1987 October 30

[TRIANTAFYLLIDES P., LORIS STYLIANIDES JJ.]

SHOEMEX LTD.,

Appellants-Respondents.

v.

ANDROULLA GEORGHIOU.

Respondent-Applicant.

(Case Stated No. 247).

Master and servant — Wrongful dismissal — The Termination of Employment Law, 1967 (24/67) — Application for compensation and payment of wages in lieu of notice before the Industrial Disputes Tribunal — Evaluation of evidence adduced and findings of fact — Matters that fall entirely within the province of the tribunal — Task of this Court confined to applying the Law to the facts as found by the Tribunal

The facts sufficiently appear in the judgment of the Court.

Appeal dismissed with costs.

Cases referred to:

Glykis v. Municipal Committee of Nicosia (1985) 1 C.L.R. 206.

Case stated.

Case stated by Chairman of the Industrial Disputes Court relative to his decision dated 19th February, 1987 in proceedings under sections 3 and 9 of the Termination of Employment Law, 1967 (Law No. 24 of 1967) instituted by Androulla Georghiou against Shoemex Ltd. whereby the respondent was ordered to pay to the applicant compensation plus £270. - wages in lieu of notice for wrongful or unjustified dismissal.

Chr. Kitromilides, for the appellants.

M. Papapetrou with A. Sophocleous, for the respondent.

Cur. adv. vult.

TRIANTAFYLLIDES P.: The judgment of the 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 Tribunal dated 19.2.1987, whereby the appellant company was adjudged to pay to the respondent compensation plus £270.- wages in lieu of notice for wrongful or unjustified dismissal of the respondent, pursuant to the provisions of sections 3 and 9 of the Termination of Employment Law 1967, (Law No. 24/67) as amended.

The appellant is a limited company running a shoe-factory at Strovolos.

The respondent was working as a labourer with the appellant company from 14.6.1974 up to 27.5.85 when she was dismissed by the appellants without notice.

The respondent applied to the Industrial Disputes Tribunal claiming compensation and payment of wages in lieu of notice, for wrongful or unjustified dismissal under sections 3 and 9 of the Termination of Employment Law 1967 (Law No. 24/67), as amended.

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

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

Provided that where the employer does not exercise his rights 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»

. . . . . .

The alleged facts relied upon by the appellants were to the effect that the respondent inspite previous warnings by the appellant for unjustified absence from work, for several days during the years 1982 and 1983 she was again unjustifiably absent from work with the appellant company from the 8th up to the 25th May 1985, whilst she was fit for work throughout the said period and in fact she did work during the latter period collecting strawberries in her own property

The Industrial Disputes Tribunal after hearing the evidence adduced by both sides made the following findings of fact:

(a) that the absence of respondent from work during previous years was due to illness certified by Government Doctor and in any event the appellants did not exercise their right, if any, within reasonable time and as envisaged by the proviso to s. 5(e) of Law 24/67 they must have been deemed to have waived such a right in respect of previous years.

(b) the decisive factor which led to the dismissal of the respondent without notice on 27.5.85 was the latter's absence from work between the 8th and 25th May, 1985.

(c) her absence from work from 8th of May up to the 10th of May was justified as she was ill; no medical certificate was produced for the aforesaid period as the respondent was conveyed to the doctor on 11.5.1985 but the trial Court was satisfied that the condition of her health as later revealed by medical and bacteriological examination justified her absence from work throughout the said period.

(d) that according to the medical certificate and the relevant bacteriological examination the respondent was suffering from infection of the urinary tract; the medical certificate recommended further examination and abstention from work initially during the period 11.5.85 - 17.5.85 and further stay out of work from 18.5.85 up to and including 25.5.85.

These were the main findings of fact made by the Industrial Disputes Tribunal as a result thereof the tribunal reached the conclusion that the absence of respondent from work throughout the period of 8 5 85 -25 5 85 was fully justified and dismissing the allegations of the appellant that the termination of the employment was within the ambit of the provisions of s 5 of Law 24/67, awarded to the respondent compensation for wrongful or unjustified dismissal under sections 3 and 9 of Law 24/67 as amended

The present appeal, by way of case stated is directed against the aforesaid decision of the Industrial Disputes Tribunal and the two questions posed by the Tribunal for our determination are in effect questions revolving on the findings of primary facts made by the Tribunal

Learned counsel appearing for the appellant strenuously argued against the findings of the tribunal on primary facts He rightly conceded that in order to succeed he had to convince us that the findings of the Tribunal in respect of primary facts was wrong

We have made it clear to him that it is entirely within the province of the tribunal, (who has the opportunity of hearing the witnesses and watching their demeanour in the witness box) to evaluate the evidence adduced and make his findings of fact (vide *Glykis v Municipal Committee of Nicosia* (1985) 1 C L R 206 at p 208) Out task is confined in applying the Law to the facts as found by the Tribunal

So we did not call upon the other side The findings of fact made by the Tribunal unequivocally lead to the conclusion that the dismissal of the respondent was wrongful and unjustified and the appellants cannot in the circumstances avail themselves of the provisions of s 5 of Law 24/67

In the light of the foregoing, we refuse this appeal by way of case stated and we remit the case, with our opinion as contained in this judgment to the Industrial Disputes Tribunal for the necessary action

The costs of this appeal will follow the event

Order accordingly