

THE REPUBLIC OF UGANDA

IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA

LABOUR DISPUTE REFERENCE No.154 OF 2015

ARISING FROM MGLSD 05/2015

IVAN MUZOORA CLAIMANT

VERSUS

CIVIL AVIATION AUTHORITY RESPONDENT

BEFORE

- 1. THE HON. CHIEF JUDGE, ASAPH RUHINDA NTENGYE**
 - 2. THE HON. JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA**
- PANELIST**

1. MS. JULIA NYACHWO

2. MR MAVUNWA EDSON HAN

3. MR. EBAYAU FIDEL

AWARD

BACKGROUND

This matter was brought seeking for declarations that the claimant was illegally terminated by the respondent, recovery of general damages, punitive damages, unpaid housing allowance for 9 years, overtime payments for 9 years, basic salary for 18 years from date of termination to retirement, interest on all the claims and costs of the suit.

Before the matter was set down for hearing, both parties were directed to file a joint scheduling memorandum and the relevant pre-trial documents. The respondents however failed and or refused to file their pre-trial documents and did not appear in court despite having been served by the Claimant. The claimant then prayed that the matter is heard exparte. Court was satisfied that proper service had been effected and granted the claimants leave to be heard exparte.

BREIF FACTS

On 23/10/2003 the claimant was employed by the Respondent Company as Driver and he commenced duty after signing a collective bargaining agreement which regulated the Respondent Company as employer and the claimant as its worker. According to the Claimant he was very obedient and well behaved and was highly recommended by administration. He claims that on 27/11/2012 he was illegally/wrongfully/unlawfully terminated without notice and a fair hearing on trumped up charges that he had entered the airside without authorisation and obstructing air Uganda.

ISSUES

SUBMISSIONS

It was submitted for the claimant that following the allegations against him, he was suspended to pave way for investigations and subsequently referred to the disciplinary committee. Counsel argued that the hearing was not fair and the offence he was charged with did not warrant a dismissal. He argued that during the hearing, the claimant was not allowed access to his shop steward as his representative and the particular to the offence were never substantiated and it seemed that the tribunal was biased against the claimant both during the proceedings and their decision.

Counsel asserted that as a result of the unlawful and unfair termination the claimant lost his income and suffered mental distress due to increased hardship in sustaining his family. Counsel contended that the claimant had not been given a fair hearing as prescribed in **LEVI MALINZI VERSUS UPPC LDC No.50 OF 2015**. According to counsel the allegations against the claimant did not justify the application of Article 28(2) (a) and (o) of the collective Bargaining Agreement to warrant disciplinary action against him or her. He cited the provision as follows;

“An employee shall be deemed to have committed a disciplinary offence as misconduct and may be liable to disciplinary action against him if he or she is found guilty of the following

- a) Willful insubordination or disobedience of lawful and reasonable order of his/her superior or commission f any act subversive of discipline or good behavior.***
- b) Breaching of ant law rule, regulations or orders applicable to authority***

According to counsel the allegations did not show which order the claimant had disobeyed and which of his superiors he had so obeyed or acted insubordinate or how during the bus to air side constitutes conduct subversive of discipline or good behavior neither was there any indication with regard to Article 28(2) (a) of what law, rules, regulations, or orders applicable to the authority were broken. It was counsel's submission that whereas the entry into the airside had to be with permission, such law, rules or regulations prescribing the requirement of such permission have not been pleaded or furnished to court. He was of the opinion that the claimants permits exhibited as C13 and C14 permitted him to all operational areas. He however noted that on the reverse side of C14 it stated "vehicle authorized to move on the airside will do so with tower permission and guidance only" although there was no indication that this was not complied with.

Counsel further argued that the claimant had not been notified of the allegations of insubordination, disobedience or breach of provisions of laws, rules or regulations and EX C10, the letter of suspension could not be said to constitute the facts or particulars of gross misconduct. He insisted that although the letter of suspension had invited the claimant for a disciplinary hearing his rights to be accompanied at the hearing and the right to cross examine the defendant witness and call his own witnesses was not mentioned. He argued that the claimant had not availed the services of his shop steward from the transport department nor was he been given the opportunity to cross examine the Marchalles, manager or personnel from the control tower. Counsel contended that all these persons were not called to the hearing yet they were best placed to substantiate the allegations against him, therefore the tribunal could not have reached a fair decision as regards the fate of the Claimants employment through a process that was devoid of the claimants rights. Therefore the respondent should be faulted for granting the claimant a fair hearing. He cited **WAKIBI FRED VS BANK OF UGANDA & ANOTHER LDC No.41/2014** in which this court held;

"It is in the interest of Justice and equity that the employer informs the employee of his right to have another person present during the disciplinary hearings, we think that section 66(1), (2) and (3) creates an entitlement by the employee to a person of his or her own choice to represent his interest. This being an entitlement in our view ought to be embedded in the contract of employment. In the alternative the said entitlement ought to be communicated to the employee in the notice of the disciplinary hearing. In the absence of either of the two, in our view, the legal position would be in the abstract and of no legal consequence since the entitlement is not obvious. Since there was no evidence that either the entitlement was echoed

in the notice of disciplinary hearing or in the contract of employment, we hereby fault the respondent on this tenet of fair hearing ...”

Counsel further contended that Mr. Rwakibale Charles who sat on the disciplinary tribunal was biased because the claimant under paragraph 12 and 13 of his statement had alleged that he had a grudge and also because the content of Ex 8 which he authored was couched in judgmental terms. He quoted Rwakibale in part as follows;

“ ... Besides neither you nor the bus had been deployed to the airside at the time but you went unauthorised. It is also unexpected of you a trained driver that you are to drive at the airside as if you are completely ignorant of the rules. You almost caused an incident at the airside which is a matter of very serious concern.”

He was therefore of the view that the tribunal could not have been impartial when they chose to retain Rwakibale Charles as one of its members despite the claimants protest.

Counsel therefore prayed that court finds that the disciplinary hearing of the claimant failed on the tenets of a fair hearing and therefore his dismissal was unjust and unlawful.

DECISION OF COURT

After carefully considering the evidence on the record and counsel submissions, we found that it was not in dispute that the claimant was employed by the Respondent as a driver and he was attached to bus No.UAA 759 F.

What was in dispute was that the claimant was dismissed for driving the bus to the airside without authorisation. From the record we established that the claimant did drive the bus to the airside because there was no water at the designated washing bay so he had to use the services of a new fire station to wash his vehicle. He however claimed that by virtue of his permits marked C13 and C14 he was authorized to access all the operational areas of the Respondent. Counsel for the claimant in his submission however brought to our attention the fact that on the back side

of C14 before accessing the airside, the claimant had to get the permission and guidance from the Tower only.

The back side of C14, the entry permit, provides that:

“... 4. Vehicle Authorised to move on Airside will do so with Tower permission and Guidance only”

The claimant in his defence marked C9, admitted to accessing the airside and that at the time he did Air Uganda was taxiing on the run way. He stated that he was driving the bus to the fire station to wash it because the designated washing bay had no water although he did so after Air Uganda had cleared the way. He stated that;

“ ... I reversed and allowed Air Uganda pass since taxiing aircraft has a right of way, after Air Uganda cleared the way I drove back to the new fire station....”

We found no evidence to show that, as provided under directive 4 on the backside of the Claimants entry permit, the Tower had authorized the claimant to access the airside , to wash the vehicle or for any other official business. We believe that the claimant was aware of what was required of him as a driver in the Respondent and as holder of the Entry permit. We also believe that he understood the terms of his contract which included the collective bargaining agreement and the Respondents directives, rules and regulations such as those stipulated on the backside of his entry permit.

Although there was no evidence to the contrary, we do not think that the control Tower whose responsibility was to ensure the safe takeoff and landing of aircraft could have authorized the claimant to drive on the airside at the time an aircraft was taxiing on it. It is clear to us that the claimant drove in disregard of the requirement to seek authorisation from the Tower. His failure to abide by the directive on the entry permit in our considered view amounted to willful insubordination which was a fundamental breach of Article 28(2) (a) and (o) of the Collective Bargaining Agreement and therefore a breach of his contract of employment. Article 28(2) (a) and (o) (supra) provides that;

“28:

(2) DISCIPLINARY OFFENCES

An employee shall be deemed to have committed a disciplinary offence as misconduct and may be liable to disciplinary action against him/her if he or she is found guilty of any of the following:

...

- (a) willful insubordination and disobedience, whether or not in combination with others of any lawful and reasonable order of his/her superior or commission of any act subversive of discipline or good behavior***

....

- o) Breaking of any law, rules, regulations or orders applicable to the Authority. ...”***

It is our considered opinion therefore that the Respondents were justified to summarily terminate his services and they did so in accordance with Section 69(3) of the Employment Act. Section 69(3) provides that:

“69 (3).summary termination

- (1) An employer is entitled to dismiss summarily and the dismissal shall be termed justified, where the employee has, by his or her conduct indicated that he or she has fundamentally broken his or her obligations arising under the contract of service.”***

On whether he was given a fair hearing, the claimant contended that C10 the letter inviting him to appear before the Respondents disciplinary tribunal, had not spelt out his rights to be accompanied by a person of his choice and to be given an opportunity to cross examine the defendants witnesses , the Marshalls manager and any other personnel. We found no evidence to the contrary.

Section 66 of the Employment Act spells out the procedure to ensure a fair hearing and specifically section 66 (1) and (2) provides that;

“66. Notification and hearing before termination

- (1) Notwithstanding any other provision of this part, an employer shall before reaching a decision to dismiss an employee, on the grounds of misconduct or poor performance explain to the employee, in a language the employee may be reasonably expected to understand, the reason for which the employer is considering dismissal and the***

employee is entitled to have another person of his or her choice present during this explanation,

(2) Notwithstanding any other provision of this part, an employer shall before reaching a decision to dismiss an employee, hear and consider any representations which the employee on the grounds of misconduct or poor performance, and the person, if any chosen by the employee under subsection (1) may make.

This court in many cases has already defined a fair hearing to mean that before the hearing an employee is informed about the infractions or allegations levied against him or her and advised on his or her right to be accompanied to the hearing by a person of his or her choice, he or she is given time to prepare for a response to the infractions or allegations, he or she is given the opportunity to physically appear before an impartial tribunal or disciplinary body to present his or her response and adduce any other evidence and the tribunal or disciplinary body then makes a decision.

In the instant case, there was no evidence to show that the tenets of a fair hearing had been met by the Respondents. In the absence of evidence to the contrary, we are inclined to believe that the Respondents did not accord the claimant a fair hearing and therefore the termination was procedurally unfair.

However irrespective of the flawed disciplinary process the claimant was found to have fundamentally breached his contract. In the premises in accordance with Section 66(4) which provides that:

(4) Irrespective of whether any dismissal which is a summary dismissal is justified or whether the dismissal of the employee is fair an employer who fails to comply with this section is liable to pay the employee a sum equivalent to 4 weeks net pay.”

The respondents are therefore ordered to pay the claimant 4 weeks net pay.

In conclusion we found that the claimant had fundamentally breached his contract of employment and therefore his termination was substantially justified. The claim therefore fails.

No order as to costs is made.

Delivered and signed by;

1. THE HON. CHIEF JUDGE, ASAPH RUHINDA NTENGYE

**2. THE HON. JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA
PANELIST**

1. MS. JULIA NYACHWO

2. MR MAVUNWA EDISON HAN

3. Mr, EBAYAU FIDEL

DATE 12/JAN/2018