1986 June 17

[PIKIS, J.]

COSTAS IOANNOU,

Plaintiff,

v.

M. V. "SOL CHRISTIANA",

Defendant.

(Admiralty Action No. 324/85).

The Merchant Shipping Law 46/63—Ss. 25(1) and 25(2)—Object of legislature in enacting s. 25(2)—Statutory obligation thereunder not exonerated by the payment to the seaman of a substantial part of what was owing to him upon termination of his employment or dismissal—"Reasonable excuse"—Meaning of—Ultimately a question of fact—Refusal of seaman to accept payment in full settlement of his claims—Not a reasonable excuse for not paying to him in full the total amount due to him.

Words and Phrases: "Reasonable excuse" in s. 25(2) of The Merchant Shipping Law 46/63.

The plaintiff in this action claims £125 balance of wages due, damages for wrongful dismissal quantified at £1,350 and damages for unreasonably withholding money due to the plaintiff claimed under s. 25(2) of Law 46/63.

Apart from the fact of plaintiff's engagement aboard the defendant ship beginning on 10.7.85 and his dismissal on 23.8.85, everything else was disputed. Plaintiff's remuneration, the duration of the agreement, other terms of employment and the reasons of plaintiff's dismissal were matters in issue. The determination of the said issues depended on the evaluation of the credibility of the witnesses who testified before the Court.

The Court, having evaluated the credibility of such witnesses, believed the version of the witnesses for the

defendants, and as a result made the following findings, namely that the salary of the plaintiff was £400 per month and that the plaintiff was dismissed for persistent default in his duties sufficiently material to justify his dismissal. The sum owing to the plaintiff at the time of his dismissal representing balance of wages was £239. As, however, the plaintiff was unwilling to accept that amount in full settlement, he was only paid at the time of his dismissal £200 on account. In a week's time the defendants offered to the plaintiff the balance of £39, but the latter refused to accept it.

Held, (1) Section 25(2) of Law 46/63 casts a statutory obligation on the Captain or the shipowner to pay twice the daily remuneration of a seaman for as long as they are in default of paying him the monies owing to him upon termination or dismissal (s. 25(1)), unless they have a reasonable cause for the non-discharge of this obligation.

It must be noticed that subsection 2 refers to the payment of the sum total of the money owing and, therefore, payment of a substantial part thereof does not exonerate them of their said statutory obligation.

(2) "Reasonable cause" is not synonemous with a cause valid in law, that is, a cause exonerating the employer from his obligation to pay the money for any period of time. It includes every cause that is in good sense reasonable in the particular circumstances. Whether the excuse is reasonable in any given case is ultimately a question of fact.

(3) In this case the excuse for not paying to the plaintiff the full amount owing to him (C£239) was his refusal to accept such amount in full settlement of his claims. This is not a "reasonable excuse" in the sense of s. 25(2). It follows that for the period as from the plaintiff's dismissal until the offer of the balance of £39 was made to the plaintiff the defendants should pay to him double his daily wages amounting to £13.35 per day, that is, a sum of £186.90.

In addition they have to pay the £39.- balance of wages due as aforesaid.

Judgment for the plaintiff for £225.90. No order as to costs.

Admiralty Action.

Admiralty action for £125.- balance of salary and/or wages due and for damages for wrongul dismissal and damages for unreasonably withholding money due to plaintiff claimed under the provisions of section 25(2) of the Merchant Shipping Law, 1963 (Law No. 46 of 1963).

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

N. Pirillides,, for the defendant.

Cur. adv. vult.

PIKIS J. read the following judgment. The two undisputed facts in the proceedings are the engagement of plaintiff by the defendants as third engineer for service aboard vessel "SOL CHRISTIANA" beginning on 10th July, 1985, and his dismissal on 23rd August, 1985. His remuneration, duration of the agreement and other terms of employment are in dispute; also the reasons for his dismissal. Upon resolution of these facts turns the outcome of plaintiff's action for recovery of-

(a) £125.- balance of salary and/or wages due;

(b) Damages for wrongul dismissal quantified in the petition as equivalent to three months salaries, viz. £1,350. The equivalent of three months salaries is claimed notwithstanding the fact that plaintiff found fresh employment two months after his dismissal; and

(c) Damages for unreasonably withholding money due to the plaintiff claimed under the provisions of s. 25(2) of the Merchant Shipping Law—46/63.

The determination of the issues revolves almost exclusively on the credibility of the witnesses, namely, the plaintiff who testified in support of his case and the three witnesses who gave evidence for the defendants, Manolis Kouloumas, a director of defendants in charge of personnel, Andreas Koupepides, the chief engineer of the company owning the defendant vessel at the time and Georghios Poullakos, the first engineer of "SOL CHRISTIANA" at

the time of the employment of the plaintiff. As the written contract of employment purporting to embody the terms of the agreement between the parties was never signed because of differences respecting the height of the salary of plaintiff, conflicting oral testimony was received to elucidate this aspect of the case as well. The agreement was reached on 9th July at the offices of the company at Limassol but owing to pressure of work and the urgency of the plaintiff and fellow seamen leaving for Spain to board "SOL CHRISTIANA", the execution of the written agreement was postponed until the following day or two. As a matter of fact, the agreements were written out and despatched for execution by Mr. Koupepides, who accompanied the team to Spain. Because of differences as to the height of the salary of the plaintiff the agreement was never executed.

Plaintiff alleged in evidence that the written contract failed to record the agreement of the parties concerning the rate of his monthly remuneration. It stipulated for a sum of £400.- whereas the agreement was for £450.- He was encouraged, he testified, not to sign the written agreement and seek its rectification by Mr. Koupepides, the person who introduced him to the defendants for employment. Mr. Koupepides refuted every suggestion that the monthly remuneration of plaintiff was anything other than the amount recorded in the agreement, viz. £400. It was through the mediacy of Mr. Koupepides that plaintiff was employed by the defendants. Plaintiff contended that from his start Mr. Koupepides told him his remuneration would be £450.- per month, whereas Mr. Koupepides stated in evidence this was not so. He informed plaintiff that the post of third engineer—the position plaintiff was interested to occupy—was remunerated at the rate of £400.- or £450.- per month, depending on whether the engineer was qualified or unqualified. Plaintiff and Mr. Koupepides agreed that the employment of plaintiff and the precise rate of his remunation were left over to be agreed the following day on a visit to the offices of the defendants. Plaintiff testified the agreement was for a period of 7 months.

The meeting took place the following day at the office of Mr. Kouloumas, in the presence of the wife of the plain-

tiff and Mr. Koupepides. Plaintiff asserted the understanding he reached the previous day with Mr. Koupepides about his salary was confirmed and it was agreed at £450.- per month. Mr. Kouloumas claimed otherwise and testified that the agreement reached was for £400.- in accordance with the scales approved by the company for the remuneration of third engineers, namely, £400.- for unqualified engineers and £450.- for qualified engineers. As the plaintiff had no qualifications other than previous experience, he ranked as unqualified and his remuneration was agreed at £400.- The evidence of Mr. Koupepides is to the same effect. The latter is no longer in the employment of the defendants as he has temporarily retired. It is, however, in his contemplation to seek employment anew after a proper rest, not necessarily with the defendants or any particular firm, though he did not exclude the possibility being re-employed by the defendants.

Notwithstanding the importance attached by plaintiff in his evidence to a Nautical Certificate issued him by the Greek authorities, he has no qualifications in engineering other than the practical experience he gained in previous service at sea. As it transpired from the evidence of defence witnesses, the aforementioned Nautical Certificate signifies nothing other than the fitness of the holder to serve at sea. Therefore, he could not, by any standard, be regarded as possessing formal qualifications in engineering. According to Mr. Kouloumas he rested his claim for a revision of salary on the fact that fellow third engineers were remunerated at £450.- per month despite the fact that they were similarly unqualified. The witness took pains resisting the claim of the plaintiff to explain to him their salary was increased to £450.- on account of length of service. Plaintiff maintained his differences with the defendants regarding the terms of his employment were not confined to the rate of his remuneration but to the daily hours of work as well being unwilling to serve longer than eight hours; unlike the Philippinese fellow seamen he was unprepared to do longer service than 12 hours a day.

The relationship of plaintiff with the defendants was an unhappy one during his short employment. Mr. Poullakos, an experienced seaman with prior service in the Greek

Navy, testified that plaintiff repeatedly defaulted in the discharge of his duties. On at least three occasions he left the ship without leave, a matter of grave concern to himself and the Captain. The indiscipline of the plaintiff made difficult, according to Mr. Poullakos, not only the running of the boat but her safety too. He explained that "SOL CHRISTIANA" being a passenger boat had to conform to strict safety standards, not only when at sea but when at port as well. Persistent insubordination of one seaman, if allowed to continue, could ruin discipline among seamen with grave consequences. On the last incident of insubordination that occurred on 23rd August, 1985, it was decided, in agreement with the Captain and Mr. Kouloumas, that plaintiff should be dismissed for persistent default in the discharge of his duties. On 23rd the boat "SOL CHRISTIANA" put to port at Limassol at about 12 noon. Shortly afterwards plaintiff left the boat without leave to return a shortwhile before the hour appointed for her departure, at about 7.30 p.m. Plaintiff refused to disembark and raised an uproar demanding he should be paid the balance of wages due to him and damages for wrongful dismissal as a condition for leaving the ship. Eventually the Police were called on board but the uproar did not end until Mr. Solomonides, the chairman of the company owning the defendant vessel, intervened and had a word with the plaintiff. Mr. Poullakos explained the absence of the plaintiff without leave on 23rd was the last of three to four instances of absence without leave that left no alternative to the management of the ship but to dismiss him. A few days earlier, on 18th August, 1985, an equally serious incident of absence without leave occurred at the Piraeus, an incident that led the Captain of the ship to reprimand Mr. Poullakos for suffering such a state of affairs to continue. Entries about the incidents were made by the Captain in the log-book of the ship produced by consent, exhibit 2. Counsel for the plaintiff drew my attention to the fact that plaintiff was never given notice of the content of the entries in the log-book or an opportunity to comment on or controvert their content. So they should carry no evidential weight.

Plaintiff denied in evidence every suggestion that he

left the boat, either at the Piraeus or Limassol, without leave maintaining that he went ashore with the leave of his superiors after completing his rota of work. On the occasion of his dismissal he was allowed to leave the boat by the second engineer, a fact disputed by Mr. Poullakos who claimed that no one other than himself had authority to allow third engineers to go ashore.

According to the plaintiff Mr. Solomonides gave him his word of honour and assured him before leaving the boat on 23rd August, 1985, that he would settle (κανονίσω) his claims inviting him to call the following day at his office. This was denied by Mr. Kouloumas who witnessed the conversation. The promise of Mr. Solomonides was confined to paying to plaintiff whatever was due to him. The following day plaintiff called at the offices of the defendants at Limassol and met Mr. Kouloumas. The differences between the parties persisted, plaintiff claiming to be compensated on the basis of a monthly salary of £450.- while Mr. Kouloumas insisted on a monthly rate of £400.- Further the claim of plaintiff for wrongul dismissal was refuted. The sum owing to the plaintiff, according to the books of the defendants was £239.- but as plaintiff was unwilling to accept that amount in full settlement he offered him £200.- that was received on account (see Exhibit 1). In a week's time he made an offer of the sum of £39.- to the plaintiff but the latter refused to accept it. The story of the plaintiff with regard to this aspect of the case is that he was paid £200.- on account and that the matter of compensation for wrongful dismissal and other matters relevant to the termination of his employment were left over for further consideration by the officials of the company. A few days later he was informed that no compensation would be paid to him for wrongful dismissal; thus the present action was raised.

I have anxiously examined the evidence before me, not least because it rests on the credibility of witnesses. Had the entries in the log-book been brought to the notice of the plaintiff and had he been given a chance to comment on them at the time of their recording, the log-book might afford corroboration of the evidence of Mr. Poullakos with regard to allegations of refusal of plaintiff to carry out his

duties. As it is I am not disposed to attach any weight to the content of the log-book. Thus the matter ultimately rests on the view taken by the Court of the credibility of witnesses. I consider it most unlikely that Mr. Koupepides who tried to secure employment for the plaintiff would do him an injustice by refusing to tell the Court the truth about the terms of his employment and more unlikely still that he would invite the plaintiff to refuse to sign an agreement embodying the terms of his employment. Mr. Koupepides left me with a very favourable impression. Mr. Poullakos too impressed me as a reliable witness and truly concerned with the fate of his subordinates. I accept that plaintiff drove him to exasperation by his insubordination before he advised for his dismissal. I also appreciate the implications of insubordination aboard a ship and the right to insist on strict performance of duties. The evidence of Mr. Kouloumas is supported, with regard to terms of employment of the plaintiff, by the testimony of Mr. Koupepides. The plaintiff, on the other hand, left me with the impression that he allowed the sense of grievance he harboured about the terms of his employment to prevail over his duty to perform his obligations faithfully giving in that way a valid cause to his employers to dismiss him. Also plaintiff allowed the same sense of bitterness to overwhelm his recollection of the true facts relevant to the height of his monthly salary. I feel unable to rely on the testimony of the plaintiff which consequently I reject.

In the light of my findings I accept the case for the defendants that the agreed rate of monthly remuneration for the services of the plaintiff was £400.- and that he was dismissed for persistent default in his duties; a default sufficiently material to justify his dismissal. At the time of his dismissal the sum owing to him was £239.-. I do not accept that defendants, Mr. Solomonides or anybody else, promised him on the day of his dismissal to pay him anything more than was due to him. What he was promised was that defendants would pay whatever was owing to him without delay.

It is an acknowledged fact that defendants did not pay him on the day of his dismissal the money owing to him as required by s. 25(1) of the Merchant Shipping Law—

46/63—and the question arises whether they are liable to pay him for any period double compensation.

Section 25(2)—46/63—casts a statutory obligation on the Captain or the shipowner to pay twice the daily remuneration of a seaman for as long as they are in default of paying him the monies owing to him upon termination of employment or dismissal (s. 25(1)), unless they have a reasonable cause for the non-discharge of this obligation. It must be noticed that subsection 2 refers to the payment of the sum total of the money owing, therefore payment of a substantial part thereof does not exonerate the employer of his obligations under subsection 2 of s. 25.

Counsel referred the Court to the statutory obligations of the employer under s. 25(2) making conflicting submissions as to its applicability to the facts of the present case. Neither referred me to any caselaw bearing on the interpretation or illustrating the application of s. 25(2).

The objects of the legislature in enacting s. 25(2) are fairly obvious: to ensure, in view of the exposed position of seamen who may inter alia find themselves upon termination of employment in foreign lands, that everything owing to them is paid upon cession of employment. Any failure to comply is excusable only if founded on a "reasonable cause". In its ordinary acceptation a "reasonable cause" is not synonemous with a cause valid in law, that is, a cause exonerating the employer from the obligation to the money for any period of time. It includes every cause that is in good sense reasonable in the particular circumstances of the case. For example, objective inability to quantify the sum owing would offer a valid excuse for delay in payment for as long as necessary to make the quantification; but not for longer. Whether the excuse is reasonable in any given case, is ultimately a question of fact. Applying this test to the facts of the case the delay of the employers to pay the applicant until the day following his dismissal was in the circumstances justified but no such justification existed for its prolongation thereafter. The offer of less than the money owing to him, that is £200.- instead of £239.- fell short of a discharge of their obligations for as earlier stated, the obligation extends to

payment of the entire amount; was the excuse given by Mr. Kouloumas reasonable in the circumstances? He omitted to pay the plaintiff the entire amount in view of the unwillingness of the latter to accept the amount of £239.- in full settlement of his claim. Mr. Kouloumas was, it seems to me, under the erroneous impression that he could not pay the entire balance unless the other party was willing to sign a discharge. The reason for non-payment of the entire balance did not amount to a "reasonable cause" in the sense of s. 25(2). Therefore, they remained liable to pay double compensation for as long as the default lasted. It lasted for seven days. At their next meeting the sum of £39.- was offered to plaintiff but he refused to accept it. For the duration of the seven-day period they are liable to pay him twice his daily remuneration as provided in s. 25(2). If my arithmetic is right his daily remuneration calculated at the rate of £400.- per month was £13.35. This amount miltiplied by seven gives us £93.45: doubled it comes to £186.90.

In the result judgment is given for the plaintiff for £225.90. As plaintiff was in the main unsuccessful I shall make no order as to costs.

Judgment in favour of the plaintiff for £225.90. No order as to costs.