(17)

IN THE SEYCHELLES COURT OF APPEAL

EQUATOR HOTEL APPELLANT

VERSUS

MINISTER OF EMPLOYMENT AND SOCIAL AFFAIRS. RESPONDENT

Civil Appeal No. 8 of 1997

(Before: Goburdhun, P., Silungwe & Adam JJA)

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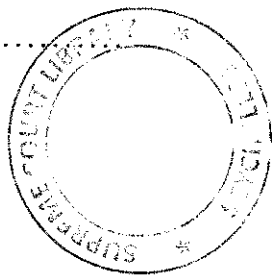

Mr. B. Georges for the Appellant
Mr. M. Vidot for the Respondent

JUDGMENT OF THE COURT

Delivered by Silungwe, J.A.

The only bone of contention in this appeal is whether the Supreme Court erred in upholding all three monetary awards that the Minister of Employment and Social Affairs (to whom we shall hereafter refer as the Minister) had granted against the appellant in favour of Antoine Ignace (hereinafter referred to as the complainant).

It is apparent that there is now no dispute that the complainant was at all material times employed by the appellant as a carpenter. It is further common ground that in May 1995, the complainant, having been denied access to the appellant's premises, lodged with the Ministry of Employment and Social Affairs a complaint in which he claimed sick and annual leave and sought "to be paid full salary from 16/5/95 to 15/6/95". The complaint was entertained by a competent officer against whose decision the complainant appealed to the Minister. Upon hearing the appeal, the Minister made the following determination in favour of the complainant:-

"(i) sick/annual leave for the period 16th May to 15th June 1995	Rs. 4,900.00;
(ii) one month's salary in lieu of notice	Rs. 4,900.00;
(iii) compensation for length of service	Rs.23,746.45;

(iv) less 5% Social Security	Rs. 1,677.45;
(v) To be paid	Rs.31,868.84."

It was against the said determination that the appellant invoked the supervisory jurisdiction of the Supreme Court in terms of Article 125(1)(c) of the Constitution by petitioning the Supreme Court for a writ of certiorari so as to quash the offending part of the Minister's decision. As the appellant's efforts in the Supreme Court were to no avail, the matter is now before us as a last resort.

Mr. Georges indicates that the first award is accepted by the appellant, but that the second and third ones are rigorously challenged on the ground that these awards are ultra petita as the Minister went beyond what the complainant had requested.

While Mr. Vidot concedes, on behalf of the respondent, that salary in lieu of notice and compensation were not claimed by the complainant, he contends that as the complainant was prevented by the appellant from returning to his place of work, the Minister's second and third awards were provided for under Section 49 (see also Section 63) of the Employment Act 1995.

However, the provisions of sections 49 and 63, in so far as this case is concerned, could only relate to termination of employment; and sight must not be lost of the fact that the case is grounded on a claim for sick/annual leave, not on termination of employment. To this extent, therefore, Mr. Vidot's argument on the point is misconceived. Further, the Minister's decision was based on the Employment Act 1995 which does not provide that issues such as one month's salary in lieu of notice and compensation for length of service could be raised for the first time before the Minister. In so doing he exceeded his powers.

Further, Mr. Vidot supports a finding by the learned trial judge to the effect that the issues of payment in lieu of notice and compensation before the Supreme Court had been raised in the proceedings before the Employment Advisory Board and not objected to. The relevant part of the judgment reads as follows:-

> "It is therefore important to note here that although in filing his grievance Mr. Ignace had wanted only to be paid full salary from 16/5/95 to 15/6/95 'the

> issue of termination benefits came up in the course of the hearing before the Employment Advisory Board. Mr. Georges did not controvert nor object to these issues being raised as they were not part of the pleadings in that quasijudicial organ."

The learned trial judge found that the Minister of Employment and Social Affairs had been right in coming to his decision in the matter. He went on to say this:-

> "Although it is a general rule that parties must plead all the facts they wish to rely upon during trial and that they cannot rely on facts not pleaded, it was nevertheless, rightly put by this court (Amerasinghe, J) in the case of Philip D'Offay v/s Geoffrey Cedras (civil appeal No. 14/92) thus:-
>
> 'the evidence outside the pleadings not objected to could be acted upon by the judge in the final determination of the case before him ...'

Here, we wish to say that the complainant's complaint was, in the circumstances of the case, tantamount to pleadings. There is no dispute that the issues of payment in lieu of notice and compensation, though raised during proceedings, had not been "pleaded". Such issues clearly fall within the category of matters not properly before the Employment Advisory Board. Failure or omission to object to the introduction of such issues during proceedings or in evidence cannot, and does not, have the effect of translating the said issues into pleadings or evidence. To that extent, we would have no hesitation in holding that Philip D'Offay case, to which reference has already been made, was wrongly decided.

We have no doubt whatsoever that in so far as the Minister's awards of payment in lieu of notice and compensation were concerned, he had no power to make them (see Anisminic Ltd and Foreign Compensation Commission and Another 1968 (HL) 147-223 at 171 B-F); consequently, his decision on the matter was ultra petita as the exercise of his quasi-judicial function was limited to what had been

"pleaded" before the Competent Officer from whose determination the appellant was before the Minister.

In the circumstances, the appeal succeeds in that the writ of certiorari shall be issued setting aside the Minister's awards in (ii) and (iii) above. Accordingly, the appeal is allowed with no order as to costs.

Dated at Victoria this 24th day of November 1997.

H. GOBURDHUN	A. SILUNGWE	M. A. ADAM
PRESIDENT	**JUSTICE OF APPEAL**	**JUSTICE OF APPEAL**

Handed down
Adam JA