

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: CA 3/2014

Appeal from Employment Tribunal Decision 2010/2012

[2016] SCSC 227

**BLUE SEA DIVERS LIMITED
BEAU VALLON, MAHE**

Appellantversus

ARA ALEXANDRE ASIANIAN

Respondent

Heard: 10 February
Counsel: Mr Brian Julie for appellant
Mr Kieran Shah for respondent

Delivered: 4 April 2016

JUDGMENT

McKee J

- [1] This is an appeal against a Decision of the Employment Tribunal of Seychelles dated 10th October 2013.
- [2] In essence this was a claim for unfair dismissal based on the terms of a contract of employment between parties and with reference to the provisions of the Employment Act. The Respondent, a diver, had signed a fixed-term Contract of Employment with the

Appellant for the period from 8th August 2011 to 8th August 2013. This followed on from previous contracts of employment between the parties. The employment of the Respondent was brought to a premature end as at 5th September 2012, which was the final day that he worked for the Appellant. The Respondent had received wages for the period up to 1st September 2012. The claim before the Tribunal focused on the payments due, if any, to the Respondent following his dismissal. I have had the opportunity of reading the written Submissions by Counsel for each party before the Tribunal, the documentation lodged in support and the Ruling of the Tribunal.

- [3] The present Appellant, the Respondent in the original tribunal hearing, being dissatisfied with the Ruling has appealed to the Supreme Court in its appellate jurisdiction. Again only written submissions were placed before this Court, the terms of which I have taken these into account.
- [4] I do not intend to repeat the arguments as set out in the Submissions since the major points are clear.
- [5] On consideration of all the evidence I agree with the first two Findings in the Ruling of the Tribunal. I find that the Respondent did not “self terminate” his contract of employment. I also find that the Appellant in this matter had failed to prove that it had sufficient grounds to terminate the employment of the Respondent. Thus I find that the termination was unjustified and amounted to unfair dismissal.
- [6] I disagree with the Third Finding of the Ruling of the Tribunal that any financial award should be based on a rate of salary of Rs 21,000 per month. I have considered the salary slips for the months of January to August 2012. Each shows a basic salary of Rs 9175.98 and there are no entries under the heading “Others/Benefits”. Income tax was calculated on the figure for basic salary only. At paragraph 4 on page 5 and again at paragraph 2 on page 11 of the Ruling the phrase “tax evasion” is used. I have looked at the written submissions of both parties to the Tribunal and I can find no specific mention of these or like words. However it seems to me that there are grounds for forming a view that the salary slips may not represent an accurate picture of the total monthly taxable emoluments paid to the Respondent. In my opinion, in these circumstances, it would be

erroneous to take the inflated figure of Rs 21,000 as the starting point for any financial calculations. While there is a figure of Rs 13,200 stated in the contract relating to performance, this addition sum should also be excluded since it would be based on indeterminate factors which may or may not occur at a future time. In my view, the correct monthly figure on which to base any calculation is Rs 9175.98 which was the declared monthly salary for each of the first eight months of 2012.

- [7] I would support the opinion of the Tribunal that the Respondent in the Appeal is not entitled to a payment under the heading “compensation”. However, as found in the Ruling, I agree that the Respondent is entitled to a payment for accrued leave not taken for a period of thirty two days. There is little or no challenge to the further award in respect of public holidays and I find that the rate shall remain as set out in the Ruling. Likewise, I confirm the award of the single airline ticket from Seychelles to Paris to the Appellant.
- [8] In the result, I uphold the Ruling of the Employment Tribunal made on 10th October 2013 subject to the amendment that the payment in respect of salary between First September 2012 and Eighth August 2013 shall be calculated at the rate of Rs 9175.98 per month rather than RS 21,000 per month. Consequently, but only to this extent, I find that the appeal succeeds.
- [9] Each party shall pay his own costs.

Signed, dated and delivered at Ile du Port on 4 April 2016

C McKee
Judge of the Supreme Court