1980 May 12

[A. LOIZOU, DEMETRIADES AND SAVVIDES, JJ.]

COSTAS G. MAKRIS,

Appellant,

v.

MAKRIS BROS. LTD.,

Respondents.

(*Case Stated No.* 179).

Master and servant—Dismissal without notice—Misconduct—Serious or repeated contravention or disregard of works or other rules relating to employment—Dismissal of employee without notice for refusal to refund an amount of C£2000 entrusted to him by the employer, for refusal to obey instructions of employer and for continuous absence from work—No right to compensation—Section 5(f)(i) and (v) of the Termination of Employment Law, 1967 (Law 24/67).

The appellant, who was a shareholder and employee of the respondent company, was dismissed from the service of the company on the ground that he refused to refund to the company an amount of C£2,000 which was entrusted to him by the company for the purpose of making payments on its behalf when its Managing Director was absent abroad; and on the ground of refusal to obey the instructions of the management and of his continuous absence from work. The appellant applied to the Industrial Disputes Court for compensation but his application was dismissed on the ground that the termination of his employment was made for the reasons set out in section 5(f)(i)(v) of the Termination of Employment Law, 1967.

Upon appeal, by the employee, by way of Case Stated, the Court of Appeal affirmed the trial Court's judgment for the reasons appearing at pp. 242–43 *post.*

Case Stated.

Case stated by the Chairman of the Industrial Disputes Court relative to his decision of the 11th July, 1979, in proceed-

dings under sections 3 and 9 of the Termination of Employment Law, 1967 (Law No. 24 of 1967) instituted by Costas G. Makris against G. M. Makris Bros Ltd., whereby appellant's application for damages for the unlawful termination of his employment and for damages for his dismissal from work without notice was dismissed.

G. Arestis, for the appellant.

A. Markides, for the respondents.

A. Loizou J. gave the following judgment of the Court. This is an appeal by way of case stated from the decision of the Industrial Disputes Court, by which the application of the appellant for damages for the unlawful termination of his employment and damages for his dismissal from work without notice and/or any other remedy that the Court deemed reasonable in the circumstances, was dismissed.

The appellant is a shareholder of the respondent company which was registered with limited liability in 1971 under the Companies Law, Cap. 113. One of its objects is to own petrol tank tracks for the carrying of petrol in execution of a contract which Yiannis Makris, another shareholder and Managing Director of the respondent company, had with Esso company and which he assigned to it. The appellant was found by the Court to be also an employee of the respondent company, in charge of the transport of these petrol products.

On the 4th March, 1976, a deposit account in the name of the appellant was opened with the Cyprus Popular Bank Ltd., originally for the sum of C£1,000.–, later increased to C£2,000.–, from which account the appellant could withdraw money for the purpose of making payments on behalf of the respondent company when its Managing Director was absent abroad.

This sealing of C£2,000.– was kept in spite of withdrawals therefrom by the Managing Director of the respondent company issuing cheques in the name of the appellant for payment into it. In any event the appellant was not debited in his personal account with the respondent company with any of these amounts.

On the 5th October, 1978, the Managing Director of the respondent company by registered letter of that date asked the appellant to return the amount of C£2,000.– so entrusted

to him as the Managing Director had returned and that amount should be paid into the general account of the company plus interest as appearing in the relevant deposit book. There followed another letter but the appellant gave no reply to either of them and failed to comply with the request made therein.

On the 27th October, 1978, at a meeting of the Board of Directors, the Managing Director produced a statement of the accounts for the year 1978, as well as the report of the auditors of the respondent company, Messrs. Chrysanthou & Christoforou, of Nicosia, and pointed out that the appellant was withholding and refusing to return a sum exceeding C£2,000.

The appellant admitted that he had received the C£2,000.– but said that he did not know whether his personal account was debited with that amount or not; he wanted the books of the respondent company to be examined and if it was found that he was not personally debited, he would return the money being bound to do so. He also alleged that this was a personal account out of which he was being paid his salaries and he was paying import duties for which he was reimbursed by cheque. The Managing Director informed the appellant that he could inspect the accounts as well as the current account for 1976 which had already been in his possession and those of 1977 which were given to him at that meeting and ascertain that his personal account was not debited with that amount and that it was the account of the company that it was so debited. As the appellant failed to respond favourably to the aforesaid demands and direction of the respondent company, at its general meeting of the 20th November, 1978, it was resolved that proceedings should be instituted against him for the sum which he ought to have returned and further to terminate his services and ask him to return the company car which was in his possession. On the same day a letter of termination of his services on the ground that he refused to refund the amount of C£2,000.– which was entrusted to him and on the ground of refusal to obey the instructions of the Management and because of his continuous absence from work, was sent to him.

The trial Court found that the termination of the employment of the appellant was made for the reasons set out in section 5 of the Termination of Employment Law, 1967 (Law No. 24

of 1967) and especially paras. (f) (v) thereof which reads as follows:-

"5. Termination of employment for any of the following reasons shall not give rise to a right to compensation:

.....

(f) without prejudice to the generality of the immediately foregoing paragraph, the following may, *inter alia*, be grounds for dismissal without notice, all the circumstances of the case being taken into consideration:

(i) any conduct on the part of the employee which makes it clear that the employer-employee relationship cannot reasonably be expected to continue;

.....

(v) serious or repeated contravention or disregard of works or other rules in relation to the employment".

In stating the case the President of the Court did not formulate himself the questions for which the opinion and/or the order of this Court was sought, but simply referred to the grounds set out in the notice of appeal as being the questions referred to us.

In arguing, however, the case before us, counsel for the appellant formulated three questions: The first one is that the trial Court wrongly interpreted the position of the appellant as an employee of the respondent and as a member of its Board of Directors, by concluding that the duties and obligations which the appellant was found to have violated were those emanating from his capacity as an employee and not as a member of the Board of Directors of the respondent company.

It has been argued that his duties as an employee did not include the keeping and operation of the account for C£2,000.- but that sum was part of his duties as one of the directors of the respondent company. In support of this proposition we were referred to the finding of the trial Court that the appellant as an employee was responsible for the transport of the petrol products. In our view the trial Court rightly found that the keeping and operation of this account was also part of his

duties as an employee as the responsibility for the transport of petrol products referred to by the Court was not the only duty that the appellant did as an employee of the company. This being so, the duties of the appellant were not misinterpreted by the trial Court which correctly approached this matter.

The second question is that the trial Court was wrong in concluding that the instructions given by Ioannis Makris were instructions and directions of the respondent company. It was argued that what transpired at the meeting of the Board of Directors of the 27th October and in particular the invitation to the appellant to inspect the accounts of the company was in accordance with the provisions of section 141(3) of the Companies Law, Cap. 113, a matter that could only be addressed to a Director and not an employee of a company. We do not agree with that view. The said section refers to the powers of inspecting the books of accounts of a company which had to be kept at its registered place or such other place as the directors think fit and that those accounts are open for inspection by the directors. This provision regarding the place of keeping and availability of company accounts for inspection by its directors, has nothing to do with what took place at the aforesaid meeting where the accounts were made available to the appellant and he was invited to inspect them so that he would verify that the C£2,000.- or any other sum connected with it, standing to his credit in the deposit account with the Cyprus Popular Bank Ltd., was not debited to his personal account with the respondent company. We, therefore, find that this question cannot be answered in favour of the appellant.

The third question is that the respondent company waived its rights for dismissing the appellant because of the contents of the letter of the 11th November sent to him and which, as reproduced in the statement of facts, reads as follows:-

> "To-day I was informed that you had a motor car accident with motor vehicle FM.898 and you acted on your own initiative without notifying me and you sent the car to the Peagout garage for repair since the 13th November, 1978. A long time ago I sent you a registered letter by which I was informing you that I do not recognize any expenses which do not come in time to my knowledge and that I am the one entitled to give orders as to where

and how a vehicle will be repaired. On account of this, the company has no obligation whatsoever to pay any expenses for the said vehicle and I draw your attention that if this is repeated you will be dismissed from its employment and the vehicle will be taken away from you".

Stress was laid to the last sentence of the aforesaid letter which we were asked to consider as a waiver of the right of the respondent company to dismiss the appellant. We do not subscribe to that view, that was a letter referring to unauthorized repairs of a vehicle and expenses incurred in connection thereto and had nothing to do with other differences and in particular the complaint of the respondent company regarding the refusal of the appellant to refund the C£2,000.- entrusted to him, which refusal, together with his disobedience of instructions of the Management and his continuous absence from work, was the ground for the termination of his services as set out in the letter of the 20th November, 1978. This question, therefore, cannot be answered in favour of the appellant and this case is sent back to the Industrial Disputes Court with the aforesaid answers which in effect affirm its judgment.

Appellant to pay also the costs of this appeal.

Appeal dismissed with costs