

**Ernesta v Air Seychelles
(2001) SLR 162**

France BONTE for the Plaintiff
Kieran SHAH for the Defendant

Judgment delivered on 15 March 2001 by:

ALLEEAR CJ: This is an action brought by the Plaintiff claiming a total of R676,376.00 "for loss and damages with costs".

The Plaintiff worked for Air Seychelles from April 1996 to July 1996 first as Manager of Industry Affairs and then as Head of Planning Section. Her monthly salary was R7,850 inclusive of allowances.

In July 1996 the Defendant purported to terminate the Plaintiff's employment verbally. The Plaintiff appealed to the Competent Officer in the Ministry of Employment and Social Affairs. The Competent Officer found that the Defendant

varied the terms and conditions of the Applicant's contract of employment without her consent pursuant to Section 49(1) of the Employment Act 1995. Reasons for termination have not been established by the Respondent.

Therefore, pursuant to Section 61(2)(a)(ii) of the Employment Act 1995, termination of the Applicant's contract of employment was justified.

And ordered that:-

The Applicant is to be reinstated in her post as Head of Planning without any loss of earnings with effect from 29th July 1996 and to formalise her appointment as per Section 21 of the Employment Act 1995.

The Defendant did not appeal the decision of the Competent Officer. The Plaintiff was not reinstated and according to her remained unemployed from July 1996 to April 1997. The Plaintiff's recollection as to the number of months that she remained unemployed was very vague and imprecise. The Plaintiff stated in response to the question:

I cannot be exact ... I do not have the dates ... it has been a long time ... please forgive me if I do not have the exact details.

It is the Plaintiff's contention that as she did not work for about 35 months she is entitled to R298,385 as loss of salary. There is an additional claim in respect of Leave for R17,295. There is a further claim of R13,488 under the head of Compensation. Under the head of Gratuity there is a claim for R44,758. Under the head of Loss of Other

Benefits there is a claim for R77,400 and R200,000 as moral damages.

The Plaintiff, it will be well recalled, was sent abroad for training for a period of 3 years by the Government. Whilst on training she was deemed to be the employee of the Ministry of Education. She returned to Seychelles in February 1996.

It will be noted that Air Seychelles is a parastatal organisation. Before taking on an employee therefore, it has to seek permission from the Ministry of Administration.

By April 1997 the Plaintiff obtained employment with the Ministry of Community Development and earned a salary of R7,600 per month. The Plaintiff denied in cross examination that she had received a letter from the Principal Secretary for the Ministry of Administration and Manpower dated 16th January 1998 dismissing her from Government service with immediate effect on grounds of misconduct. Nonetheless the Plaintiff admitted that she worked for the Ministry of Community Development in early December 1998 or late November 1998. According to her she stopped working for the Ministry of Community Development because she got another offer of employment with the Indian Ocean Tuna (IOT). The Plaintiff was asked the following question:

Q. Are you saying that your employment with the Ministry of Community Development was not terminated by the Government but that you terminated it because you wanted to take up a job with IOT?

A: That is correct.

The Plaintiff admitted having received the sum of R6,162.34 as salary for the month of April 1996 from the Defendant. She was paid for the months of May and June 1996. Between April 1996 and August 1996 the Plaintiff admitted "that she was off-duty, on sick leave and on unofficial business for some time." The Plaintiff explained that during that period when she was off-work she was on sick-leave and on compassionate leave. In May 1996 she said she took time-off from work with Air Seychelles to "think things through".

On 28 May 1997 the Defendant wrote to the Plaintiff (Exhibit D1) as follows:

Further to your grievance lodged against Air Seychelles with the Ministry of Employment and Social Affairs, it has been approved by the Ministry of Administration and Manpower for your appointment to be terminated "in the interest" of the organisation with effect from 1st April 1997.

You will note that you have been on 20 days unpaid leave for the period 13th July to 1st August 1996. Since your case is long outstanding, we have accepted to pay you the salary you were receiving at the time of your departure, up to 31st March 1997.

As per my letter of even reference dated 24th February 1997, you were paid Rs.28,389.47 as part of your terminal payments which was calculated based

on your gross basic salary of Rs.4,800/- per month plus overtime, entertainment, telephone and duty allowances.

It is now felt that, although you were theoretically in employment, you were not actually working. Therefore the payment of the monthly allowances cannot be considered. Your compensation payments have thus been recalculated on your gross basic salary of Rs. 4,800/- per month broken down as follows:

Salary from 1st to 12th July 1996

$\text{Rs.}4800 \times 12 \times 12 \text{ days} \div 366 = \text{Rs. } 1,888.52$

Salary from 2nd to 31st August 1996

$\text{Rs.}4800 \times 12 \times 30 \text{ days} \div 366 = \text{Rs. } 4,721.31$

Salary from 1st September 1996 to 31st March 1997

$\text{Rs.}4800 \times 7 \text{ months} = \text{Rs.}33,600.00$

Annual leave from 3rd April 1996 to 31st March 1997

$\text{Rs.}4800 \times 12 \times 20.88 \div 365 = \text{Rs. } 3,295.03$

$\text{Rs.}43,504.85$

Less 5% Social Security = (Rs. 2,175.24)

$\text{Rs.}41,329.61$

Compensation payments from 3.4.1996 to 31.3.1997

$\text{Rs.}4800 \times 12 \times 18 \times 11 \text{ months} \div 2080$

= Rs. 2,436.92

= Rs.43,766.53

Amount already paid out = (Rs.28,389.47)

Balance Due $\text{Rs.}15,377.06$

The Defendant called one Fauzia Zarquani-Rose, General Manager, Human Resources Air Seychelles as its sole witness. Mrs Zarquani-Rose worked as General Manager Human Resources Air Seychelles since January 1996 to date. The witness confirmed that in April 1996 the Plaintiff started employment with Air Seychelles. She explained that when the Plaintiff returned from abroad from a course of study in February 1996 Air Seychelles received a letter from the Ministry of Administration and Manpower requesting Air Seychelles for a vacancy for the Plaintiff. In terms of the Public Service Order all the posts that are available in an organisation are entered in a nominal roll. In February 1996 the Defendant had no post available for a person with the qualifications of the Plaintiff. However, by verbal communications between Air Seychelles and the Ministry of Administration and Manpower it was agreed that the Defendant would employ the Plaintiff pending the formalisation of a post in the organisation. The Plaintiff was thus employed "without first having sorted out what kind of a job she would do." She joined initially as Manager Industry Affairs in the Marketing Division and subsequently asked for another post. The Plaintiff felt that with her qualifications she was entitled to a higher position in the Organisation and was promoted to Head of

Planning in the Finance and Planning Division.

Meanwhile Air Seychelles was in the process of requesting a transfer of the Plaintiff from the Ministry of Youth and Sports as the latter was still on the payroll of the Ministry of Youth and Sports. The transfer request never materialised as the Plaintiffs continued employment with the Organisation was put in doubt. The Plaintiff was paid all her salaries up to 31 March 1997 by the Defendant.

On 20 April 1997, the Plaintiff started working with the Ministry of Community Development (as it was then called). She did not challenge the termination of employment with Air Seychelles (Exhibit PI). She sought and obtained employment elsewhere. She did not appeal against the said termination of employment.

Exhibit D6 shows that the Plaintiff was paid for leave taken from 8 April 1996 to 31 March 1997. She was paid compensation at the rate of one day's pay for every month of service up to 31 March 1997 vide Exhibit D1. She was not paid gratuity. The Plaintiff was paid one month's notice as per the Employment Act 1995.

In my judgment although the Plaintiff was theoretically employed and not actually working from August 1996 to 31 March 1997 this was due to non-compliance by the Defendant with the Competent Officer's order. Therefore in computing the payment of the monthly allowance, same cannot be calculated on the gross basic salary of R4,800 only. In fairness a computation must take into account all the allowances that were paid to the Plaintiff i.e. R7,850 per month. The said computation ought to reflect the figures given below.

Salary from 1 to 12 July 1996

$$R7850 \times 12 \times 12 \div 366 = R3,088.52$$

Salary from 2 to 31 August 1996

$$R7850 \times 12 \times 30 \div 366 = R7,721.31$$

Salary from 1 September 1996 to 31 March 1997

$$R6,850 \times 7 \text{ months} = R54,950$$

Annual leave from 3rd April 1996 to 31 March 1997

$$R7,850 \times 12 \times 20.88 \div 365 = R5,388.75$$

$$\text{Total} = R71,148.58$$

$$\text{Less 5\% Social Security} = (67,591.16)$$

Compensation payments from 3.4.96 to 31.3.97

$$R7,850 \times 12 \times 18 \times 11 \text{ months} \div 2080$$

$$= R8,967.11$$

$$R67,591.08$$

		R 8,967.11
		<u>R76,559.19</u>
The Plaintiff has received	=	R28,389.47
The balance due to her is	=	R76,558.19
		R28,389.47
		R48,168.72

The Plaintiff has received payment in respect of gratuity calculated as follows, 14 over 180 x R20,000.

The Plaintiff is claiming R200,000 moral damages. As per the judgment of the Seychelles Court of Appeal in *Antoine Rosette v Union Lighterage Company* CA 16 of 1994 and read in conjunction with the Employment Amendment Act of 1999, the Court of Appeal decided and (I share the view expressed by Ayoola P in the above judgment) that the said Act did not envisage a situation in which the worker and employer would go through the grievance procedure to finality only for the worker to commence and drag the employer through fresh proceedings based on the same cause of action in another forum.

The Plaintiff according to me is only entitled to remedies and reliefs provided for under the Act. If the legislature had intended that additional compensation by way of moral damages "is to be awarded having regard to the manner and circumstances of the termination of the employment it would have so provided". Hence I do not grant any sum under the head of Moral Damages as I do not think that was the intention of the legislature. There will accordingly be judgment for the Plaintiff in the sum of R48,168.72 with interest and costs on amount awarded. Interest payable from date of filing of action. The Registry will refund the Plaintiff the balance from filing fees.

Record: Civil Side No 160 of 1999