

SUPREME COURT OF SEYCHELLES

Reportable

[2019] SCSC 74

CA 14A/2011

(Appeal from ET/2009)

JANE LABICHE

(rep. Joel Camille)

Appellant

versus

MARIE-MAI KOLSH

(rep. by S Rajasundaram)

Respondent

Neutral Citation: *Labiche v Kolsh* (CA 14 A/2011) [2019] SCSC ([23 January 2019]).

Before: Dodin J.

Summary: Employment award. Whether calculations of terminal benefits calculated as at date of termination or at the date of judgment. Whether award subject to tax deduction.

Heard: 5 December 2018

Delivered: 23 January 2019

RULING

Ruling on a motion for clarification of judgment award on whether calculations of terminal benefits should be calculated as at date of termination or at the date of judgment and whether such award is subject to tax deduction.

The award should be calculated as at the date of judgment and is not subject to any tax deduction. Notice of this judgment is to be served on the Director Industrial Relations, Employment Department.

RULING

DODIN J.

[1] In a judgment delivered on the 14th February, 2018, in this case CA 14 A/2011, the Court made the following awards in favour of the Appellant:

1. Salaries at 1.5 day's pay for Saturdays worked (3).
2. Salaries at 2 days' pay for work on Sundays and Public Holidays. (7)
3. 6 months transport allowance at SCR500 per month (January to June, 2009).

- [2] The Court further ordered the competent officer of the Ministry of Employment to do the computations as necessary and submit a copy to the Court and to the parties.
- [3] By August, 2018, the competent officer had not complied with the Order of the Court and the Director of Industrial Relations in the Department of Employment appeared before the Court to account for the lack of compliance. The Director submitted that she had been in consultation with the Attorney General's Office and the Seychelles Revenue Commission (SRC) for direction on whether calculation of terminal benefits as ordered by the Court in the judgment should be calculated as at the date of judgment or at the date of termination and whether the benefits are subject to tax or social security deductions. The Director submitted that the SRC did not provide a definitive response whilst the Attorney General was of the opinion that since there has been no savings provision in the Tax Act or Seychelles Pension Fund Act, the benefits should be calculated as at the date of judgment on the gross income if the salary was less than SCR 8000.
- [4] Both learned counsel for the Appellant and the Respondent agreed with the opinion of the Attorney General and made no further submission on the issue.
- [5] Having perused the provisions of the Tax Act and the Seychelles Pension Fund Act I am also in agreement with the Attorney General's opinion that without any savings provision, the Appellant should benefit from the current regime in existence at the time of the judgment.
- [6] I therefore find that the calculation of the terminal benefits ordered by this Court in this judgment delivered on the 14th February, 2018 is made on the gross income and without any deduction of tax, pension or social security therefrom.

[7] I order accordingly.

[8] A copy of this Ruling shall be served on the Director Industrial Relations, Department of Employment.

Signed, dated and delivered at Ile du Port, Victoria on 23 January, 2019

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke extending to the right.

Dodin J.