

IN THE FULL COURT OF THE SUPREME COURT OF JUDICA-
TURE OF GUYANA
APPELLATE JURISDICTION

2019-HC-DEM-CIV-FCA-110

BETWEEN:

GUYANA SUGAR CORPORATION INC
Appellant

-and-

VICTOR SEEOBIN
Respondent

The Honourable Justices Navindra A. Singh and Gino Persaud, Puisne Judges

Mr. Kamal Ramkarran for the Appellant

Ms. Mandisa Breedy-Joseph for the Respondent

Delivered December 8th 2020 via electronic mail.

DECISION

The Appellant is a company duly incorporated under the **Companies Act; CAP 89:01** of the laws of Guyana and the Respondent was employed by the Appellant from July 1976 to December 2012.

By letter dated November 5th 2012 the Appellant informed the Respondent of charges of serious misconduct, to wit, that he falsified and manipulated work records.

By letter dated November 17th 2012 the Appellant informed the Respondent of a disciplinary hearing scheduled for November 20th 2012, however, the Appellant did not attend.

By letter dated November 21st 2012 the Appellant informed the Respondent of a rescheduled disciplinary hearing scheduled for November 23rd 2012.

The Respondent sought to attend that meeting with his Union Representative, however, the Appellant refused entry to the Union Representative since that was not allowed under the Appellant's procedure for disciplinary hearings applicable to the Respondent.

The Respondent was subsequently summarily dismissed on December 21st 2012, as a result of which the Respondent instituted High Court Action 2013-HC-DEM-CIV-W-157 against the Appellant claiming damages for wrongful dismissal.

The trial of the High Court Action commenced before Justice Brassington Reynolds on August 26th 2019 and during cross examination of the Respondent, he was asked about alleged incidents that resulted in his dismissal to which his Counsel objected on the ground that the Respondent's claim that he was wrongfully dismissed was based on the contention that the procedure employed by the Appellant in the conduct of the disciplinary hearing was in breach of the Respondent's contract of employment and the rules of natural justice and not on whether he was guilty of the charges of serious misconduct levelled against him by the Appellant that resulted in his dismissal.

The trial Judge upheld the objection and his ruling is recorded as follows;

'Court makes oral ruling upholding objection by Ms. Breedy to question which sought to determine the basis/ grounds for Plaintiff's dismissal on ground that the central issue by the Court was the propriety of the procedure adopted by the tribunal rather than the reason for the dismissal. The question would fail for relevance.'

It is from this ruling that this appeal lies.

It is clearly necessary to briefly explain the law of wrongful dismissal.

An employee can only claim for wrongful dismissal if the employer breached the contract of employment in terminating his/ her employment.

There is no breach of contract by the employer if the employer terminated the contract in the face of a fundamental breach of contract by the employee.

As was stated by Sachs LJ in Sinclair v Neighbour [1967] 2 QB 279;

‘It is well established law that a servant can be instantly dismissed when his conduct is such that it not only amounts to a wrongful act inconsistent with his duty towards his master but is also inconsistent with the continuance of confidence between them.’

Summary dismissal is dismissal without notice or with inadequate notice and if it is not justified by an adequate reason it will constitute wrongful dismissal.

Therefore, the principal issue for determination by the Court in an action for wrongful dismissal where the employee was summarily dismissed is whether the employer had adequate grounds or reasons for effecting such a dismissal.

In this regard whether a particular procedure, [whether agreed upon or not], was utilised in the investigation of the alleged actions of a dismissed employee, may or may not assist the trial Court in determining whether the employer is able to establish that it had adequate grounds for dismissal, but certainly the fundamental question that the Court must be focused on is whether adequate grounds or reasons exist for effecting the dismissal.

It is perplexing that the trial Judge would disallow questions posed to the dismissed employee *‘which sought to determine the basis/ grounds for Plaintiff’s dismissal’* when the sole issue to be determined by the Court in a wrongful dismissal suit is whether the employer had **grounds for dismissing the Plaintiff**.

Suffice it is to say that it is impossible for such questions to *‘fail for relevance’* in this type of law suit.

I have had the opportunity to read the decision of my colleague, Justice Gino Persaud, and I cannot agree with his view that *‘the Full Court should not interfere with, restrict or compel a trial judge to exercise his discretion in a particular manner on an evidential point whilst the civil trial is ongoing’*.

Appellate intervention is permitted and warranted in limited circumstances, where, in my humble opinion, the trial Court has made a conspicuous error as would be the case where the trial Court misdirected itself as to the legal principle to be applied or as to the law which is relevant to the exercise of its discretion.

If the trial Court has properly exercised its discretion, certainly the appellate Court will not intervene solely because it may have exercised the discretion differently.

It is the duty of every Court to ensure the determination on the merits of the real question in controversy between the parties.

As previously stated the sole issue to be determined by the Court in a wrongful dismissal suit is whether the employer had **grounds for dismissing the Plaintiff**, therefore the questions/ evidence that the ruling of the trial Court will exclude is obviously central to the real question in controversy between the parties.

In my opinion this demonstrates that the trial Court misdirected itself as to the law which is relevant to the exercise of its discretion and a refusal by the Full Court to entertain the appeal would be to allow the trial to continue with a conspicuous error.

It is my view that the Appeal should be allowed and the Appellant be at liberty to cross examine the Respondent on the circumstances leading to his dismissal by the Appellant and on such other facts that are in issue.

Justice N. A. Singh