

1985 January 15

[PIKIS, J.]

ANTONIS CHIOTES,

*Plaintiff.*

v.

1. M/V ISSAM STAR, CYPRUS FLAG, NOW LYING AT THE PORT OF LIMASSOL,
2. BRASAL OFF-SHORE SERVICES LIMITED,

*Defendants.*

*(Admiralty Action No. 25/84).*

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*Admiralty—Seaman—Wrongful dismissal—Compensation payable therefor—Dismissal taking place in Cyprus before the lapse of one month from the engagement—Seaman entitled to one month's salary as compensation—Section 42 of the Merchant*

5 *Shipping (Masters and Seamen) Law, 1963 (Law 46/63).*

*Merchant Shipping (Masters and Seamen) Law, 1963 (Law 46/63)—Wrongful dismissal of seaman—Compensation therefor—Section 42 of the Law not limited to contracts of indefinite duration.*

10 *Practice—Pleadings—Constitutionality of legislation—To be specifically pleaded.*

The plaintiff was engaged by the second defendants, under a written agreement, as ship engineer to serve aboard the defendant ship. His salary was specified at

15 £600.— per month and the duration of the contract at one year. On 7.11.83 the ship was damaged in an accident while executing a manoeuvre within the port under the direction of the master; and as a result the defendants suffered loss and damage. Soon afterwards the defendants

20 dispensed with the services of the plaintiff by dismissing him on or about the 17th November, 1983, after paying him, through the master the sum of £500.—.

Hence this action whereby plaintiff claimed (a) £100.— balance of wages due for the first month of his employment, and (b) £1,500.— compensation for wrongful dismissal.

The defendants denied liability and asserted that the dismissal was justified because of the conduct of the plaintiff, consisting of negligence and/or failure in the discharge of the duties of the master of the ship and/or of the plaintiff and/or both, causing the defendants damage of £7,136.— for which they raised a counterclaim. 10

*Held, after finding that there was no evidence to substantiate the allegation of negligence:*

- (1) That the plaintiff is not answerable in law for the actions of the master under whom he served and whose directions he followed to minute detail; that, therefore, the plea of the defendants of justification of the dismissal, as well as the counterclaim, must be dismissed; that the inescapable inference from the facts before the Court is that the employment of the plaintiff was terminated because of breach of the agreement on the part of the defendants; and that, accordingly, he was wrongfully dismissed. 15
- (2) That since the dismissal took place in Cyprus before the lapse of one month plaintiff is, by virtue of section 42 of the Merchant Shipping (Masters and Seamen) Law, 1963 (Law 46/63), entitled to one month's salary that is £600.— to which it should be added £100.— balance of wages. 25

*Held, further,* (1) that section 42 of Law 46/63 is not limited to contracts of indefinite duration. 30

- (2) That in the absence of a specific plea of unconstitutionality it is impermissible to examine the constitutionality of s. 42 of Law 46/63, in particular, whether it is compatible with Article 26 guaranteeing freedom of contract. 35

*Judgment for £700.—  
with costs.*

Cases referred to:

*Improvement Board of Eylenjia v. Constantinou* (1967)  
1 C.L.R. 167;

*Chimonides v. Manglis* (1967) 1 C.L.R. 125;

5 *Aloupas v. National Bank* (1983) 1 C.L.R. 55.

**Admiralty Action.**

Admiralty action for £100.— balance of wages and for  
£1,500.— compensation for wrongful dismissal.

A. *Theofilou*, for the plaintiff.

10 G. *Michaelides*, for the defendants.

*Cur. adv. vult.*

PIKIS J. read the following judgment. Consequent on  
an understanding between plaintiff and Mr. Edmonto  
Branco, a director of the second defendants, the owners  
15 of the first defendant (M/V ISSAM STAR), the plaintiff  
was engaged as ship engineer to serve aboard M/V ISSAM  
STAR, a relationship that was formalised four days later  
by the execution of a written agreement signed by the  
master on behalf of the ship (exhibit 1). Mr. Branco  
20 acknowledged in evidence he had instructed the master to  
engage the necessary personnel for the manning of the  
boat, then at bay at the port of Limassol. The seaman's  
agreement regulated the terms and condition of service.  
The salary of plaintiff was specified at £600.— per month,  
25 and the duration of the contract at one year.

The engagement of the plaintiff did not last for long.  
The ship was damaged in an accident on 7.11.83, while  
executing a manoeuvre within the port under the directions  
of the master. As a result the defendants suffered loss and  
30 damage. Soon afterwards, the defendants dispensed with  
the services of the plaintiff by dismissing him on or about  
the 17th November, 1983. He was paid through the master  
the sum of £500.—

By his action he claims —

- (a) £100.— balance of wages due for the first month of his employment, and
- (b) £1,500.— compensation for wrongful dismissal.

He testified before me that despite his efforts, it took him two and a half months before it became possible to find new employment. 5

The defendants deny liability and assert that dismissal was justified because of the conduct of the plaintiff, consisting of negligence and/or failure in the discharge of the duties of the master of the ship and/or of the plaintiff and/or both, causing the defendants damage of £7,136.— for which they raised a counterclaim. Why the plaintiff should be held vicariously liable for the actions of the master, it is nowhere explained. Certainly he is not answerable in law for the actions of the master under whom he served and whose directions he claimed to have followed to minute detail. I consider it unnecessary to reproduce the evidence of Mr. Branco given in answer to the claim for wrongful dismissal and in support of the counterclaim. Not an iota of evidence was adduced to substantiate allegations of negligence made against the plaintiff; nor for that matter is there anything before me to contradict the evidence of the plaintiff pertaining to the circumstances of the accident. Hence the plea of the defendants of justification of the dismissal, as well as the counterclaim, must, by the same token and for similar reasons, be dismissed as wholly unfounded. Also unsubstantiated and liable to be dismissed remain allegations that the agreement apparently signed by the master was not in his hand. 10 15 20 25

The inescapable inference from the facts before me, particularly the evidence of the plaintiff that I accept, is that the employment of the plaintiff was terminated because of breach of the agreement on the part of the defendants. Hence I find he was wrongfully dismissed. The only remaining issue is the damage the plaintiff is entitled to. Certainly he is entitled to recover the sum of £100.— balance of wages due for the first month of his employment. He was entitled to £600.— whereas he was paid 30 35

only £500.—. There remains to decide to what other damage he is entitled on account of wrongful dismissal.

The Merchant Shipping (Masters and Seamen) Law \* purports to regulate, by s.42, the compensation payable to a seaman for wrongful dismissal, where the dismissal takes place before the boat sails off or before the lapse of one month. It provides that the seaman is entitled to, apart from wages due, compensation equal to a month's salary if the dismissal takes place in Cyprus, and two months' salary if it takes place elsewhere. Relying on the provisions of s.42, counsel for the defendants argued compensation should be limited to one month's salary, that is £600.—.

For the plaintiff it was argued the application of s. 42 is limited to seamen contracts of indefinite duration; therefore, it is inapplicable in the present case for the agreement stipulated a definite period of employment, that is, one year. The law does not in terms make the distinction suggested by counsel, nor is there anything to indicate that the legislator omitted to make the distinction by default. On the contrary, there are other provisions in the law itself supporting the proposition that the absence of any distinction was purposeful. Section 12 of the law, preceding in order of arrangement s.42, specifies the conditions that seamen contracts should embody; they should include, as laid down in sub-section 3(b), the duration of the agreement where this is practically possible. In enacting s.42, we may assume with certainty that the legislator intended to regulate the compensation payable for breaches of contracts executed in accordance with s. 12(3)(b), that is, contracts of definite duration. To my mind, the submission that the application of s.42 is limited to contracts of indefinite duration, runs contrary to the plain provisions of the enactment and the wider purposes of the law, as may be discerned by reading the law in its entirety. Evidently, the legislature intended to provide a ready guide for the compensation of seamen upon wrongful dismissal, and speedy disengagement from their former employers.

In view of the plain provisions of s.42, that is also in

\* Law 46/63

line with the wider purposes of the law, there is no room for constructing s. 42 in any manner other than that indicated above. In the absence of a specific plea or unconstitutionality<sup>1</sup> — and there is none in this case — it is impermissible to examine the constitutionality of s. 42, in particular, whether it is compatible with Article 26 guaranteeing freedom of contract.<sup>2</sup>

In view of the aforementioned, the plaintiff is entitled to £700.— damages, while the counterclaim fails.

In the result, judgment is given to plaintiff for £700.— with costs. The counterclaim is dismissed with costs. For steps taken and appearances made that were common to the claim and counterclaim, one set of costs will be recovered.

*Judgment for £700.—.*  
*Order for costs as above.*

<sup>1</sup> (See, *The Improvement Board of Eylenja v. Andreas Constantinou* (1967) 1 C.L.R. 167).

<sup>2</sup> (See, *Constantinos Chimonides v. Evanthia K. Manglis* (1967) 1 C.L.R. 125;  
*Aloupas v. National Bank* (1983) 1 C.L.R. 55)