

Hui Cheng Wan Agnes v Nippon SP Tech (S) Pte Ltd
[2001] SGHC 208

Case Number : Suit 1069/2000/J
Decision Date : 31 July 2001
Tribunal/Court : High Court
Coram : Woo Bih Li JC
Counsel Name(s) : Vijay Kumar Rai (V K Rai & Partners) for the plaintiff; G B Vasu (Arthur Loke Bernard Rada & Lee) for the defendants
Parties : Hui Cheng Wan Agnes — Nippon SP Tech (S) Pte Ltd

JUDGMENT:

1. On the question of dismissal for cause, various reasons were given by the Defendants in their letter dated 19 May 2000 to dismiss the Plaintiff. 5 reasons were given:

(a) The Plaintiff's failure to fulfil her obligations to prepare accounts for PT NSP for December 1999 and January 2000 ('the 1st reason').

(b) and (d) can be read together. They relate to a note dated 2 February 2000 (PBD 118) written by the Plaintiff and a note dated 25 February 2000 written by her assistant Linda Lim (PBD 125) ('the 2nd and 4th reasons').

(c) This relates to an urgent fax from Ernst & Young on 25 January 2000 (PBD 113). It was alleged that the Plaintiff did not bring the fax to the Defendants' attention until the Plaintiff's note dated 2 February 2000 although the Plaintiff knew the contents and the importance of the matters stated in the fax ('the 3rd reason').

A 5th reason was stated. This relates to the Plaintiff's legal action against Mr Nishide for defamation in total disregard of procedure and respect to the Defendants and to Mr Fujii, the President of Komatsulite Manufacturing Co Ltd ('Komatsulite') of which the Defendants are a subsidiary.

2. I would add that although the letter of 19 May 2000 was a letter of dismissal, it also informed the Plaintiff that she would be paid one month's salary in lieu of notice.

3. On the 1st reason, I am of the view that it was part of the duty of the Plaintiff to prepare accounts for PT NSP and she had in fact been doing so. However the Plaintiff should not be expected to do so in Bahasa Indonesia and Rupiah currency, which were subsequent requirements, without more help. There was no misconduct on the part of the Plaintiff in respect of the 1st reason.

4. On the 2nd and 4th reasons, the Plaintiff should not have simply said that she did not want to do the accounts nor, as I find, encourage her subordinate to write directly to Mr Nishide in those terms. However although the Plaintiff's conduct was wanting, it was not so bad as to warrant a dismissal for cause.

5. (a) As for the 3rd reason, I find that the Plaintiff did bring the Ernst & Young fax dated 25 January 2000 to Mr Nishide's attention. Accordingly, she did not fail to bring it to the Defendants'

attention until 2 February 2000 as Mr Nishide can be said to be representing the Defendants for the purpose of receiving information about the Ernst & Young fax.

(b) In any event, Mr Kondo appeared to have been aware of the fax before 2 February 2000.

(c) The Defendants' allegation that the Plaintiff did not explain the fax to Mr Kondo is an allegation made in closing submission by the Defendants for the first time and is a different complaint from that stated in the letter dated 19 May 2000.

(d) There was no misconduct by the Plaintiff regarding the 3rd reason.

6. (a) As for the 5th reason, the Defendants did not lay down any procedure to be followed if an employee of the Defendants wants to sue someone elsewhere.

(b) While the Plaintiff should have consulted Mr Kondo (the MD) or Mr Teo (the GM) before initiating the suit against Mr Nishide, bearing in mind that the suit might cause problems for Komatsulite, of which the Defendants are a subsidiary, she was not obliged to do so.

(c) The omission by the Plaintiff to consult and the initiation of the defamation action against Mr Nishide did not amount to misconduct to justify a dismissal for cause.

7. When the Plaintiff refused to withdraw her defamation action against Mr Nishide notwithstanding Mr Kondo's and Mr Teo's request to her to do so, this was the straw which broke the camel's back. Accordingly, the Defendants issued the letter of dismissal dated 19 May 2000.

8. Taking into account all the reasons advanced by the Defendants in the letter dated 19 May 2000 and the circumstances, the Defendants have not established that the Plaintiff's conduct was so bad as to justify a dismissal without cause, although the Plaintiff's conduct was wanting.

9. However, the Plaintiff could not seriously expect to be retained in the Defendants' employment, especially when she continued with her action against Mr Nishide notwithstanding that Mr Kondo and Mr Teo had made it clear to her that her action was hurting the relationship between Mr Nishide's employers Asahi Bank and Komatsulite.

10. The Defendants did not agree to nor had they led the Plaintiff to believe that she would be employed on a permanent or lifelong basis until retirement. The statement, "We look forward to your continued support and contribution for many more years to come" in letters from the Defendants to the Plaintiff does not amount to any such representation. It is a statement of appreciation and encouragement but nothing more.

11. Also, letters of confirmation or promotion, without more, do not amount to any such representation.

12. Accordingly the Defendants were entitled to exercise and did exercise their rights under clause 15 of the employment agreement dated 17 May 1989 to terminate the Plaintiff's employment by giving one month's salary in lieu of one month's notice of termination. The Defendants have validly terminated the Plaintiff's employment, see *Delaney v Staples* [1992] ICR 483, p.488 to 489.

13. Even if the Defendants had initially omitted to give one month's salary in lieu of notice, the extent of the Plaintiff's damages would be the amount which she would have received until her employment was lawfully terminated, see *Alexander Proudfoot Productivity Services Co Singapore Pte Ltd v Sim*

Hua Ngee Alvin [1993] 1 SLR 494 and *Latham v Credit Suisse Boston* [2000] 2 SLR 693. This would have been the one month's salary in lieu of notice.

14. The issue about the rules of natural justice is not relevant as such rules do not apply to a termination of employment in accordance with the terms of a contract, even if, for the sake or argument, they apply to a dismissal under ordinary contracts of employment where there is no prescribed procedure for a dismissal.

15. In any event, the Plaintiff knew about the concerns of the Defendants especially about her legal action against Mr Nishide and would not budge from her position.

16. The issue about bad faith is a red herring as the Defendants were entitled to terminate the Plaintiff's employment by paying one month's salary in lieu of notice. In any event, the Plaintiff has failed to establish bad faith.

17. There is no valid issue of retrenchment.

18. The Plaintiff's claim is dismissed.

19. I will hear parties on costs.

Sgd:

WOO BIH LI
JUDICIAL COMMISSIONER