

1985 March 29

[TRIANTAFYLIDIS, P., LORIS, STYLIANIDES, JJ.]

CHRISTODOULOS K. GLYKIS,

Appellant,

v.

THE MUNICIPAL COMMITTEE OF NICOSIA,

Respondents.

(Case Stated No. 185).

Practice—Case stated—Industrial Disputes Tribunal—No findings of fact by trial Court—And questions of Law, on which the opinion of the Supreme Court was sought not formulated clearly—Court of Appeal unable to pronounce on the questions posed—Case remitted to trial Court to be reframed—Regulation 17(2) of the Arbitration Tribunal Regulations, 1968. 5

This was an appeal, by way of case stated, against a decision of the Industrial Disputes Tribunal. The case was stated under the provisions of regulation 17(2) of the Arbitration Tribunal Regulations, 1968 (as amended) which provides that a case stated shall be formulated according to Form 5; and paragraph 3 of Form 5 provides as follows: "The facts found by me were." The trial Court, inserted a lengthy text containing a narration of the evidence without findings of fact; and the questions on which the opinion of the Court was sought were not clearly formulated. 10 15

Held, that para. 3 of Form 5 requires the trial Court to make and record his findings of fact; that such requirement is not a mere formality; that it is a substantial ingredient of the case to be stated because the trial Judge has the opportunity of hearing the witnesses and watching their demeanour in the witness box and it is entirely within his province to evaluate the evidence adduced and make his findings of fact; that, further, the trial Court who seeks the 20 25

5 opinion of this Court, in a case stated, must formulate clearly the specific questions for which the opinion of this Court is sought; that this Court is unable to pronounce on the questions posed because of the failure of the trial Court to make any findings of fact and the vague way, in which the questions of Law were formulated; and that, therefore, there is no other alternative, but to direct that the case be remitted back to the trial Court and be re-framed as indicated in this judgment.

10 *Order accordingly.*

Cases referred to:

Christofides Ltd. v. The Fund of Redundant Employees
(1978) 1 C.L.R. 204;

Constantinidou v. Woolworth (1980) 1 C.L.R. 302.

15 **Case stated.**

Case stated by the Chairman of the Arbitration Tribunal relative to his decision of the 16th July, 1981 in proceedings under sections 3 and 9 of the Termination of Employment Law, 1967 (Law No. 24/67) instituted by
20 Christodoulos K. Glykis against the Municipality of Nicosia whereby applicant's application against the termination of his employment was dismissed.

E. Efsthathiou, for the appellant.

K. Michaelides, for the respondent.

25 *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, directed against the decision of the Industrial Disputes
30 Tribunal (established under the Annual Holidays with Pay Law, 1967—Law 8/67, as amended by Law 5/73), whereby the application of the appellant was dismissed, the Tribunal having held that the termination of the employment of the appellant was made pursuant to the cumulative effect of grounds envisaged by s. 5(στ) (i) and
35 (v) of the termination of Employment Law, 1967 (Law

No. 24/67 as amended) which are grounds for dismissal without notice.

The case was stated under the provisions of rule 17(2) of the Rules of Procedure (which have been retained and they are still applicable by virtue of the provisions of s. 7 of Law 5/73) appearing in the appendix of the Arbitration Tribunal Regulations 1968, which with the exception of their appendix have been abolished by virtue of s. 7 of Law 5/73. 5

Rule 17(2) thereof provides that a case stated shall be formulated according to Form 5 which appears in the appendix (page 157). 10

Paragraph 3 of Form 5 states clearly: «Τα διαπιστωθέντα υπ' εμού πραγματικά γεγονότα ήσαν». That is, it requires the trial Court to make and record his findings of fact. Such requirement is not a mere formality; it is a substantial ingredient of the case to be stated because the trial Judge has the opportunity of hearing the witnesses and watching their demeanour in the witness box; it is entirely within his province to evaluate the evidence ad- 15
duced and make his findings of fact; these findings of fact, which must be clear and unequivocal will be used in due course by this Court who has not before it the witnesses. 20

The trial Court in this particular instance inserted a lengthy text containing a narration of the evidence without findings of fact. 25

Such absence of findings of fact renders our task impossible, because it must always be borne in mind, that under s. 12(13) (b) (ii) of the Annual Holidays with Pay Law 1967 (as set out in s. 3 of Law 5/73) a case stated to this Court lies only on a question of law and we are not in a position to decide on the law unless all the factual issues are resolved by the trial Court. 30

We repeat, mere narration of the evidence is of no help; the trial Court who has the opportunity to hear and see the witnesses has to evaluate their evidence and make his findings of fact. 35

On the other hand the trial Court who seeks the opinion of this Court, in a case stated, must formulate clearly the specific questions for which the opinion of this Court is sought.

5 The importance of such formulation has been repeatedly emphasized.

In the case of *Christofides Ltd. v. The Fund of Redundant Employees* (1978) 1 C.L.R. 204 the following observations were made:

10 "We avail ourselves of this opportunity to point out for the guidance of the Courts and Tribunals that it is absolutely necessary that when asked under the Law to state a case, the specific questions for
15 which the opinion of this Court is sought, must be clearly and separately set out so that the very purpose of stating a case, i.e. of having well defined legal issues, can be achieved..."

In the case of *Constantinidou v. Woolworth* (1980) 1 C.L.R. 302 it was pointed out "that it is very desirable
20 that in a case stated the question submitted for the decision of this Court should be clearly formulated and embodied in the submission of the case as not all grounds of appeal raised by counsel are necessarily points that can be raised by way of a case stated under the law."

25 Very recently in Case Stated No. 184 (judgment delivered on 29.11.84—still unreported)* similar observations were made and the case was sent back to the trial Court to be dealt with accordingly.

30 A glance at the formulation of the questions in the present case stated, indicates that the questions posed are far from being clear.

35 Having given to the matter our best consideration we have unhasitatingly come to the conclusion that we are unable to pronounce on the questions posed because of the failure of the trial Court to make any findings of fact, and

* Reported as *Patikkis v. Municipal Committee of Nicosia* (1984) 3 C.L.R. 802.

the vague way, in which the questions of law were formulated.

In the result, we have no other alternative, but to direct that the case be remitted back to the trial Court and be reframed as indicated in this judgment.

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In the circumstances we make no order as to costs.

Order accordingly.