without the prior approval and/ or permission of her supervisor, the Medex.*

3. *The Plaintiff failed to carry out the duties she is required to undertake in the absence of the Medex, namely, providing medical care, refusing assistance in the case of medical emergencies and preparing charts for the Doctor, within the scope of her contractual obligations to patients attending the clinic.*

4. *The Plaintiff unlawfully destroyed the personal property of another member of the Defendant's staff.*

5. *The Plaintiff published and posted written defamatory messages and statements on the walls of the Defendant's premises and libelled other employees of the Defendant to members of the public.*

The law governing the issues in this case is The Termination of Employment and Severance Pay Act, CAP 96:01 of the Laws of Guyana.

Section 10 of CAP 96:01 provides;

- (1) an employer is entitled to dismiss summarily without notice or payment of any severance or redundancy allowance or terminal benefit any employee who is guilty of serious misconduct.
- (2) the serious misconduct referred to in subsection (1) is restricted to that conduct which is directly related to the employment relationship and has a detrimental effect on the employer's business.

The main issue that had to be determined in this trial was whether the Plaintiff was guilty of serious misconduct as an employee of the Defendant.

The Defendant's Human Resources Manager, Lalta Persaud, testified that he was the Defendant's HR Manager at the Blairmont sugar estate for the entire duration of the Plaintiff's employment with the Defendant.

He testified that Medex Corine Watts took up duties at the Blairmont sugar estate on January 13th 2014 and he started receiving complaints from Medex Watts regarding the Plaintiff from January 15th 2014.

He testified that prior to Medex Watts coming to Blairmont the Plaintiff was “*a good employee with no problems*”.

With respect to the Defendant’s contention that the Plaintiff was justifiably dismissed summarily because of her serious misconduct, Mr. Persaud testified that the first complaint from Medex Watts was settled in his office and that complaint concerned Medex Watts wanting to change the working hours of the Plaintiff and the Nurse Aides.

Mr. Persaud did not testify as to any other “complaints” albeit he settled the “first” complaint.

He testified that Medex Watts wrote to Defendant’s Chief Medical Officer complaining of several issues sometime in March 2014 and he was instructed to investigate those complaints, which he did.

He did not see it necessary to testify and relate his findings from the investigation he conducted. Nevertheless, apparently based on the investigation he was instructed to issue the Plaintiff with a “*show cause notice*”, which he did and which is tendered into the evidence as **Exhibit “F”**.

The notice is incredibly vague; the notice states that an investigation was conducted concerning several incidents, it does not in any way serve to let the Plaintiff know the nature of the “*several incidents*”, but nevertheless goes on to state that “*the investigation revealed that you have allegedly committed the following breaches: 1) Abusive Behaviour, 2) Insubordination, 3) Making untrue statement against fellow employee and 4) Commission of an act striking at the foundation of employment contract*”.

No particulars of the breaches were provided to the Plaintiff. The Plaintiff was given just 7 days to respond in writing, failing which disciplinary action would be taken against her.

The Plaintiff responded in writing to the notice stating simply that she was unaware of the alleged breaches.

Rather than inform the Plaintiff at this stage of the particulars of the allegations thereby providing the Plaintiff with an actual opportunity to respond to any allegations that were in fact made against her, the Plaintiff was instead served with a letter to attend a disciplinary hearing.

Interestingly, the letter requiring the Plaintiff to attend a disciplinary hearing states “*Your response to the alleged breaches, as stated in my letter, does not satisfy the Corporation to exonerate you from disciplinary action ...*” which still does not provide any particulars of the “alleged breaches” but nonetheless invites her to produce evidence in her defence, stating, “*... feel free to call into evidence any person or document that could **extricate** you from these charges.*”

It is bewildering how the Plaintiff would have been able to produce evidence to “extricate” herself from “charges” of which she had just the day before stated she had no knowledge of and for which no particulars had been provided.

This was the extent of Mr. Persaud’s testimony.

Suffice it is to say that Mr. Persaud did not in any way assist the Court with respect to the *serious misconduct that the Plaintiff engaged in between January 13th 2014 and April 24th 2014 that was inconsistent with her terms of employment and her contractual obligations to the Defendant necessitating summary dismissal* nor did his testimony substantiate the particulars of such misconduct pleaded at paragraph 7 of the Defendant's Statement of Defence.

The Medex that Mr. Persaud referred to, Corine Watts, also testified on behalf of the Defendant.

She testified that she took up her position as Medex at the Blairmont sugar estate on January 13th 2014 and on that day had a meeting with the Plaintiff and the Nurse Aides and at that meeting she was informed by the Plaintiff that there was no 8:00 - 5:00 shift at that estate’s dispensary.

She enquired about this from the HR Manager, Mr. Lalta Prsaud, and he told her he would deal with that. She made it very clear that she did not make a complaint to the HR Manager she simply enquired from him what was the practice.

It is recalled that Mr. Persaud testified that **the Medex** wanted to change the working hours of the Plaintiff and the Nurse Aides as opposed to what is pleaded in the statement of defence, to wit, *“The Plaintiff changed the working hours of staff members without authority and without the prior approval and/ or permission of her supervisor, the Medex.”*

Medex Watts then testified to several instances which purportedly evidenced the Plaintiff's serious misconduct.

Medex Watts testified that in February 2014 she asked the Plaintiff to do vitals on a patient and she refused. She subsequently testified that she did not ask the Plaintiff why she did not take the vitals.

It is not clear to the Court what occurred. Is it that the Plaintiff refused or did she fail to take the vitals and further, what were the prevailing circumstances at the time. It is noted that the Plaintiff was not cross examined on this issue at all.

Medex Watts testified that once when she was not there she asked the Plaintiff to assist in administering medication. She testified that the Plaintiff did administer the tablets but didn't put it on the scroll sheet.

She testified that the Plaintiff told her that was not her job, that is to record it on the scroll sheet. Medex Watts did accept that she, the Medex, has to keep an account of drugs.

It is noted that based on her testimony she only requested the Plaintiff to administer medication.

Medex Watts testified that on another occasion a senior staff had an accident and his bruises were getting worse and she and the Plaintiff had an argument in front of

the patient. It is unclear if this was misconduct, and if it was, whose conduct was improper.

Medex Watts testified that a worker came from the back dam and she asked the Plaintiff to do **something** and she refused. Once again there were no further details regarding the alleged incident or what it was that she asked the Plaintiff to do to assist the Court as to the alleged serious misconduct that was engaged in by the Plaintiff. Without further the Court cannot determine if the Plaintiff's refusal was justifiable or not.

Medex Watts testified that a patient came from the back dam and the Plaintiff examined him and told her that his blood pressure was high. As a result the patient was taken to a doctor who treated him. The next day the patient returned and his blood pressure was low.

It is Medex Watts contention that the Plaintiff must have tested the blood pressure incorrectly and therefore misdiagnosed that he had high blood pressure resulting in the doctor giving him improper treatment, notwithstanding the fact that the patient was sent to a doctor who **treated** him.

Medex Watts testified that she was offended that the Plaintiff would tap on her door to indicate when she came to work and when she was leaving rather than say "good morning".

Medex Watts testified that the Plaintiff hid supplies. She testified that she was talking about a bottle of methylated spirits. She further testified that she had locked the bottle in her office and the Plaintiff had taken it and put it in a cupboard from where Nurse Zalima retrieved it when she, Medex Watts, asked for it, the Plaintiff not being at work that day. It would certainly appear as though the Plaintiff is the one who ensured that the methylated spirits was available for use by the staff at the dispensary.

Medex Watts testified that she wrote a letter to the Defendant's Chief Medical Officer complaining of the Plaintiff's "misconduct". That letter was tendered as an exhibit in the trial as **Exhibit "K"**.

It is noted that numerous allegations levelled against the Plaintiff in Exhibit “K” were not testified to by Medex Watts in this trial.

Medex Watts evidence did not in any way substantiate the particulars of serious misconduct pleaded at paragraph 7 of the Defendant's Statement of Defence.

There was a complete lack of details and failure to highlight a single definite act of misconduct by the Plaintiff.

Medex Watts testified that she made several complaints to the HR Manager which is inconsistent with Mr. Persaud’s testimony. This coupled with the fact that Medex Watts testimony with respect to the purported incidents of misconduct was vague led the Court to the conclusion that these incidents either did not take place or did not happen the way Medex Watts attempted to portray.

The common thread that runs through the actions of the Defendant leading up to the summary dismissal of the Plaintiff on June 13th 2014 is that of unfairness.

The Plaintiff was suspended on April 25th 2014 without being provided a reason for her suspension, having not been previously warned of any incident of misconduct or told of any allegation of misconduct.

This was followed by a vague “show cause notice” containing broad, non-specific allegations of misconduct allegedly having occurred over a 100 day period that was 19 days prior to the said notice.

There is no evidence that any specific allegation of misconduct was ever put to the Plaintiff for her to answer to.

The Court finds that the Defendant has not produced any evidence of serious misconduct on the part of the Plaintiff in accordance with Section 10 of CAP 96:01 or any misconduct at all.

In fact, though it does not arise for consideration, the Court finds that the Defendant’s evidence demonstrates that the Defendant would not even have been able to dismiss the Plaintiff under Section 7 (c) (i) of CAP 96:01.

In the circumstances the Court finds that the Plaintiff was unlawfully and unfairly dismissed by the Defendant on June 13th 2014.

In accordance with Section 20 of CAP 96:01 the Court makes the following award to the Plaintiff against the Defendant for unlawfully dismissing the Plaintiff.

According to the paragraph 6 of the Statement of Claim the Plaintiff's salary at the date of dismissal was \$88,396.00 and the Plaintiff testified that her salary was \$88,000.00 per month plus allowances before tax.

The Defendant in its Statement of Defence stated paragraph 6 of the Statement of Claim was not admitted.

It cannot be that the Defendant can plead a non-admission to something that is clearly within its knowledge, after all, it is the Defendant that paid the Plaintiff her salary.

It is a ridiculous waste of precious judicial time to require the Plaintiff to have to lead evidence to establish a fact that is within the Defendant's knowledge.

In these circumstances the Court deems paragraph 6 to have been admitted by the Defendant.

The basic award to the Plaintiff is her salary from the date of dismissal to the date of judgment, which is \$3,580,038.00 (calculated as 88,396.00 X 40.5). This figure does not include a figure for allowances so as to compensate for taxation.

The Court further awards to the Plaintiff a compensatory award as she remains unemployed and the Defendant has not shown that the Plaintiff has or should have obtained alternative employment.

This award is calculated as the Plaintiff's salary for four years, again without an inclusion of a figure for allowances so as to compensate for taxation and reduced by 5% to take into account the fact that the Plaintiff will be receiving a lump sum payment. This award is \$4,030,858.00 (calculated as 5% of 88,396.00 X 48).

The total award under these heads being \$7,610,896.00

The Court further orders that all contributions made by the Plaintiff under the Defendant's **Contributory Pension Scheme** and the Defendant's **Contributory Medical Insurance Scheme** be returned/ repaid to her forthwith.

All of the above awards and repayments are to be paid together with interest at the rate of 6% per annum from June 13th 2014 to November 1st 2017 and 4% per annum thereafter until fully paid.

Costs to the Plaintiff in the sum of \$150,000.00

Justice N. A. Singh