

2013

No. 446 - W

DEMERARA

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

BETWEEN:

JADUBANCE MOHABIR

Plaintiff

-and-

GUYANA SUGAR CORPORATION (a  
company duly incorporated under the Laws  
of Guyana with registered office at Ogle  
Estate, East Coast Demerara)

Defendant

The Honourable Justice Navindra A. Singh, Puisne Judge

Ms. Shaunella Glen representing the Plaintiff

Mr. Rafiq Khan S.C. and Ms. Rebecca Khan representing the Defendant

**Delivered January 13<sup>th</sup> 2020**

RULING

BACKGROUND

The Plaintiff was employed by the Defendant on August 29<sup>th</sup> 1995 to work as a Cane Harvester then subsequently as a Bagasse Feeder/ Boiler Chute Attendant.

The Plaintiff's employment was summarily terminated by the Defendant by letter dated March 28<sup>th</sup> 2012 for "*removing the Corporation's property without its permission*". The termination letter was tendered as an exhibit in this trial as

**Exhibit "E"**.

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

The Defendant contends that the Plaintiff was dismissed for *serious misconduct*, to wit, unlawfully and illegally loaded with the assistance of others property of the Defendant on to a tractor/ trailer with the sole intention of stealing the items.

The Plaintiff claims that he acted on the instructions of his superior, as he is required to do in accordance with his terms of employment, in loading items on to the trailer and therefore could not have intended to steal any items loaded.

### **ISSUE**

Was the Defendant justified in dismissing the Claimant?

### **LAW**

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.

The relevant sections are as follows.

Section 7 (c) of CAP 96:01 provides;

A contract of employment for an unspecified period of time may at any time be terminated -

(c) by either party -

(i) for good or sufficient cause.

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.

Counsel for the Defendant conceded that the requirements for summary dismissal under section 10 could not be met and therefore the main issue that had to be determined in this trial was whether the Defendant had good and sufficient cause to dismiss the Plaintiff.

### **FACTS**

The Plaintiff testified that he did as he placed a number of items on the tractor/trailer as he was ordered by the Chargehand.

Dexter William, the Defendant's East Demerara Estates Human Resources Manager in March 2012 testified that he attended a Disciplinary Hearing held at the Enmore Estate on March 21<sup>st</sup> 2012 where the Plaintiff along with other workers implicated in the allegations of attempted theft and several management personnel of the Defendant were present.

He testified that he took contemporaneous notes of the proceedings.

He further testified that on the said March 21<sup>st</sup> 2012 he recorded a summary of what each witness said, which was then typewritten. This summary was tendered into the evidence by consent of both Counsel and marked Exhibit "L1 - L5".

A synopsis of the hearing prepared by Dexter Williams was also tendered into the evidence by consent of both Counsel and marked Exhibit "L6 - L11".

### **ANALYSIS**

The statement/s made by Bisnauth Chan at the Disciplinary Hearing are crucial in determining whether the decision to summarily dismiss the Plaintiff is justified since he was the Chargehand present at the LBI factory compound when the items were loaded into the trailer and the person who would have been the Plaintiff's functional superior.

There is a clear difference in terms of details in the summary of Bisnauth Chan's statement [Exhibit "L2"] and the synopsis of what Bisnauth Chan said at the hearing [Exhibit "L8"] and further both lack detail of the instructions he would have given to the workers under his command.

This, coupled with the fact that the contemporaneous notes of the proceedings are not part of the evidence before this Court, leaves the Court to speculate what was the full instruction given by the Chargehand to the Plaintiff.

Further, according to the synopsis, the Chairman of the Disciplinary Hearing found that it was possible that the Plaintiff and other workers "*probably acted out of instruction from either Singh or Chan but afraid to say so **which make them culpable***".

The Chairman, in effect, was unable to positively find that the Plaintiff was guilty of the offence charged but nevertheless found him culpable solely because he may have been afraid to say what happened, notwithstanding that he did not find that the Plaintiff necessarily knew anything more than what he said at the Disciplinary Hearing.

The reliability of the summary and synopsis is further reduced by the fact that though the synopsis refers to what Mr. Vijay Sukhdeo states his instructions to the Chargehand were, there is no record in the summary that Mr. Sukhdeo made a statement.

While this is not of great importance to the Plaintiff's case, it does further bring into question to what extent this Court can rely on these records in determining whether the Defendant had good and sufficient cause to dismiss the Plaintiff.

### CONCLUSION

The Court finds that the Defendant did not carry out as much investigation into the matter as was reasonable.

Based on the evidence before this Court the Court finds that the Defendant could not have entertained a **reasonable belief** and in fact did not entertain a reasonable belief that the Defendant was guilty of the misconduct/ offence alleged at the time of the dismissal.

In these circumstances the Court finds that the Defendant did not have good or sufficient cause to dismiss the Plaintiff.

The Court accepts the Plaintiff's pleadings that he was earning \$10,000.00 per week at the date of dismissal. The Court does not accept the Defendant's contention that he earned \$8,419.00 per **month**.

Based on this the Court awards the Plaintiff the sum of \$1,000,000.00 as damages for unlawful dismissal. This figure takes into account taxation.

The above award is to be paid together with interest at the rate of 6% per annum from March 28<sup>th</sup> 2012 to January 13<sup>th</sup> 2020 and 4% per annum thereafter until fully paid.

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

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Justice N. A. Singh