

JAMAICA

IN THE COURT OF APPEAL

R.M. COURT CRIMINAL APPEAL NO. 51/77

BEFORE: The Hon. President
The Hon. Mr. Justice Henry, J.A.
The Hon. Mr. Justice Rowe, J.A. (Ag.)

REGINA

vs.

ALEXANDER DIXON

Mr. Lloyd Williams for Appellant

Mr. Henderson Downer for the Crown

20th May, and 20th July, 1977

ROWE, J.A. (Ag.)

The appellant was convicted by the Resident Magistrate for St. Andrew for assaulting Jorena Johnson thereby occasioning to her actual bodily harm and he was fined \$50.00 or 2 months hard labour. He now appeals to this Court on the ground that the complainant was a trespasser on the premises of General Engineering Services Limited at 27 Dunrobin Avenue, St. Andrew and on her refusal to leave the premises after repeated requests, the appellant was justified in ejecting her in the manner he adopted as he then used no more force than was necessary.

Miss Johnson went to work as a Secretary to General Engineering Services Limited with offices at 27 Dunrobin Avenue on the 16th September, 1975. She was given a desk and in all probability she worked from a private office because we have her saying in cross-examination, "From the 2nd to the 14th June I had no problem of entry to my office until on the morning of 15th June my office was locked....." There was no direct evidence as to the terms and conditions of her employment. However, on the 2nd June, 1976, Mr. Dixon, the Managing and Construction Director of the Company gave the complainant one month's notice to terminate her employment as of the 30th June 1976. The complainant continued to attend at the usual place of work and to carry out her duties as Secretary. The appellant gave evidence that on the 14th June he dismissed the complainant and instructed her in no uncertain

terms not to return to the office on the following day or at any future time and that her pay would be calculated by his Accountant and forwarded to her. The complainant denied being dismissed on the 14th and expressed surprise and indignation when on the 15th of June she found that the office doors were locked against her. On this direct conflict in the evidence, the Resident Magistrate accepted the complainant as a witness of truth and disbelieved the appellant. There is no basis upon which we could upset this finding of fact.

The complainant said she was very upset when on the 15th June, 1976 she could not gain entry to her office. She had her desk keys in her possession. She had some personal belongings in the office. She had expected to continue working until the 30th June. She knocked on the front door of the office to attract attention and was ignored. She went to the rear of the premises and a Supervisor came to her and delivered a message from the appellant to the effect that she had been dismissed and no longer worked on those premises. The complainant said she was not employed to or by the Supervisor, and she wanted an explanation from the appellant. So she went unceremoniously past the Supervisor at the door and marched into the appellant's office. She demanded to know why he was acting in that way towards her. From here on there is a conflict between the prosecution and the defence as to what took place. The very laconic manner in which the Resident Magistrate made his findings renders it difficult for the court to understand precisely what was the conversation that he found took place in that office. However, the Resident Magistrate having accepted the complainant's evidence in its entirety, the picture that emerges is this. The complainant entered the appellant's office and told him good morning. The appellant was then sitting behind his desk. We can do no better than quote the complainant's evidence at this stage. She said:-

"I said to him that I had come and found the door locked and that I had received a message from Mr. Raymond which I did not understand and the accused then got up from behind his desk and he pushed me from a long distance all the way from his office down to the work shop".

It was the prosecution's case that the complainant fell at the top of the step and injured her back and this the Resident Magistrate accepted as true. In cross-examination she said that on the 15th of June the accused told her that her pay cheque would be mailed out to her. It is not recorded at what point of time the appellant said this, whether it was during the incident in the office or afterwards. Although there was evidence from the defence that the complainant had refused to leave the appellant's office until she received the salary due to her inferentially the Magistrate rejected that evidence.

Unless there are statutory requirements or there is an express or implied agreement to the contrary, an employer may dismiss an employee with or without notice, for cause or without cause. In every case of dismissal the circumstances must be examined to determine whether further legal obligations flow from the act of dismissal. An employee who is entitled to a fixed minimum period of notice before his or her employment may be validly terminated, may be summarily dismissed but in those circumstances the employer must pay to the employee a sum equal to the salary or wages for the notice period or as provided in the agreement. The appellant admitted that he gave instructions to his Accountant to make up the pay of the complainant to the 30th June 1976. Bearing in mind the complainant's evidence and this admission on the part of the appellant the Resident Magistrate must have drawn the inference that there was no conduct on the part of the complainant which warranted summary dismissal without compensation.

In our view the complainant was entitled to a reasonable opportunity to have explained to her the reason for her summary dismissal. She was not acting unreasonably in wishing to have the explanation from the Managing Director of the Company which had employed her for nearly a year. Therefore she had the implied invitation of her employer to enter the office which was her ordinary place of work on the 15th June for these purposes. The complainant ought to have been given a reasonable opportunity to hand over the keys for her desk and to take hold of her personal belongings. She was entitled to be paid her salary in lieu of notice on that very day and could quite properly enter her employer's

office to obtain her salary or to be advised when and how she would be paid.

On the findings of the Resident Magistrate there was no improper behaviour by word or by deed on the part of the complainant on the morning of the 15th June. She had not been given the opportunity to make reasonable representations to her employer's chief executive. In those circumstances the appellant's peremptory order "Get out of the office" did not render the complainant an immediate trespasser and consequently the appellant acted unlawfully when he pushed the complainant from his office and continued to push her until she tripped on the top step and fell to the ground. In our view the appeal against conviction should be dismissed.

The appellant argued that in any event the sentence was excessive. There was he said no medical evidence to support the complainant's account as to the nature of any injury she suffered and there was no allegation that the appellant delivered any direct blow to the complainant. He submitted that in all the circumstances the punishment should be nominal only.

Were it not for the exceptional circumstance to which we will refer hereafter we would not interfere with the sentence which represented no more than fifty percent of the maximum monetary penalty which the Resident Magistrate had jurisdiction to impose.

Mr. Dixon was arrested on a warrant at his office on the 16th June, 1976 shortly after he had summoned the police to give him assistance in removing the complainant from the premises of General Engineering Services Limited at 27 Dunrobin Avenue. Miss Johnson had gone to the police on the 15th June and made a report concerning the events of that morning. Nevertheless on the following day she presented herself at the appellant's premises and from all accounts she was misbehaving herself and disrupting the company's activities. If the police felt constrained to take action on the complaint of Miss Johnson, this was the type of case where good sense and good judgment would indicate that a summons would be an appropriate process. The police elected to proceed by warrant and Mr. Dixon who hitherto had been a person of good character

was taken to the Half Way Tree Police Station and imprisoned in a cell from 10 a.m. to 6 p.m. Why was this appellant not given bail immediately on being taken to the Half Way Tree Police Station? Why was he not given bail in his own Surety when there was never the slightest likelihood that he would abscond? Why was it considered necessary to place this appellant in custody for so many hours on so trivial a charge?

The court proposes to record its displeasure at the unnecessary detention of the appellant in a cell for 8 hours by allowing the appeal against sentence, and in lieu thereof ordering that he be admonished and discharged.