

PAMOL PLANTATIONS SDN BHD, JOHOR
v.
LIM CHENG GUAN

Labour Relations Department, Johor Bahru
Tan Kim Siong
Award No. 95 Of 1998 [Case No: 4/4-516/96]
17 February 1998

The parties to the dispute are Pamol Plantations Sdn. Bhd., Johor (hereinafter referred to as 'the company') and Encik Lim Cheng Guan (hereinafter referred to as 'the claimant').

The dispute is over the dismissal of the claimant from the services of the company as its research conductor grade II. The claimant joined the services of the company on 1 September 1981 and his last drawn salary was RM1,150 per month and an allowance of RM130 per month.

In the statement of case the claimant alleges that the company by letter dated 21 August 1995 has summarily dismissed the claimant from its services with immediate effect.

The claimant contends that the said dismissal is without any or any just cause or excuse and in the alternative, the claimant contends that the said dismissal is contrary to the principles of natural justice and or an labour practice.

The claimant prays for reinstatement to his former position in the company without loss of any benefits monetary or otherwise whatsoever.

In the statement in reply the company alleges that it was brought to its attention sometime in July 1995 the claimant had allegedly been involved in activities directed towards certain female employees of the company, unbecoming of someone in his position. In light of the serious nature of these allegations, the claimant was put on suspension with effect from 26 July 1995 to enable the company to investigate the matter.

The claimant was subsequently issued a letter of charge dated 27 July 1995 and informed that a domestic inquiry would be convened to hear the charges proffered against him.

The claimant was found guilty of the charges proffered against him. The panel of inquiry further recommended that the claimant be dismissed from services.

Acting on complaints of the claimant's amorous behavior towards certain female employees of the company the following charges were proffered against him:

Charge No. 1



On Sunday, 23rd July 1995, at around 11.00 a.m., you are alleged to have patted Faridah bte Osman, an employee under your charge, on her right shoulder at the worksite of Research Trial DP5 (Pamil Barat) in the plantation which behavior is unbecoming of a Supervisor.

Charge No. 2

On Monday, 24th July 1995, at around 10.30 a.m. to 11.00 a.m., you are alleged to have made a suggestive remark to Masita bte Paiman, an employee under your charge, by asking for a kiss as a reward for arranging her transfer to the data Processing Unit, which behavior is unbecoming of a Supervisor.

Charge No. 3

On Monday, 24th July 1995, at around 10.30 a.m. to 11.00 a.m., you are alleged to have outraged the modesty of Masita bte Paiman, an employee under your charge, by grabbing her hand and hugging her against her will in the Bunch Analysis laboratory.

In the course of the domestic inquiry one of the three charges was withdrawn. The claimant was, however, found guilty of the remaining two charges and was dismissed by the company with effect from 21 August 1995.

The claimant denies the misconduct contained in all the charges. COW1 from the personnel department of the company told the court that the claimant was dismissed on the basis of the third charge only for outraging the modesty of an employee under his charge, Masita bte Paiman who was called as a witness to testify before the court. COW5 testified that the claimant represented her superior in the company and was in a position to exert strong influence over her. COW5 said that she and COW8 were wrapping-up fruit samples to be sent to the United Kingdom during the meal break between 10.30a.m. and 11.30a.m. on 24 July 1995.

The claimant then asked COW8 to go for her break, leaving COW5 alone with the claimant. The claimant asked COW5 for a kiss because of her impending transfer to another department and she refused.

The witness told the court what happened:

The claimant closed the door a little and hugged me. I was so panicked that this was happening. I could not even scream. I did not know what to do The claimant grabbed my hand before he hugged me.

After the incident COW5 went to the canteen where she met COW8, Faridah bte Osman and COW9 Faridah bte Ahmad and told them what had happened between the claimant and herself. COW5 later related the incident to COW10, Ravichandran, who was also in the vicinity of the canteen and noticed COW5 was upset.

Badza bin Tukimin, COW7, the husband of COW5 testified that at about 2.30p.m.



on the day of the incident COW5 told him the claimant had molested her but did not tell him the whole story for fear that he would lose his control with anger. COW5, however, told her husband that night what the claimant had done to her.

No police report was lodged but the matter was reported to the manager of the research department.

What the claimant did to COW5 at the Bunch Analysis Laboratory was seen by other female employee COW6, Umageswari Veloo. This is what she told the court:

When all the staff went for drink, I was mixing drinks. I saw through the small glass door, the claimant hugging Puan Masita.

Another female employee, Faridah bte Osman, COW8, testified that during the meal-break on 24 July 1995 she and COW5 were packing fruit samples when the claimant asked her to go and have her meal-break. COW5 was then left alone with the claimant in the Bunch Analysis Laboratory. There was no one there and the claimant's witness CLW1, was not there. She further testified COW5 later came to the canteen and told her and COW9 that the claimant had hugged her and asked for a kiss. COW8 also related an incident she had with the claimant on 23 July 1995 when the claimant had suddenly put his hand on her shoulder and commented COW8 was too thin.

It is the submission of the company it has satisfied the burden of proving the claimant outraging the modesty of a female employee, Masita bte Paiman, COW5, working under his charge by grabbing her hand and hugging her against her will in the Bunch Analysis Laboratory on 29 July 1995.

The claimant's case is a complete denial of the allegations against him. It is the claimant's contention that the evidence of the company's witnesses was fabricated and they all lied against him.

On the charge involving COW8 on 23 July 1995 the learned counsel for the claimant has urged the court to note that the claimant was alleged to have patted her on her shoulder and said she was too thin and that was all that he did.

On the allegation of molesting Masita Bte Paiman, COW5, it is the submission of the claimant COW5 was lying and her accusation was an afterthought COW5 did not tell her husband about the claimant asking for a kiss at 2.30p.m. on the day of incident and the company did not call K.C. Lau to whom COW5 had made a complaint against the claimant. It is submitted COW5 merely made bare allegations which were totally uncorroborated.

The counsel for the claimant drew the court's attention that COW6 could not have seen through the glass door the claimant hugging COW5 near the store room door, based on COW6's demonstration in Court on the incident. It is also pointed out COW6 was never a witness at the domestic inquiry at the initial hearing and was "magically" found and produced at subsequent hearing of the domestic inquiry. The court was cautioned on the weight to be given to her evidence.



It is the claimant's submission he was innocent of the misconduct and his innocence was corroborated by his witness, Madam Kang Lai Yong who was at the Bunch Analysis Laboratory at the time of the alleged incident. Madam Kang saw nothing unusual happened. She returned to the laboratory at 10.45a.m. and saw COW5, COW8 and the claimant there. She saw COW8 going for her break. COW5 then handed the fruit samples to the office and went for break at about 11a.m.

It is the claimant's submission COW5 was not a credible witness and her evidence contradicted the other witnesses, COW9 and COW10 regarding the time and events which transpired at the Bunch Analysis Laboratory and the canteen on 24 July 1995. The court is urged to view the company's evidence with the utmost of suspicion.

It is generally true in industrial adjudication that the employer is obliged to prove his case on a balance of probabilities. It is equally accepted where the misconduct alleged could be criminal in nature, the strict rules of law in criminal courts are not rigidly enforced in the Industrial Court. In dismissing an employee for criminal misconduct, like outraging the modesty, the employer need only to satisfy himself that there are reasonable grounds for believing the criminal act against the employee is committed.

I have carefully considered the evidence of the company's witnesses against that of the claimant and his witness. On the evidence adduced, the court is satisfied that the claimant had misbehaved himself by hugging COW5 a female employee working under the claimant. There is no reason for COW5, a married woman, to go out of her way to fabricate evidence on her superior. There is also no reason for COW8 to concoct a story that the claimant misbehaved towards her the previous day. Both witnesses have no grudge or ill-feeling towards the claimant. There is the eye witness, COW6 who saw the claimant hugging COW5. She described and demonstrated what the claimant did to COW5. There is also the evidence of COW4 who was his colleague and his friend. COW4 testified that after the incident the claimant came to see him and gave him RM200 in cash to settle the matter with COW5. He visited COW5 and her husband, COW7 in their home and made the offer on behalf of the claimant, which was refused.

The claimant's defense is a bare denial of wrong-doing that such an incident had ever taken place at the Bunch Analysis Laboratory on 24 July 1995. He was unable to offer any explanation why so many witnesses, his subordinates and friend should lie before this court against him. His only witness, CLW1 told the court she came to the Laboratory at 10.45a.m. on 24 July 1995 and did not see anything unusual between the claimant and COW5. Her evidence in court and her testimony before the domestic inquiry differed materially on the question of time.

This court, therefore, accepts the evidence of the company and rejects the claimant's defense.



The claimant should not behave at the work place in a manner which was improper, unbecoming and derogatory to the standard of behavior as an employee towards a fellow employee who was somebody's wife. Such behavior was an act of baseness and was totally unacceptable in any management.

For the above reasons the court finds that the company has established its case against the claimant and upholds his dismissal. The claimant's claim is dismissed.



