

1985 March 29

[TRIANTAFYLIDIS, P., L. LOIZOU, LORIS, JJ.]

PANGYPRIA ETERIA ARTOPION LTD.,

*Appellant,*

v.

ELENI AGAPIOU.

*Respondent.**(Case Stated No. 195).*


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*Termination of Employment Law, 1967 (Law 24/67 as amended)—Dismissal without notice—For repeated contraventions of the rules of employment and for failure to carry her work in a reasonably efficient manner—Sections 5 (στ) (v) and 5 (a), respectively of the Law—Employee could not avail herself of the benefits envisaged by section 9(i) (γ) of the Law.* 5

The respondent, who was in the employment of the appellants, was dismissed by them without notice. Following her dismissal she applied to the Industrial Disputes Tribunal claiming payment of wages in lieu of notice or damages for wrongful or unjustified dismissal, under sections 9 and 3 of the Termination of Employment Law, 1967 (Law 24/67 as amended). The Tribunal held that respondent was guilty of conduct envisaged by s. 5(a) and 5 (στ) (v)\* of Law 24/67 and further held that “notice” was required for her dismissal and awarded to her the sum of £93.60 representing four weeks wages in lieu of notice of dismissal pursuant to the provisions s. 9(i) (γ) of the Termination of Employment Law, 1967 (Law No. 24/67 as amended by s. 4 of Law 92/79). 10 15 20

Upon appeal by the employers, by way of case stated, the following question was posed for consideration: “Did the Court rightly or wrongly apply s. 9(i) (γ) of the Termination of Employment Law, 1967 (Law No. 24/67 as amended by s. 4 of Law 92/79).”

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\* The relevant sections are quoted at pp 198-199 post.

nation of Employment Law, 1967 (24/67), having found that the applicant had committed repeated contraventions of the rules of employment 5 (στ) (v) and failure to carry out her duties efficiently 5 (a)?"

- 5           *Held*, that once the Tribunal has held that the respondent had committed repeated contraventions of the rules of employment as provided by s.5 (στ) (v) and has failed to carry out her work in a reasonably efficient manner as envisaged by s. 5(a) this Court cannot see how the respondent  
10 could avail herself of the benefits envisaged by s. 9(i) (γ) of the Law (see; also, sections 3 and 5 of Law 24/67 as amended); and that, accordingly, the appeal must be allowed.

*Appeal allowed.*

15 **Case stated.**

- Case stated by the Chairman of the Arbitration Tribunal relative to his decision of the 31st January, 1984 in proceedings under sections 3 and 9 of the Termination of Employment Law, 1967 (Law No. 24/67) instituted by  
20 Eleni Agapiou against Pangypria Eteria Artopion Ltd. whereby the sum of £93.60 was adjudged to the applicant as wages instead of four week's notice under section 9(1)(c) of Law 24/67.

*X. Clerides*, for the appellant.

- 25           *M. Pierides*, for the respondent.

*Cur. adv. vult.*

TRIANAFYLLIDES P.: The judgment of this Court will be delivered by Loris, J.

- LORIS J.: This is an appeal, by way of case stated, from  
30 the decision of the Industrial Disputes Tribunal, whereby the appellant company was adjudged to pay £93.60 wages in lieu of notice for wrongful or unjustified dismissal of the respondent pursuant to the provisions of sections 9 and 3 of the Termination of Employment Law, 1967 (Law No.  
35 24/67) as amended.

The appellant is a limited company manufacturing

bread; the respondent was employed by the appellant company at about June 1979, as a labourer and continued in their employment up to 28.5.82 when she was dismissed by the appellants without notice.

The respondent applied to the Industrial Disputes Tribunal claiming payment of wages in lieu of notice, or damages for wrongful or unjustified dismissal, under sections 9 and 3 of the termination of Employment Law 1967, as amended. 5

The appellants defended the aforesaid application relying on facts which allegedly were bringing the aforesaid termination of employment within the ambit of the provisions of s. 5(a), (στ) (i) (iii) and (v) of Law 24/67 so that such a termination of employment would not give rise to compensation. 10 15

The relevant provisions of section 5 referred to above read as follows:

“5. Termination of employment for any of the following reasons shall not give rise to a right to compensation: 20

(a) Where the employee fails to carry out his work in a reasonably efficient manner:

Provided that temporary inability to work due to sickness, injury, maternity or disease shall not be construed as falling within this paragraph; 25

.....  
(e) where the employee so conducts himself as to render himself liable to dismissal without notice:

Provided that where the employer does not exercise his right of dismissal within a reasonable period following the matter which gave rise to this right, he shall be deemed to have waived his right to dismiss the employee; 30

(στ) without prejudice to the generality of the immediately foregoing paragraph, the following may, inter alia, be grounds for dismissal without notice, 35

all the circumstances of the case being taken into consideration:-

- 5 (i) any conduct on the part of the employee which makes it clear that the employer-employee relationship cannot reasonably be expected to continue;
- (ii) . . . . .
- (iii) commission by the employee in the course of his duty of a criminal offence without the agreement, express or implied, of his employer;
- 10 (iv) . . . . .
- (v) serious or repeated contravention or disregard of works or other rules in relation to the employment.”

The Industrial Disputes Tribunal after hearing the evidence made the following findings of fact:

15 The respondent who was employed as a labourer in the factory of the appellants but her main work was cleaning, was not performing her duties satisfactorily and on two occasions (9.10.81 and 10.2.82) she was warned in writing that she would be dismissed if she did not improve.

20 The respondent had defied on more than two occasions the rules of the appellants who had issued at least two circulars (the last one on 21.11.81) addressed to all members of the staff forbidding inter alia, the possession of any of the products of the company other than an ordinary loaf  
25 of bread, to which they were entitled, and which was issued to them by the company.

The respondent about a month prior to her dismissal was found in possession of a brown loaf of bread which she was entitled to possess and another loaf of a different  
30 kind of bread which she was not entitled to possess according to the rules of the factory.

The day prior to her dismissal the respondent was found in possession of a white loaf of bread she was not entitled to possess in addition to another brown loaf she was entitled to possess.  
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The Tribunal held that the appellants failed to establish that the respondent stole a loaf of bread from the factory and rejected the allegation of the appellants that the respondent had committed a criminal offence in the course of her duty, rejecting thus the defence of the appellant under s. 5 (σ) (iii) of the Law. 5

The tribunal relying on the facts as then accepted by him, held that the respondent was guilty of conduct envisaged by s. 5(a) and 5(σ) (v) of Law 24/67 but nevertheless proceeded further and held that "notice" was required for her dismissal taking into consideration that the offence of stealing which constituted the decisive ground for the immediate termination of her employment was not proved and awarded to the respondent the sum of £93.60 representing four weeks wages in lieu of notice of dismissal pursuant to the provisions of s. 9(i) (γ) of the Termination of Employment Law (Law No. 24/67) as amended by s. 4 of Law 92/79. 10 15

The single question which was posed by the Industrial Disputes Tribunal in the present case stated, is the following: 20

"Did the Court rightly or wrongly apply s.9(i)(γ) of the Termination of Employment Law 24/67, having found that the applicant had committed repeated contraventions of the rules of employment 5(σ) (v) and failure to carry out her duties efficiently 5(a)?" 25

With respect the answer is to be found in the combined effect of sections 3 and 5 of Law 24/67. Section 3 as amended by Law 92/79 reads as follows:

"3 (1) When, on or after the coming into operation of the present section, the employer terminates for any reason other than a reason stated in s. 5 the employment of employee who has been continuously employed by him for not less than twenty-six weeks the employee shall have a right to compensation calculated according to the first schedule..." 30 35

And section 5 already cited above clearly states that "termination of employment for any of the following reasons

shall not give rise to a right of compensation.”

5       Once the Tribunal has held that the respondent had committed repeated contraventions of the rules of employment as provided by s. 5 (σ) (v) and has failed to carry out her work in a reasonably efficient manner as envisaged by s. 5 (a) we cannot see how the respondent could avail herself of the benefits envisaged by s. 9 (i) (γ) of the Law.

10       This is the answer of this Court on the single question posed which in effect means annulment of the decision of the trial Court; the case is remitted to the trial Court for the necessary action.

For the above reasons this appeal by way of case stated succeeds for the reasons stated in this judgment; the respondent to pay the costs of this appeal.

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*Appeal allowed.  
Case remitted to  
trial Court.*