

**IN THE SEYCHELLES COURT OF APPEAL**

**ROY BEEHARRY**

APPELLANT

versus

**PUBLIC UTILITIES CORPORATION**

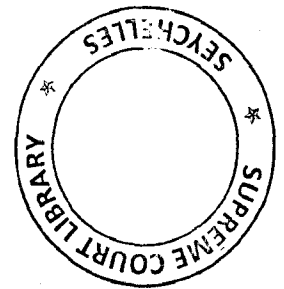
RESPONDENT

Civil Appeal No: 33 of 1999

*[Before: Ayoola, P., Silungwe & De Silva JJ-A]*

.....  
Mr. F. Elizabeth for the Appellant

Mr. J. Renaud for the Respondent



**JUDGMENT OF THE COURT**

*(Delivered by Silungwe JA)*

This appeal is against a judgment of the Supreme Court (Bwana, J.) whereby the appellant's action was dismissed. The appellant and the respondent were plaintiff and defendant, respectively.

In his amended pleadings and the evidence adduced in support thereof, the appellant sought to show, inter alia, that at all material times, he had been employed as a standby and shift driver by the respondent; that on April 6, 1996, the respondent suspended him from duty without pay on an allegation that he was responsible for the seizure of a motor vehicle engine belonging to the respondent; that on May 27, 1996, he was informed of reinstatement in his job but ordered to pay 10% (i.e. SR2800) of his salary in ten monthly instalments of SR280.00; that in his letter of suspension, he was informed that one Roland Labrosse (also an employee of the respondent) who had, at the end of his shift, handed over to him the said motor vehicle, was also suspended and surcharged 10% of his salary; that despite the fact that he had received a letter of reinstatement, the respondent had failed or neglected to reinstate him as a shift driver as a result of which he had lodged a grievance with the Ministry of Employment and Social Affairs (MESA) which ruled that the respondent's

action amounted to a variation of his terms of employment for which he should be paid in lieu of a month's notice, compensation for past services he had rendered and other relevant benefits; and that Roland Labrosse was neither suspended nor made to suffer the 10% deduction of his salary, despite the fact that he had also been held responsible for the seizure of the respondent's motor vehicle engine, which was proof of the respondent's blatant discrimination against him. He subsequently lost his employment.

It was on the basis of the allegations aforesaid that the appellant filed a plaint against the respondent, averring that the latter's actions amounted to a faute in law and, therefore, claimed damages as follows:-

(a)	Harassment	SR30,000-00
(b)	Financial hardship, distress and anxiety	SR20,000-00
(c)	Discrimination	SR40,000-00
(d)	Moral Damages	<u>SR10,000-00</u>
	Total	<u>SR100,000-00</u>

Mr. Elizabeth urges the court, on behalf of the appellant, to hold that the learned trial judge was wrong to dismiss the appellant's case as there was adequate evidence to find in his favour. On the other hand, Mr. Renaud submits that the trial court's judgment be upheld.

Evidence in respect of the above-mentioned heads of damages was led by both parties to the action. Although the appellant asserted both in his pleadings and in his testimony that he had been employed by the respondent as a "standby and shift driver", the evidence of Mr. Moustache, the respondent's administrative officer, shows that the appellant had been employed as a driver, not as a standby or shift driver. Mr. Moustache produced the appellant's contract of employment, exhibit D, in support of his evidence. The said contract of employment contained a clause that required the appellant to perform "shift" duties whenever required to do so. However, consequent upon the seizure of the respondent's motor vehicle engine, for which the appellant was held responsible, he was

removed from performing shift duties, a step that he found unacceptable, with the result that his contract of employment was terminated.

Roland Labrosse, whom the appellant had unsuccessfully tried to blame for the seizure of the vehicle engine, testified at the instance of the appellant. He told the Court that at the time of the hand-over of the motor vehicle in question to the appellant, the engine had been in a proper working order and that he had subsequently been cleared by his employer of any responsibility in the seizure of the engine.

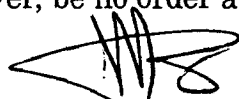
The learned trial judge found both Messrs Moustache and Labrosse to be credible witnesses. Hence, he held that the respondent was not bound do reinstate the appellant in regard to the performance of shift duties.

In so far as the claims concerning harassment, financial hardships, distress, anxiety, discrimination and moral damages were concerned, the learned trial judge found, and justifiably so, that there was insufficient evidence to establish these. He then came to the following conclusion:-

“[T]he plaintiff's case is devoid of merit and is dismissed.”

On a close scrutiny of the entire case, and particular regard being had to the evidence adduced, we are satisfied that the learned trial judge was right in his conclusion that the appellant had failed to establish his case. In the circumstances, we are constrained to uphold the trial Court's decision and to dismiss the appeal. Accordingly, the appeal is dismissed . There will, however, be no order as to costs.

  
E. O. **AYOOLA**  
**PRESIDENT**

  
**A. M. SEUNGWE**  
**JUSTICE OF APPEAL**

  
**G. P. S. DE SILVA**  
**JUSTICE OF APPEAL**

Dated at Victoria, Mahe this 12<sup>th</sup> day of **April** 2001.