WILLIAMS v. SIERRA LEONE PRODUCE MARKETING BOARD

High Court (Tejan, J.): January 21st, 1972
(Civil Case No. 268/70)

[1] **Employment—duration—general hiring—presumption that yearly contract intended rebuttable by evidence of custom or of contrary intention of parties—contractual provision for termination on notice may rebut presumption:** A contract of employment for an indefinite period is presumed to be a yearly contract terminable only at the end of a complete year but this presumption can be rebutted by evidence of custom or of the parties' contrary intention which may be indicated by a term of the contract stipulating that a period of notice of termination may be given by either party (page 11, lines 21—29; page 11, line 37—page 12, line 1; page 12, lines 13—21; page 12, lines 32—35).

[2] **Employment—holidays—termination during holiday—period of notice runs during paid holiday:** An employee taking paid leave remains in the service of the employer and notice of the termination of the employment may therefore run during that time (page 13, lines 16—25).

[3] **Employment—termination—on notice—general hiring—presumption that terminable only at end of complete year rebuttable by evidence of custom or of contrary intention of parties—contractual provision for termination on notice may rebut presumption:** See [1] above.

[4] **Employment—termination—on notice—period of notice runs during employee's paid leave:** See [2] above.

The plaintiff brought an action against the defendants for damages for breach of his contract of employment.

The plaintiff was employed by the defendants in January 1965 for an indefinite period at a specified annual salary. The conditions of employment included the following: "Normally if the Board decides to dispense with your services . . . you will be given either three months' notice or three months' salary in lieu of notice."

In 1969 the plaintiff received two letters from the defendants. The first informed him that he was entitled to 145 days' leave, with effect from three days later, the second that it had been decided that he should retire at the expiration of his leave. The plaintiff took his leave on full salary.

He subsequently brought the present proceedings against the defendants claiming damages for breach of contract. He admitted that the defendants were entitled to give him notice of retirement but contended that it could not take effect while he was on leave and should have been given at the end of his leave. He also contended that since his letter of appointment did not stipulate any

definite period of employment there was a presumption that he was employed under a yearly contract which could not be determined before the end of the employment year, which ran until the following January.

The defendants contended that the presumption that the plaintiff was employed under a yearly contract was rebutted by that term of the contract which gave them the right to terminate his employment with three months' notice. They also contended that since the plaintiff remained in their employ during his vacation, being paid by them, the notice of retirement given to him was effective.

The plaintiff's claim was dismissed.

Cases referred to:

(1) *Buckingham* v. *Surrey & Hants. Canal Co.* (1882), 46 L.T. 885; 46 J.P. 774.

(2) *Creen* v. *Wright* (1876), 1 C.P.D. 591; 35 L.T. 339.

(3) *De Stempel* v. *Dunkels*, [1938] 1 All E.R. 238; (1938), 158 L.T. 85.

(4) *Fairman* v. *Oakford* (1860), 5 H. & N. 635; 157 E.R. 1334.

Minah for the plaintiff;
C.S. Davies, Sol.-Gen., for the defendants.

TEJAN, J.:

On January 19th, 1965, the defendants offered to the plaintiff and the plaintiff accepted employment as an assistant accountant on a starting salary of Le.2,400 per annum.

On October 15th, 1969, the plaintiff was informed by letter that he was entitled to 145 days' leave, effective from October 18th, 1969. By a letter dated October 15th, 1969 the plaintiff was informed by the defendants that he was to retire from their service at the expiration of his leave. The plaintiff has now sued the defendants claiming as damages for breach of contract three months' salary, *i.e.* the sum of Le.800 in lieu of proper notice.

The case for the plaintiff is that on March 1st, 1965, he was engaged by the defendants as an accountant. In 1966, the plaintiff was promoted to the post of area accountant, Bo. In 1968, the plaintiff was again promoted to the post of acting operation manager, Bo. By this time, the plaintiff was earning the sum of Le.3200 per annum plus the sum of Le.700 per annum as acting allowance. The plaintiff held this post up to October 15th, 1969 when he

received Exhibits B and C. Exhibit B is a letter from the defendants to the plaintiff and it reads as follows: "Please refer to my letter PF/9/65 of September 25th, 1969. You are entitled to 145 days vacation leave, effective from October 18th, 1969." Exhibit C is also a letter written by the defendants to the plaintiff and this letter reads thus:

> "I refer to my memordandum No. PF/9/65 dated October 15th, 1969. I am directed to inform you that the Board has decided that you retire from the service of the Board at the expiration of your leave.
>
> I wish to thank you for your good service and hope you will have a happy and restful retirement.
>
> You are allowed to stay in the Board's quarters until the end of November 1969, when you will arrange for Mr. D.H. Sawyerr to check with you and take over all items of furniture belonging to the Board.
>
> Your entitlement is being worked.out, from which will be deducted the sum of Le.246 you owe for the furniture and Le.60 being rent for October and November, 1969.
>
> By copy of this letter the Financial Administrator is requested to take appropriate action."

In his evidence, the plaintiff said that in 1969 he was 56 years old and that the normal age of retirement is 55 years. The plaintiff went on to say that in the Sierra Leone Produce Marketing Board an employee could be permitted to be in employment up to the age of 60 years. He then put in evidence his letter of appointment which was dated January 19th, 1965.

[The learned judge read the letter of appointment which contained the following condition]:

> "5. The Board can dispense with your services at any time for disobedience, inefficiency and for any behaviour inimical to its efficient running. Normally if the Board decides to dispense with your services for other reasons, you will be given either three months' notice or three months' salary in lieu of notice."

According to the plaintiff, retirement was not one of the instances mentioned in para. 5 of this letter. The plaintiff said that he was not given three months' notice to go on retirement and that he was not given three months' salary in lieu of notice.

In answer to Mr. Davies, the plaintiff admitted that he was in the service of the defendants while he was on leave. He admitted

that he was given notice of retirement but contended that the notice should have been given at the expiration of his leave. He also admitted that he received his salary, and that he was given his leave pay for the period of 145 days.

It seems to me from the arguments of counsel for the plaintiff that the sole question to be considered is whether the notice given to the plaintiff was effective and proper. Mr. Minah has argued strenuously that the employment of the plaintiff was a yearly employment and as such, notice could not be given to him before the end of a year but at the end of a year, the plaintiff's contract being a contract of employment.

The letter of appointment did not stipulate any definite period of employment. Since no definite period was stated the contract was for employment for an indefinite period. Mr. Minah argued that since the contract was for an indefinite period, it then became a yearly contract. Mr. Minah went on further to say that since the contract was a yearly contract, it could not therefore be determined by notice before the end of the year. This rule, however, arose out of the hiring of agricultural labourers, but the rule was only a presumption, and in modern circumstances it may well not apply: see *De Stempel* v. *Dunkels* (3). In this case Greer, L.J. made it clear that the rule that an indefinite hiring is a hiring for year is no longer applicable to all cases. In *Fairman* v. *Oakford* (4), Pollock, C.B. said that there is no inflexible rule that a general hiring is hiring for a year. Each particular case must depend upon its own circumstances. One of the circumstances which determines matters of this sort may be a custom proved with regard to the particular employment, but there may be other circumstances pointing to the same direction. In *Buckingham* v. *Surrey & Hants. Canal Co.* (1), the plaintiff who was an engineer was employed by the defendants at a salary of £500 a year, and was dismissed at three months' notice. If his hiring was necessarily a hiring for a year, he was entitled to remain at the end of the year, and could not be discharged by notice within the year. It was decided that the plaintiff could not be discharged by three months' notice. In giving his decision, Grove, J. said (46 L.T. at 886; 46 J.P. at 774):

> "As a general rule, where the hiring is a yearly hiring, it cannot be put an end to by either party before the end of the year. This rule, however, is subject to an exception in cases in which the agreement of hiring is subject to some stipulation, either express or implied by custom, enabling either party to

determine the contract by notice. Now, at the conclusion of the plaintiff's case, no evidence was offered on behalf of the defendants of any custom to determine such a hiring as this by a three months' notice. It seems to me, therefore, that the judge was bound to direct the jury that in the absence of any such evidence the hiring was a hiring for a year. There is nothing to show that the plaintiff accepted the engagement upon any other terms than those expressed in the resolution. The plaintiff established a *primâ facie* case of a yearly hiring, and therefore, in the absence of any evidence of custom to rebut that *primâ facie* case, I think the verdict ought to stand."

If the present case before me was a yearly hiring, it could not be determined before the end of the year unless there is evidence of some custom or some term in the contract or some circumstance which would justify the inference that something other than a hiring for a year certain was intended. The general rule is that the length of notice depends on the intention of the parties revealed in the contract. In the absence of express provision, the court will imply a term that the employment may be determined by reasonable notice by either party. The law of a yearly hiring is summarised in 22 *Halsbury's Laws of England*, 2nd ed., at 144 (1936) as follows:

"If a contract of hiring and service is a general hiring, that is to say, without limitation of time, there is a presumption that the hiring is for a year . . . , whether the contract is oral or in writing . . . . This presumption exists not only when the original contract was a general hiring, but also when, at the expiration of a contract for a definite period of service, the service is continued under a second contract which is indefinite as to time . . . ."

But on the other hand, it has frequently been said, the presumption of a yearly hiring is rebuttable. It is not an inflexible rule, and the nature of the contract must be considered in connection with the circumstances of the case: see *Fairman* v. *Oakford* (4) and *Creen* v. *Wright* (2).

In the case before me the contract between the plaintiff and the defendants, according to the letter of appointment, was a contract of hiring for an indefinite period but the question of notice was determined by the parties expressly in the letter. Paragraph 4 reads as follows:

"If you wish to leave the Board's service at any time, you may do so by giving 90 days' notice in writing or by paying the Board three months' salary in lieu of notice."

Paragraph 5 reads thus:

"The Board can dispense with your services at any time for disobedience, inefficiency and for any behaviour inimical to its efficient running. Normally if the Board decides to dispense with your services for other reasons, you will be given either three months' notice or three months' salary in lieu of notice."

Having considered all the circumstances in this case, I conclude that the contract here is not a yearly contract of hiring, and in the absence of any stipulation to the contrary, the plaintiff was entitled to a reasonable notice. The plaintiff received the notice of retirement before going on leave but the 90 days terminated while he was on leave of 145 days. The plaintiff was paid in full his leave pay. The question is whether the plaintiff was still in the service of the defendants while on leave. The question is a simple one, and it would be foolish to say that the plaintiff was not in the service of the defendants while he was on leave. Since the letter of appointment stipulated the period of notice to be given, and since the notice was given to the plaintiff on October 15th, 1969, his leave of 145 days taking effect from October 18th, 1969, my conclusion is that a proper and effective notice was given to the plaintiff according to the terms agreed upon in that letter. The result is that the plaintiff has failed to show that he was entitled to notice at the end of a year or that he was entitled to more than 90 days' notice or rather three months' salary in lieu of notice which he has already had, and I must enter judgment for the defendants with costs to be taxed and paid by the plaintiff.

Suit dismissed.