

1986 January 30

[PIKIS, J.]

NIKITAS CHALARIS,

Plaintiff,

v.

M/V "VANESSA" OF HONDOURAS,

Defendant.

(Admiralty Action No. 329/84).

Admiralty—Admiralty action for recovery of balance of wages under a contract of employment and compensation for premature termination of said contract—Highly conflicting versions—Outcome depended on evaluation of the conflicting evidence adduced before the Court.

5

The plaintiff in this action claims the recovery of the balance of wages and other emoluments allegedly due to him by the defendants under a contract of employment and compensation for the alleged premature termination of the said contract and damages incidental thereto.

10

Apart from the fact that the plaintiff was employed by the defendants as engineer on the defendant ship, everything else was disputed. There was disagreement as to the plaintiff's agreed emoluments. The plaintiff alleged that his monthly salary was agreed at 1,200 U.S. Dollars per month plus a war zone bonus had been agreed for so long as the ship was in Lebanese territorial waters, whereas the defendants' position was that the plaintiff's salary was agreed at 100,000 drachmas per month, all inclusive. There was disagreement as to the circumstances of the termination of the employment and as to terms of a settlement of the plaintiff's claim reached after such termina-

15

20

tion. According to the petition everything was settled and what remained to be done was satisfaction of the amount due, namely an amount equivalent to £6,000, whereas in accordance with the defendants' version all the plaintiff's claims had been settled by the payment to him of 2,000 U.S. Dollars. 5

The outcome of this case depended on the evaluation of the evidence before the Court.

The Court having considered the totality of the evidence before it, made the following findings, namely: 10

- (a) The monthly salary of plaintiff was agreed at 100,000.- drachmas, all inclusive. There was no agreement as to the payment of any additional amount to plaintiff.
- (b) Plaintiff left the ship on his own volition thereby bringing to an end his employment with the defendants. 15
- (c) Accounts between the parties were finally settled as stated by Mr. Svingos i.e. one of the two partners who own the defendant ship and recorded in Exhibit 5.

Held, that in the light of the above findings the action has to be dismissed. 20

Action dismissed with costs.

Admiralty Action.

Admiralty action for the recovery of the balance of wages and other emoluments due under a contract of employment and premature termination of the agreement and damages incidental thereto. 25

D. Socratous (Mrs.) for A. Theophilou, for the plaintiff.

B. Vassiliades, for the defendant.

Cur. adv. vult.

PIKIS J. read the following judgment. This is an admiralty action for the recovery of the balance of wages and other emoluments due under a contract of employment and compensation for premature termination of the agreement and damages incidental thereto. The case was hotly contested. 5
Aside from the fact that plaintiff was employed by the defendants between 1.6.1984 to 3.9.1984, as engineer on the defendant ship, a small vessel, that is common ground, everything else is disputed. There was disagreement about 10
the terms and duration of the employment as well as the circumstances surrounding the termination of it. Rival contentions were advanced as to the terms of the contract of employment, the subject of an oral agreement ultimately turning on the credibility of the parties and their witnesses. 15
Respecting the termination of employment, the story is somewhat different in view of the production by the defendants of a note evidencing a settlement of the account between the parties. If this note is accepted as authentic the case for the plaintiff collapses for it records a final 20
settlement of the account between plaintiff and defendants. Plaintiff disputed its genuineness and questioned its provenance. In answer to the plaintiff, defendants produced a number of documents allegedly signed by the plaintiff in order to reinforce their case that the relevant receipt, 25
namely, Exhibit 5, was genuine; while the plaintiff supplied specimens of signature, notably Exhibit 3, in order to facilitate comparison by a hand-writing expert.

The case for the plaintiff, as defined in the petition with regard to the terms of employment is as follows: His 30
monthly salary was fixed at US\$1,200.- all inclusive, plus a war zone bonus for so long as the boat was in Lebanese territorial waters. Its rate was to be 125% the monthly salary, calculated pro rata for any period the ship was at bay in the Lebanon. The ship was carrying cargo from 35
Cyprus to Lebanon. The bonus was agreed by reference to the Collective Agreement regulating the remuneration of seamen in Greece. Further he would be entitled to eight

days rest for every month of work or to the payment of a corresponding amount of remuneration in lieu thereof, if required to work. The agreement was of an indefinite duration.

Early in September 1984, the defendants terminated the contract without notice or forewarning. His services were dispensed with, as averred in the petition, for the stated reason that the ship ran out of business and would on that account stop sailing for some time. Following termination, Mr. Svingos, one of the two partners who own the defendant vessel, paid him a sum of US\$2,000.- towards the monies due to him undertaking, on behalf of defendants to pay the balance later on in Greece. According to the petition everything was settled and what remained to be done was satisfaction of the amount due. The defendants failed to settle the account, a refusal that necessitated the institution of the present action for the recovery of his due. He claims:

- (a) 147,000.- drahmas, balance of wages. 5
- (b) 476,000.- drahmas, war zone bonus. 20
- (c) C£206.- repatriation expenses.
- (d) 219,600.- drahmas, agreed or reasonable remuneration for termination of employment. 15

The claim totals, as we have been told, the equivalent of about C£6,000.- 25

Defendants denied plaintiff's case and any indebtedness to him. Their version respecting the terms of the contract of employment and the circumstances surrounding the end of it, are wholly different from that of plaintiff. In their contention the agreed salary was 100,000.- drahmas per month, all inclusive. The contract was stipulated to be of short duration, for a period of two to three months. The services of the plaintiff were expressly engaged for that long to relieve one of the partners, the engineer of the 30

ship, to attend to some personal business. Plaintiff left the employment of defendants voluntarily early in September, an arrangement compatible with the plans of plaintiff to go ashore with his wife and daughter who accompanied him, in order for the latter, a girl of about 12, to resume her school studies later in September. Before leaving the parties settled accounts and exhibit 5, signed by the plaintiff and lodged with the Captain, evidences the settlement reached. If accepted as genuine, it contradicts the story of the plaintiff to the core, both in relation to the terms of employment and the circumstances surrounding its termination.

Before I make reference to conflicting evidence on the issues in dispute, it is opportune to notice certain discrepancies between the pleaded case of the plaintiff and that developed in evidence before me. While in the petition it is alleged defendants terminated his contract for lack of business, plaintiff stated in evidence that his services were dispensed with in order to allow Mr. Svingos to resume duties of engineer on the boat. Despite repetition of the claim for repatriation in the writ of summons and the petition, it was withdrawn while plaintiff was giving evidence for the reason it had been wrongly inserted by the mistake of counsel.

Contrary to the allegation in the petition that a war bonus had been negotiated and agreed by reference to the collective agreement, the said agreement is totally silent on the subject of payment of a war bonus (exhibit 2). When confronted with the contradiction of his case, his explanation for the discrepancy was none too satisfactory, confining his answer to the assertion that the agreement in question was subject to its special terms. It is worthy of notice that the rate of remuneration prescribed in the collective agreement in question for engineers, depending on their status, is 58,000.- and 46,000.- drachmas respectively, a rate far below the remuneration agreed in this case, whichever version is accepted as correct.

The opposing versions as to the terms of employment

and the facts relevant to termination of employment derive mostly from the evidence of the plaintiff and the two partners who own the defendant ship, Mr. Svingos and Mr. Chaliatsos. I had the opportunity to hear their oral testimony and watch them giving evidence. Further I directed my mind afresh to the facts of the case reading the notes of evidence at the end of the case, a necessary task in order to see how individual parts of evidence fit in the pattern of the case. No benefit would derive from reproducing the evidence or any particular aspect of it. On the whole plaintiff and the two partners supported the case they proffered before the Court. On the other hand I consider it pertinent to direct attention to certain parts of his evidence, because of the light they tend to shed on the veracity and accuracy of the allegations of witnesses.

I find the allegation of plaintiff that defendants paid him the relatively large sum of US\$2,000.- without requiring him to sign a receipt rather improbable; but of course improbable things happen too. Earlier we noted discrepancies between the version of the plaintiff as adumbrated in the petition and that advanced in evidence regarding the termination of his employment. A third version appears in the affidavit of the plaintiff sworn to before the Greek judicial authorities (exhibit 8), apparently made in order to premise accusations against the defendants about alleged mal-practices in the employment of seamen. In this document the suggestion is made that plaintiff left the employment of defendants on account of persistent refusals to pay the wages due to him, to his wife and fellow seamen. Counsel for the plaintiff submitted, little weight should be attached to this affidavit in view of the failure of defendants to confront him with its content. Nevertheless, one cannot overlook the unqualified nature of the statement made in exh. 8 in this respect and the solemnity of the occasion on which it was made. I find it difficult to see how anyone could reconcile the allegations put forward in the affidavit about the facts relevant to the termination of his employment with the allegations made in evidence and those put

forward in the petition. That the wife and daughter of plaintiff accompanied him on his trip constituted, in the suggestion of Mr. Svingos, living evidence of the absence of war or warlike operations in Lebanese territorial waters. 5 Armed conflict was, as he stated, confined to land, mostly involving skirmishes between rival militias.

An alleged discrepancy in the case for the defendants, to which attention was drawn by counsel for the plaintiff, arises from comparison of the content of exhibit 5 and the 10 evidence for the defendants relevant to the rate of remuneration agreed. The sum allegedly paid to the plaintiff, 360,000.- drahas, exceeds the amount due according to the defendants under the contract of employment; also the details of the particular payments do not reconcile with 15 some of the payments known to have been made. Mr. Svingos explained that as plaintiff drew more than was due to him, they thought fit to settle matters at that figure and thus bring the contract of employment to a happy end.

Oral and documentary evidence was directed towards 20 eliciting the genuineness of exhibit 5. Exhibit 5, if accepted as an authentic expression of the settlement of the parties, not only supports the case for the defendants as to the existence of a final settlement, but corroborates by enlarge their case as to the terms of the contract of employment. 25 Mr. Svingos testified that when plaintiff signified his wish to leave their employment they went through accounts on the bridge of the ship, filled in and signed exhibit 5 and subsequently the two of them delivered it to the Captain of the ship for entering in the ship records. Plaintiff, though 30 agreeing that a settlement had been reached, it was of a wholly different content resulting in the payment of the unreceipted amount of U.S. \$2,000.- and the promise of the defendants to pay the balance in Athens. In his contention exhibit 5 is a fabricated document. To support 35 their case for the genuineness of exhibit 5, defendants produced a number of documents allegedly in the signature of the plaintiff bearing mark of the similarity with the signature attributed to the plaintiff in exhibit 5. These documents

consist of invoices recording the purchase of goods and material on behalf of the defendants allegedly signed by the plaintiff, bundled together as exhibit 7. Another document proffered for the same purpose is exhibit 6, a receipt from hotel "Continental" in Limassol, signed by the plaintiff. Plaintiff was on the whole vague in answering questions designed to elicit whether he signed the above documents. Excepting exhibit 7(C), the signature on which he wholly disowned, his answers with regard to the remaining documents were equivocal. His response was mostly "No" "I doubt it" (amfivalo).

At the request of the defendants the documents under exh. 5 and exh. 7 were submitted to a handwriting expert, Mr. Georghiou (P. W. 2), with a view to detecting similarity between them and marks, if any, of forgery. As stated in his report (exhibit 4), adopted in evidence, he was unable to offer a concluded opinion with regard to the first question on account of the roughness of the signatures and the illegality of any letter of the alphabet. However, there were no signs of guidelines stoppages or tremble or other signs giving rise to a suspicion that the signature of someone was copied or imitated. However, he could come to no definite conclusions. On the other hand, the signatures appended to the above documents bore no similarity to the specimens of signature specifically supplied by the plaintiff for purposes of comparison, exhibit 3. In the submission of counsel for the defendants little should be made of this fact considering that the specimen signatures were supplied with foreknowledge of the purpose for which they were inscribed.

Plaintiff expressed similar reservations to those relating to the documents under exhibit 7 respecting the genuineness of his signature on exhibit 6, the hotel receipt. It is significant, however, that in the case of exhibit 6 we have direct evidence from Ioannis Dorotheou (D.W.2) that plaintiff signed the receipt in his presence. I accept the evidence of Mr. Dorotheou as both truthful and accurate and find that plaintiff did, as a matter of fact, sign exhibit

6. Great as the temptation is to attempt a comparison between the signature on exhibit 6 and those of the documents making up exhibit 7 and exhibit 5, I shall avoid the pitfall. But I cannot overlook the equivocations of the plaintiff whether he did sign this document or the similarity of his reservations to those expressed in relation to most of the documents under exhibit 7. If the signature on exhibit 6 was, as I find it was, his own, why did he fail to identify it? He had recollection of the fact that he stayed at the hotel on the night recorded in exhibit 6. Must I assume, considering my finding in relation to exhibit 6, that he finds it hard to recognize his own signature or must I find he has an inclination to refuse to admit facts unpalatable to him?

15 Although conflicting testimony was adduced about what happened at the end of the employment of the plaintiff, both Mr. Svingos and the plaintiff agreed they went through accounts and settled them. The material difference between the evidence of the two is that they advanced differing accounts as to what was agreed. According to plaintiff no record was kept of the settlement reached nor was any receipt demanded for the payment of U.S.\$2,000.- to him. Mr. Svingos testified, as mentioned, that their agreement ended with the settlement of the account and the execution of exhibit 5. In the first place I consider it unlikely that as large a sum as U.S.\$2,000.- was paid to the plaintiff in cash without acknowledgement of the payment. The account of Mr. Svingos is supported by an affidavit of Captain of the ship produced in evidence on account of his disappearance at sea. I agree with counsel for the plaintiff that in the absence of opportunity to cross-examine, little weight can be attached to this document. And had it been the only evidence supporting the genuineness of exhibit 5, I would be unwilling to rest my finding on its content. However I accept the evidence of Mr. Svingos as to the circumstances preceding and accompanying its signing.

At the end, having carefully addressed myself to the totality of the evidence before me, I make the following findings I find that:

- (a) The monthly salary of plaintiff was agreed at 100,000.- drachmas, all inclusive. There was no agreement as to the payment of any additional amount to plaintiff.
- (b) Plaintiff left the ship on his own volition thereby bringing to an end his employment with the defendants. 5
- (c) Accounts between the parties were finally settled as stated by Mr. Svingos and recorded in exhibit 5.

In the light of my above findings, the case for the plaintiff fails. It is dismissed with costs. 10

Action dismissed with costs.