

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. P201 OF 1990

BETWEEN

EUNICE POWELL

PLAINTIFF

A N D

CARIBBEAN PRODUCTS
COMPANY LIMITED

DEFENDANT

Norman Samuels for Plaintiff.

Miss Ingrid Mangatal instructed by Dunn, Cox, Orrett and
Ashenheim for Defendant.

Heard: February 8th, 9th, 10th, 13th, 14th and March 10, 1995.

LANGRIN J.

This is an action in which the plaintiff claims damages for wrongful dismissal from her employment with the defendant.

The plaintiff, a fifty-three (53) year old woman in 1965 entered into a contract of employment with the defendant as a Presser. She was later transferred to the job of a Machine Operator and reached the level of Grade II. She was a shift worker and a contributor to the Staff Pension Scheme.

Plaintiff's Case

In April, 1989 while the plaintiff was working in the Plant she left to the lady's room where there was an incident between herself and a co-worker, Ann-Marie Powell. Powell threw some chemical substance in her face. She reported the matter to Mr. Thyne, Personnel Officer who never dealt with the matter. She went to the Doctor and the following day Mr. Thyne called her to the office and suspended her.

In June 1989, she received a letter from Mr. Lewis, Plant Manager. She attended the office where she saw Messers. Lewis and Thyne. She related to them what had happened between herself and Ann-Marie Powell. They told her to go home but she complained to the Union Delegate who attended and spoke to Mr. Thyne. Not being satisfied she left and consulted a lawyer and sometime in October 1989 she received a letter of dismissal.

Ann-Marie Powell was not dismissed. She had no problem with her, and did not threaten to do her any harm with a cutlass.

She was given the Company's Manual. She was never suspended in her twenty-five (25) years of service.

Messers. Lewis and Thyne prevented her from seeing the Managing Director of the Company.

Dr. Maurice McFarlane testified that he saw the plaintiff on June 13, 1989 and again on June 18, 1989. There was mild encrustation which could have been six (6) to eight (8) weeks old. In the absence of the history he received from the plaintiff he couldn't say it was not hot water or any other caustic material which caused the injury he saw.

Defendant's Case

Maurice Thyne, the principal witness for the defence testified that in 1989 he was Personnel Manager at Caribbean Products Limited. He keeps records of staff concerning all relevant information of employees including discipline and termination of employment.

Eunice Powell was employed on May 6, 1966 and worked until June 1989. She was employed in the Margarine Department. Eunice Powell was an employee who had a bad temper and he had counselled her previously about her temper which was violent and uncontrollable at times. She was disciplined on those previous occasions for breaches of Company policy.

In March 1984 she was suspended for eight (8) hours for using indecent and abusive language to her Charge-Hand.

In November 1985 she was suspended for three (3) days and four (4) hours for the following offences:

- (a) use of indecent language.
- (b) use of abusive language to Foreman.

In November, 1986 she was suspended for four (4) weeks for using abusive language and threatening her supervisor with intent to assault and for failing to carry out instructions given to her.

On June 20, 1989 she was suspended pending investigations into incident on Friday, June 16, 1989 when she brandished a machete at her co-worker. She was subsequently dismissed.

The Personnel Request form came to him on September 1, 1989 when it was decided to dismiss her. The dismissal was approved by Ray Barrett on September 11, 1989 and a dismissal letter dated September 18, 1989 was forwarded to the plaintiff.

On Friday, June 16, 1989 Eunice Powell came to his office and related an incident which had taken place in the Change Room between herself and another co-worker, Ann-Marie Powell. Eunice Powell said Ann-Marie Powell splashed her with 'dirty water' from a cleaning rag. An argument developed between them and Eunice Powell went outside to her friend's car where she removed a machete from under the drivers' seat. She said she was going to use it on Ann-Marie Powell who got away because she was warned by other workers that she Powell was coming at her.

Eunice Powell was quite angry and serious about what she wanted to do. He was astonished about her behaviour since he was a Manager and discipline was a part of his responsibility. He spoke to her but never saw any implement in her hands. There was no sign of any injury to her person, neither did she complain of pain or say she needed any medical assistance. There was a Health Centre on the Compound for the treatment of employees and one would have expected her to consult that Centre.

Ann-Marie Powell came to him shortly after Eunice Powell left.

This matter was reported to the Plant Manager and Eunice Powell was suspended on June 20, 1989. An investigation was carried out in the presence of both parties, witnesses and Union Representatives. It was the policy of the Company that any violence would result in instant dismissal. Previous conduct of employees would be taken in consideration when a decision is being made to dismiss an employee.

Whenever the Plant Manager completes his investigation he makes a report of his findings, on a document referred to as Personnel Request. His recommendation would be communicated to the employee and then the file would be sent to the supervisor.

The employee has a right of appeal to the Operations' Manager. If the decision remains unchanged at this stage it would go to the Managing Director for the approval of the dismissal. The relevant persons would sign the Personnel Request. He signed the document. It was his view that the offence committed on June 16, 1987 was serious.

Milton Brown, General Manager of Caribbean Products, testified that in 1989 he was the Maintenance Manager of Caribbean Products. In June 1989, there was an incident in which Eunice Powell was involved.

On Friday June 16, on his way to the canteen he had to pass the male and female change room. He saw Eunice Powell, proceeding towards the female change room. She had a cutlass in her hand and there was general excitement among the workers. She banged the cutlass against a metal post saying she was prepared to lose her job and she was going to chop up someone. He went to the change room where workers were trying to take the cutlass from her. He left only when he was satisfied that she was disarmed. He didn't notice anything unusual about her except that she had the machete.

The following questions arise for consideration:-

1. Did the Company's Manual form part of the contract of employment?
2. Was there just cause for dismissal?
3. Did the Managing Director approve the Plaintiff's dismissal?

I will now deal with these questions.

1. Did the Company's Manual form part of the contract of employment?

The contract of employment was concluded when the defendant company indicated to the plaintiff that she was selected for employment as a Presser.

Both Mr. Samuels and Miss Mangatal submitted that the Company's Manual guided the actions of both employee and employer.

It is common ground between the parties that there was incorporated in the contract a 'Company Policy Manual' which prescribed policies and procedures to be followed in relation, inter alia to the suspension and dismissal of employees for breaches of discipline.

There is a schedule of disciplinary measures applicable to employees which include sanctions for fighting, intimidation or threats as well as unauthorised possession of dangerous weapons.

Paragraph 16 of the Manual under the heading fighting states as follows:-

"Fighting on the Company's premises is forbidden.
Employees who become involved in fights except in self-defence or in the taking of action intended to maintain order or discipline, are liable to dismissal."

The answer to the question is therefore, Yes

II. Was there just cause for dismissal?

Miss Mangatal submitted with force that Natural Justice does not apply to contracts of employment but nevertheless the plaintiff was treated fairly.

It would be improper to imply ideas of natural justice into contracts of employment. Generally, certainly into ordinary employment. See Ridge v Baldwin (1963) 2 AER 66 and Malloch v Aberdeen Corp. (1971) 2 AER 1278.

However, the employer should only exercise its right to suspend or dismiss on reasonable grounds. (Emphasis added)

The plaintiff's evidence including her demeanour relating to the events surrounding her dismissal was evasive and lacked the credibility necessary to satisfy the burden of proof. The medical evidence which was adduced to support her case was more inkeeping with the defendant's case as to when and what happened. I reject the evidence that she sustained chemical burns.

I accept the evidence of the defendant's witnesses and make the following findings of fact:-

- (1) The incident occurred on June 13, 1989.
- (2) The plaintiff was seen with a machete in a threatening manner on the defendant's premises.
- (3) There was an investigation by the Company in which the plaintiff was present and had an opportunity to explain her side. Union delegates were present.

My conclusion on the evidence is that there is a preponderance of evidence which the Court accepts that the exercise of the power of suspension and dismissal had been reasonable and it was for just cause.

In my judgment plaintiff had a reasonable opportunity of presenting her case and there was just cause for her dismissal.

III. Did the Managing Director approve the Plaintiff's dismissal?

Clause 13 of the Company Policy Manual states as follows:-

"13: Disciplinary Action

It is the policy of the Company to advise the Union when any disciplinary action is taken against an employee who is a member of the Union.

When an employee who has more than five (5) years service to his or her credit is to be discharged, the approval of the Managing Director must be obtained." (Emphasis added)

The approval of Ray Barrett, the defacto Managing Director was obtained before the dismissal letter was sent to the plaintiff. The letter dated September 18, 1989 reads as follows:-

"The following report has been received from your Supervisor and is being recorded on your file.

June 20, 1989

You have been dismissed for brandishing a machete in a threatening manner towards a co-worker on the Company's premises.

Sgd. Maurice Lewis
Plant Manager
Caribbean Products Company Limited."

Mr. Samuels, Counsel for the plaintiff submitted that upon the ordinary construction of the letter of dismissal dated September 18, 1989 the plaintiff was dismissed by her supervisor. The fact that the plaintiff was informed of her dismissal on September 1, 1989 and the dismissal was only approved by Mr. Barrett on September 11, 1989 the purported dismissal was invalid, no ratification by the Company having been made. He cited as authority Palmer's Company Law Vol. 1 page 246 paragraph 21-08 also page 140 paragraphs 9-30.

This argument cannot withstand any reasonable objective analysis. The evidence indicated clearly that the dismissal was made on the 1st September 1989 after the procedure relating to an investigation was carried out. The approval of the dismissal was given by Mr. Ray Barrett, Acting Managing Director on August 11, 1989 when he signed the Personnel Request. Following this a letter dated September 18, 1989 was forwarded to the plaintiff informing her of the dismissal. The fact that she might have been informed orally of the dismissal on the 1st September 1989 before the date of approval cannot be regarded as invalidating the dismissal. There is no necessity for ratification by the Company as contended for by Mr. Samuels.

According to the Company's Policy Manual the approval of the Managing Director is required to dismiss a worker with a minimum of five (5) years service. This was done in respect of the plaintiff on the 11th September 1989 when Mr. Barrett signed the Personnel Request form. On the 1st September 1989, ten (10) days prior to date of approval, Mr. Lewis the Plant Manager, had dismissed the plaintiff. There is therefore no merit in the submission.

In my judgment, the dismissal of the plaintiff was carried out in accordance with the Company's Policy Manual and in keeping with fair procedures.

Measure of Damages

Miss Mangatal submitted that the contract comes to an end on dismissal. But even if it does not the only damages that the plaintiff can recover constitutes twelve (12) weeks wages. Based on Section 3 (1) of the Employment (Termination and Employment) Act, such a period of notice would have been required to dismiss lawfully. She relied on Secretary of State for Employment v Wilson 1978 3 AER 137 and Guston v London Borough of Richmond upon Thames (1980) 3 All ER 577. In the usual case, the wrongfully dismissed employee should be placed so far as money can do it in the same position as if the contract had been performed. This can be achieved by awarding as damages the amount of remuneration that the employee has been prevented from earning by the wrongful dismissal.

Apart from a fixed term contract where the starting point is the remuneration for the remainder of the fixed term, most contracts of employment are terminable by notice. Therefore the employee is entitled to recover only the amount of remuneration during the notice period. Such remuneration includes wages, or salary, commission, and other fringe benefits as well as any loss of pension rights. In the case of dismissal for just cause no notice is required.

Vennise Love - Cohen, Salary Administrator at Seprod testified in 1989 she was Pension and Payroll Officer of Seprod Group.

In 1975 - Seprod Superannuation Scheme came into being. Employees contribute 5% of basic pay and employer matches that contribution. The current contribution of each side is now 9%. The total benefit would be given to the employee if she remains in the scheme until retirement. If not, she could only recover her personal contribution with interests.

The plaintiff after joining Seprod in 1960 started making contributions in 1975 when the Superannuation Scheme started.

When the Personnel Request (Exhibit 2) came to her, cheques were prepared by her department in respect of the plaintiff's dismissal as follows:-

- | | | |
|-----|---|---------------|
| (1) | Pension contribution plus interest
up to date of dismissal | = \$11,547.91 |
| (2) | Salary including outstanding leave pay | = \$ 2,225.72 |

These cheques were sent to Central Personnel Department for delivery to the plaintiff. She saw the cheques again in 1990 when they were returned to her department stale dated. Her salary was paid up to June 1989 and in particular for week ending June 28, 1989 her pay was \$168.75 with a net amount of \$25.35. This included her long service bonus and shift premium.

Her evidence remains unchallenged.

Carmen Allen testified that she is the Personnel Records Officer. In June 1989, there was an incident with Ann-Marie Powell. A report was made that Eunice ran her down with a macehte. There was a hearing and she was dismissed.

Mrs. Allen received a pension cheque as well as Leave Balance cheque for the plaintiff. Messages were sent to plaintiff informing her of the cheques on several occasions. She informed her several times that the cheques were there. The plaintiff said she didn't want the cheques because she was pursuing the matter in Court.

Under the terms of the Pension Scheme as demonstrated by the witness' testimony the plaintiff contributed to the Pension Fund. The plaintiff is entitled to a refund of her pension contribution of \$11,547.91. Additionally, she should be now refunded the cheque for \$2,225.72 as stated supra. A reasonable amount of interest should be paid on these two (2) sums from June 1989 to the present.

I fear that the circumstances of this case provide a barren ground in which any attempt can be made to nurture a remedial seed. Mr. Samuels has failed to persuade me that there is any basis upon which his client can assert a wrongful dismissal.

Accordingly for the reasons stated there will be judgment for the defendant with costs to be agreed or taxed.