BATA SHOE CO LTD v NAVO

SC

SUPREME COURT OF SIERRA LEONE, Supreme Court Civil Appeal No 4 of 1979, Hon Mr Justice E Livesey Luke CJ, Hon MR Justice CA Harding JSC, Hon Mr Justice OBR Tejan JSC, Hon Mrs AVA Awunor-Renner JSC, Hon Mr Justice S Beccles Davies JSC, 13 July 1980

[1] Employment Law – Termination – Whether wrongful termination – Contract could be terminated "at any time and without cause" – Whether sufficient notice – Whether breach of natural justice

[2] Words & Phrases – "Not less than one month"

On 30 April 1976, the respondent's (plaintiff's) employment as a salesman was terminated without any reason by the appellant company (defendant) with one month's salary in lieu of notice, and he claimed wrongful dismissal and damages. The High Court dismissed the claim, but the Court of Appeal allowed it. The questions before the Supreme Court were whether the respondent's services were wrongfully terminated, whether notice was sufficient and whether the termination amounted to a breach of natural justice. The employment contract required either party to give to the other "not less than one month prior notice in writing",

Held, per Beccles Davies JSC, dismissing the application:

1. Under clause 9 of the employment contract, either party could terminate the agreement *at any time and without any cause*. There was no justification for the Court of Appeal's attempt to furnish a cause for the termination of the respondent's services. The appellant had acted within the provision of clause 9 of the agreement relative to termination without cause.

2. "Not less than" so many days or weeks means 'clear' days or weeks. A period of "not less than" a month's notice accordingly means a period of one month excluding the day from which it ran and the day on which the notice expired. Where the parties to a document use terms which have an established meaning in law, they will usually be taken to have used them in that established meaning. The appellant gave the respondent a calendar month's salary in lieu of notice, which was all the respondent was entitled to and not six months as found by the Court of Appeal. The defendant therefore acted within the provision of clause 9 of the agreement relative to the length of notice for its termination. *R v Turner* [1910] 1 KB 346 applied.

3. This was no evidence that there had been a breach of natural justice.

Cases referred to
Chambers v Smith (1843) 12 M & W 2
R v Turner [1910] 1 KB 346
Railway Sleepers Supply Co, In Re (1885) 29 Ch D 204

Other sources referred to
Norton on Deeds [2nd Ed] at p 185

Application
This was an appeal against the decision of the Court of Appel which found that the respondent, Anthony J Navo, had been wrongfully terminated. The facts appear sufficiently in the following judgment of Beccles Davies JSC.

Mr JH Smythe QC, with Mr Manly-Spaine, for the appellant.
Mr JT Massaquoi for the respondent.

BECCLES DAVIES JSC: The plaintiff, Mr Anthony Jacob Navo, entered the employment of Messrs Bata Shoe Co, the defendant on 14th August 1961. He started off as a salesman. He entered into a fresh written agreement of service with the defendant after every completed year of service. He continued in the defendant's employment until his services were terminated on 30 April 1976.

The plaintiff was dissatisfied with the termination of his services by the defendant. He sued them claiming (a) damages for wrongful dismissal, (b) damages for wrongful deprivation of the

benefit of earning commission and (c) damages for wrongful reduction of salary. The defendant resisted his claim.

The action was tried by Williams J who, apart from awarding the plaintiff his earned commission from the week 36/75 (which would be about the second week in September 1975) to 30 April 1976, virtually dismissed the claim.

The plaintiff then appealed to the Court of Appeal. His complaints were that Williams J had refused to award (a) damages for wrongful reduction of salary (b) damages for wrongful dismissal and (c) general damages.

The Court of Appeal heard the appeal and allowed it. Cole JA, delivering the unanimous judgment of the court summed it up in these words:

> "In the main I have come to find that the termination of the appellant was wrongful, the cancellation of his earned commission and the reduction of his salary were also wrongful. The total amount of damages the appellant is entitled to, having regard to settled authorities, are as follows:
>
> 1. The difference between one month's salary which the appellant should have received.
> 2. Loss of earned commission from weeks 25–36, 37, 38, 39/75 and on to 30 April 1976.
> 3. Loss of salary at the rate of Le14.00 per week as from week 51/75 on to 30 April 1976."

It is that judgment which has given rise to the present appeal. The arguments before this court fall under three topics.

Firstly, were the plaintiff's services wrongfully terminated? As I had said earlier in this judgment, the plaintiff and defendant entered into a fresh contract in writing at the expiration of every completed year of the former's services. The agreement at the date of termination of the plaintiff's services contained a clause relating to its termination. It is contained in Clause 9. It stipulates:

> "Either party may terminate this agreement *at any time and without cause* by giving not less than one-month prior notice in writing of such termination, and if such notice be given, this agreement shall terminate on the date specified in the notice. During the period after the giving of any such notice and before the effective date of the termination, the Company may at its election discontinue the pay until the effective date of termination." (Emphasis mine)

According to the terms of clause 9 therefore, the plaintiff or the defendant had the right to terminate the agreement between them "at any time and without cause" for such termination. This brings me to an examination of the defendant's letter to the plaintiff terminating the latter's services under the agreement. It reads—

> "30 April 1976 Mr AJ Navo, C/o Sales Department
> Bata Shoe Company (SL) Ltd Freetown.
>
> Dear Mr Navo.
>
> We write to inform you that Management has decided to terminate your appointment with the Company as from Saturday 1 May 1976. You will be settled as follows in respect of final claims on the Company:
>
> 1 Month Salary in lieu of Notice
> Any wages due you
> Leave entitlement plus allowance
> Balance on Personal Account as at Week 18/76
> Interest on Personal Account as at Week 18/76
> Provident Fund Contributions
> Less Income Tax

Settlement of this amount will be in accordance with Clause 21(c) Page 8 of the Supervisory Conditions of Employment by which you are bound. You are requested to report to the Assistant Accountant on Friday 7th May 1976 at 10 a.m. to collect all benefits due you.

We thank you for your past services and should you request a testimonial we shall be too pleased to give you one.

The Management takes the opportunity of wishing you the very best in the future.

Yours faithfully,

BATA SHOE COMPANY (SL) LTD

(U.N.S. JAH)

PERSONNEL OFFICER."

The defendant letter stipulated no cause for the termination of the plaintiff's services under the agreement. The plaintiff claimed that he had been wrongfully dismissed (that is to say that he had been dismissed without just cause or excuse) in consequence of that letter. Paragraph 7 of the plaintiff's statement of claim contained the allegation of wrongful dismissal. It reads:

"7. The defendant on 30 April 1976 gave the plaintiff one month's salary in lieu of notice, to quit his employment, and wrongfully dismissed the plaintiff without reasonable and/or proper notice and/or cause."

The defendant refused to be drawn into any contention as to whether there was reasonable and/or proper cause necessitating their termination of the plaintiff's services without cause, under the agreement. The defence stated inter alia:

"6. The defendant denies that it wrongfully dismissed the plaintiff.

7. The defendant will contend that the plaintiff's appointment with it was terminated by letter

dated 30 April 1976 according to Clause 9 of the agreement of employment between the plaintiff and the defendant."

The issue when the matter went to trial was whether the plaintiff's services had been wrongfully terminated having regard to Clause 9 of the agreement between the parties.

At the hearing counsel for the plaintiff tendered in evidence certain correspondence between the parties relative to the plaintiff's discharge of his duties. The last of such correspondence was dated 16 December 1975. It became clear during the closing speech of the plaintiff's counsel that one of the purposes for which the correspondence was put in evidence was to suggest to the court that the defendant's reason for terminating the plaintiff's services was its claim that his services were satisfactory. Counsel said:

"I submit that up to the time of his dismissal the plaintiff's services were never unsatisfactory. It is for the defendant to prove that his services were unsatisfactory."

That argument did not find favour with Williams J.

The same argument was apparently put before the Court of Appeal. In dealing with the point Cole JA said:

"Let me hasten to state that in the instant case the respondent did not give any reason for terminating the appellant's services. This is in keeping with Clause 9 of the agreement."

The learned Justice was quick to add the following statement:

"However it is my view that Exhibit 'M' dated 30 April 1976 is by implication the culminating effect of Exhibits 'C', D', 'E,'F' 'J' and etc."

There was no justification for the learned Justice's attempt in furnishing a cause for the termination of the plaintiff's' services.

The defendant in my view had acted within the provision of Clause 9 of the agreement relative to termination without cause.

Secondly, was the notice terminating the plaintiff's services adequate in this particular ease?

The defendant had given the plaintiff a month's salary in lieu of notice. Clause 9 of the agreement dealt with notice of termination. It enjoined whichever party wishing to terminate the agreement to give to the other "not less than one month prior notice in writing".

Counsel for the plaintiff contended that the duration of the notice to be given was uncertain. It had a minimum period and that the maximum period was uncertain. He argued that it could be anything over a month depending on what was reasonable in the circumstances. The trial judge concluded that a month's notice was adequate and reasonable. Counsel for the plaintiff repeated his argument in the High Court before the Court of Appeal. The Court of Appeal accepted Counsel's submission and held that reasonable notice in the circumstances should be six months. The issue on this point turns on the construction of the phrase 'not less than one month'.

The phrase 'not less than' in the computation of time has been the subject of judicial construction. See *Chambers v Smith* (1843) 12 M & W 2, *In Re Railway Sleepers Supply Co* (1885) 29 Ch D 204. In *R v Turner* [1910] 1 KB 346 at 359, in construing the phrase Channell J said:

> "Section 10(4)(b) of the Prevention of Crime Act 1908 provides that not less than seven days' notice must be given to the proper officer of the Court and to the offender. The question whether the words 'not less than seven days' mean clear days is a troublesome one to answer as there have been decisions upon similar words which are not exactly in accord. Those decisions depend upon particular statutes and may therefore all be right and yet bring about apparently conflicting results. We have come to the conclusion that the decision most nearly on point is that in *Chambers v Smith*, referred to by Chitty J in I*n Re Railway Sleepers Supply Co*. where he reviewed the authorities. In *Chambers v Smith* the words were 'not' being less than fifteen days, and the court in the first instance held that what I may call the ordinary rule applied, namely, that where a certain number of days are specified they are to be reckoned exclusive of one of the days and inclusive of the other unless clear days are expressed. But although that is the rule, the difficulty is to ascertain whether clear days are expressed by the language of the particular statute. In *Chambers v Smith* the court after having in the first instance thought that the words 'not less than fifteen days" were to be construed according to what I have called the ordinary rule, namely inclusive of one of the days and exclusive of the other, on re-consideration came to the conclusion that they were to be construed as meaning fifteen clear days. The words upon which that decision was based are the nearest to be found in the authorities to those which we have to construe in the present case, and we therefore come to the conclusion that the provision that 'not less than seven days' notice has to be given means 'seven/clear days' notice and we so answer the question."

'Not less than' so many days or weeks means 'clear' days or weeks, as the authorities indicate since *Chambers v Smith*. That construction of the phrase in the statutes is equally recognised in the construction of deeds and other writings. See *Norton on Deeds* [2nd Ed] at p 185. A period of 'not less than' a month's notice accordingly means a period of one month excluding the day from which it ran and the day on which the notice expired. Where the parties to a document use terms which have an established meaning in law, they will usually be taken to have used them in that established meaning.

The proper length of terminating the agreement under review is one clear lunar month's notice, because at common law 'a month' means a lunar month. In my opinion there was no uncertainty as to the duration of notice to be given. The matter was put beyond argument when the defendant on 30 April gave the plaintiff a calendar month's salary in lieu of such notice. Indeed the plaintiff admitted this in paragraph 7 of his defence. In my judgment the plaintiff was only entitled to a lunar month's notice and not six months as found by the Court of Appeal. The defendant therefore acted within the provision of clause 9 of the agreement relative to the length of notice for its termination.

Thirdly, was there a breach of the rules of natural justice? It was during the course of counsel for the plaintiff's closing speech in the High Court that the issue of the breach of the rules of natural justice was first raised. It emerged from the evidence that the plaintiff's commission had been cancelled on two occasions during September 1975 and that he had been reduced in rank from being in overall supervision of the Reserve and General Goods Stores to Storekeeper with a corresponding change in salary and counsel's submission was that he had not been afforded an opportunity of stating his case before the decision was taken to cancel his commission and to reduce his rank and salary.

The defendant's reason being the plaintiff's unsatisfactory performance of his duties. The High Court held that the rules of natural justice had not been breached. The learned trial judge however approached the matter on the basis that the plaintiff's services had been terminated without having had an opportunity of proffering an explanation in that behalf. That, with respect, was not counsel's case. Counsel's submission related to the matters I have stated earlier. The Court of Appeal on the other hand put the submission in its proper perspective and proceeded to hold that the rules of natural justice had been breached. Now clause 13(b) of the agreement between the parties provides:

> "The employee covenants and agrees that in case of unsatisfactory performance of his duties the company reserves the right after due warning to transfer him from one schedule of duties to another with corresponding change in salary structure."

The plaintiff was transferred from one schedule of duties to another in consequence of which there was a reduction in his income. The defendant had addressed two letters to the plaintiff warning him of the consequences of his failure to improve the performance of his duties in their establishment. These letters were tendered in evidence by the plaintiff himself. Considerable light was thrown on this issue by yet another letter tendered in evidence by the plaintiff. It was a letter dated 24 December 1975 addressed by the Managing Director to the plaintiff. The relevant portions of that letter state—

> "Dear Mr Navo,
>
> I have received your letter dated 17 December 1975 listing down points for my attention and an appeal for a review of our letter dated 16 December 1975 regarding change of status with corresponding income.
>
> Before I proceeded on annual leave on 25 August 1975, I had personally counselled you several times regarding your apparent lack of control and supervision of the Retail Store.
>
> During the visit of Mr Kucera an inspection of your store was conducted and he caught a member of your staff sleeping. This was much of an embarrassment. Also in the fact that 12 empty cases were missing from the store and that investigation could not hold any one responsible. You will agree with me that these cases could not have just vanished in the air.
>
> It is also understood Management offered you personal advices for your improvement and you took them in a different spirit until the situation became worse and uncontrollable. As a result of which Management decided to reorganise the Retail Store and split it into 3 stores each with a storekeeper… ."

The above letter was a reply to that addressed by the plaintiff to the Nanaging Director. He concluded that letter by referring to the Managing Director in these words.

> "You being the pillar holding the administrative influence of this establishment and well known for fair play and justice, I am therefore humbly submitting this of mine for favourable consideration."

Most of the reported cases deal with wrongful dismissal arising out of a failure on the part of the employer to observe the rules of natural justice. It is unnecessary to deal with those cases here. I am concerned with a servant whose income and status were reduced and who continued in the service of that employer after such reduction in status and income. I propose to approach the issue on the broad principle that since some proprietary interest was involved, then the rules of natural justice had to be observed. Were they observed in this case? I think they were. The Court of Appeal said that there should have been written charges. The strict rules of procedure and evidence in a court of law

do not necessarily have to be observed in a case such as this. The Managing Director had spoken to the plaintiff 'several times' regarding the unsatisfactory manner in which the latter discharged his duties. The Management had also proffered advice as to how he could improve the performance of his duties. He was not amenable to advice. Warning letters were addressed to him. The letter intimated that serious consequences would arise if he failed to improve his performance. He offered no explanation.

I suppose the reason for this is his description of himself in his letter for a review of his reduction in status. He described himself in his petition for a review of his reduction in status as "a man of very slow nature to complain. Not until the worse comes to the worst, as this is now the case, do I put up my case…". In my judgment the rules of natural justice were not breached in this case.

I would allow the appeal, set aside the judgment of the Court of Appeal, and restore the judgment of Williams J.

Hon Mr Justice E Livesey Luke CJ: I agree. **Hon Mr Justice CA Harding JSC:** I agree. **Hon Mr Justice OBR Tejan JSC**: I agree. **Hon Mrs Justice AVA Awunor-Renner JSC**: I agree.

Reported by Anthony P Kinnear