Arokiasamy Joseph v Singapore Airlines Staff Union
[2000] SGCA 15

Case Number : CA 132/1999

Decision Date : 22 March 2000

Tribunal/Court : Court of Appeal

Coram : Chao Hick Tin JA; L P Thean JA; Yong Pung How CJ

Counsel Name(s) : Suresh Damodara and John Thomas (Colin Ng & Partners) for the respondents

Parties : Arokiasamy Joseph — Singapore Airlines Staff Union

Administrative Law – Dismissal from employment – Natural justice – Decision not to refer matter to Industrial Arbitration Court – Whether union acted in breach of natural justice

Employment Law – Unfair dismissal – Trade union – Constitution of trade union – Whether constitution imposes obligation on union to represent its members whenever requested

Employment Law – Unfair dismissal – Industrial Arbitration Court – Referral of matter to Industrial Arbitration Court – Jurisdictional requirements of Industrial Arbitration Court – Whether dispute over dismissal between employer and employee could be heard by Industrial Arbitration Court

(delivering the judgment of the court): ***Introduction***

The appellant brought this appeal against the decision of Warren LH Khoo J who dismissed the appellant`s application for a declaration and an injunction to compel the respondents to refer a dispute between the appellant and his former employers, Singapore Airlines Ltd (`Singapore Airlines`), concerning the termination of the appellant`s employment, to the Industrial Arbitration Court (`the IAC`).

Background facts

The appellant had been an employee of Singapore Airlines from 1973 until he was dismissed from the organisation in March 1997. Between 1989 to 1995, he was seconded to the Singapore Airlines Staff Union (`the SIASU`). During that time, he held various positions in the SIASU such as Assistant General Secretary, Chairman of Marketing Division, Chairman of Disciplinary Committee and Chairman of Sports Committee.

Sometime in 1996, the appellant came under investigation by the Corrupt Practices Investigation Bureau. As a result, he voluntarily resigned from his posts in the SIASU but retained his ordinary membership.

On 18 February 1997, the appellant was charged with offences in the Subordinate Courts. The appellant was accused of obtaining bribes in the form of loans from three union members who were facing disciplinary inquiries. As he was unable to raise the bail amount of $20,000, the appellant was remanded in Queenstown Remand Prison till his trial was heard. While in remand, the appellant received a letter from Singapore Airlines dated 5 March 1997, the relevant portion of which reads:

> *Dear Mr Clement,*
>
> *You have not reported for work since 21 February 1997 nor have you given the company any reason for your unauthorised absence. You have therefore broken your contract of service with the company and your employment is terminated*

with effect from 21 February 1997. Your last day of service was, therefore, 20 February 1997.

2 Consequent on your termination, you will be paid your salary up to and including 20 February 1997.

...

The appellant was subsequently acquitted of the charges after his trial in June 1997. He then sought reinstatement in Singapore Airlines by writing letters to various people in Singapore Airlines throughout the months of June and July 1997. On 31 July 1997, the appellant met representatives from Singapore Airlines to discuss a compensation package in lieu of reinstatement. Some members of the SIASU were also present at this meeting. However, no agreement on the compensation package was reached between the parties and the appellant subsequently took out DC Suit 4989/97 against Singapore Airlines in November 1997 claiming damages for his alleged wrongful dismissal. However, in May 1998, the appellant instructed his solicitors to discontinue this action against Singapore Airlines.

At around the time he discontinued his action against Singapore Airlines, the appellant wrote two letters to the President and the General Secretary of the SIASU requesting them to file an application on his behalf to the IAC under ss 35(1) and 82 of the Industrial Relations Act (Cap [shy]136) (`the IRA`) to adjudicate in the dispute between him and Singapore Airlines. He also said that there were other grounds on which the matter could be brought before the IAC. These included the fact that he had not been treated fairly and impartially by Singapore Airlines; that he had been singled out and victimised by Singapore Airlines; that Singapore Airlines was engaging in unfair labour practices; that his termination was unfair, in breach of the terms of employment and in violation of natural justice; that he was not accorded a fair and impartial hearing on his alleged misconduct, and that his termination was not in accordance with and was in breach of the express and implied terms of the Collective Agreement between the SIASU and Singapore Airlines.

There was no reply to the appellant`s first letter dated 26 May 1998. However, on 1 September 1998, after the executive council of the SIASU had held a meeting at which the matter was considered, the appellant received a response to his second letter of 11 August 1998 in the following terms:

Re: Your application to IAC

We refer to your letters dated 26 May 1998 and 11 August 1998 on the above.

The executive council in its meeting on 31 August 1998 had deliberated at length on your appeal to the union to file an application under s 35(1) of the Industrial Relations Act.

In order to support an application under s35(1) of the Industrial Relations Act the Union must be able to show that the termination of service is due to the reasons as stated in the Act.

Based on the facts and evidence given, to date, however there are no grounds in our view to support the application.

In view of this, we regret that we will not be able to accede to your request.

We wish you all the best in your endeavours.

By order of the Executive Council.

The appellant then applied to the court for a declaration and an injunction to compel the SIASU to act pursuant to his request and refer the matter to the IAC.

The decision below

The appellant claimed that the SIASU had an obligation to bring his case before the IAC by virtue of art 3.2(iii) of the constitution of the SIASU. The constitution was a contract which gave rise to contractual rights and obligations between the SIASU and its members. In failing to accede to his request, the SIASU had breached its obligations under the constitution. Furthermore, the appellant said that the SIASU had acted in contravention of the rules of natural justice as he was not given an opportunity to be heard before the executive council of the SIASU made the decision. He felt that his was a fit case for being brought before the IAC under ss 35(1) and 82 of the IRA.

As the judge was of the opinion that art 3 of the SIASU`s constitution only sets out the generality of the objects and purposes of the union and did not give rise to a contractual obligation between the SIASU and an individual member which was enforceable by the compulsive powers of the court, he rejected the appellant`s arguments that the executive council of the SIASU had acted improperly in refusing to intercede with Singapore Airlines on the appellant`s behalf. In any event, the wording of art 3 indicated that the SIASU was given a discretion to decide whether to take up a member`s case with his employer.

The judge also held that the appellant had not shown how his case came within the requirements provided by the IRA in order for the IAC to have jurisdiction over the matter, commenting that the appellant`s case obviously did not fall within any of the provisions of s 31. As far as ss 35 and 82 were concerned, the appellant was caught by the limitation in s 35(1A) that the IAC could only consider a dispute relating to the dismissal of an employee in circumstances arising out of a contravention of s 82 by the employer. The situations in s 82 however, concerned dismissals of employees in connection with trade union activities, which did not arise in the appellant`s case.

The judge concluded that the appellant could not make out a prima facie case that his case was one fit for referral to the IAC. The judge felt that there was also no substance in the appellant`s claim that the SIASU had acted in breach of the rules of natural justice in not giving him the opportunity to be heard. The appellant had made the representations and the SIASU had considered them. In the circumstances, this was all that was required of the SIASU. The judge thus dismissed the appellant`s application with costs fixed at $500.

The appeal

The appellant appealed against the whole of the judge`s decision. The appellant, who appeared in person, submitted firstly that there was a contract between himself and the SIASU with its

constitution forming the terms of the contract and that the wording of art 3.2(iii) indicated that the SIASU had an obligation to take up the member`s case with his employer at the request of that member in every case; secondly, that the appellant`s case was a trade dispute and industrial matter as defined in s 2 of the IRA, that a declaration in the same terms should have been granted by the judge and that the appellant`s case fell within the jurisdictional provisions of ss 31, 35(1) and 82 of the IRA; and finally, that the SIASU had acted in breach of the rules of natural justice as they had never deliberated over the appellant`s case before coming to their decision not to pursue the matter with Singapore Airlines.

Effect of the constitution of the SIASU

The appellant`s first ground of appeal was that the SIASU is contractually obliged to intercede with Singapore Airlines on his behalf. The appellant submitted that the fact that he pays a certain amount of subscription each month to the SIASU is an indication of the contractual relationship between him and the SIASU, the terms of which were found in the constitution of the SIASU. The article in the constitution of the SIASU relied on by the appellant in support of his contention that the SIASU is obliged to represent him is found in the section titled `Objects`. Article 3.2(iii) reads:

> *3.2 The other objects of the Union shall be:*
>
> *...*
>
> *(iii) to represent the members before their employer and/or other persons whenever necessary or desirable in their interest;*

The appellant alleged that the words used in art 3.2(iii) along with the normal practice of the SIASU of making representations on behalf of their members impose on the SIASU the obligation to make such representations whenever a member puts in a request. This is because the main reason for an employee of a company joining a trade union is to ensure that his welfare is looked after by the union whenever desirable and necessary in his best interest, so that he is not discriminated against, victimised or unfairly treated by his employer. Article 3.2(iii) thus does not give the SIASU a discretion not to represent the appellant and they should have acted accordingly when he put in his request.

We are of the opinion that, while it may well be the case that a contract exists between the SIASU and the appellant and that the rules of a trade union form the terms of such contract between the parties, the judge was correct to hold that art 3.2(iii) is not a term in the constitution capable of being enforced by a court of law. Article 3 as a whole sets out the objects of the SIASU, the principal one being to regulate relations between its members and Singapore Airlines. The provision relied on by the appellant comes under the other objects of the SIASU which include, inter alia, fostering a sense of involvement and identity amongst employees of Singapore Airlines, co-operating with Singapore Airlines in striving for the success of the company with a view to benefiting the members through a fair and equitable sharing of the fruits of such success and to promote the educational, cultural, vocational, recreational, social and material interests and welfare of the members.

The appellant argued that the article had to be read in the context of how a member would interpret it and that the drafters of the provision did not intend for discretion to be given to the relevant union officials in such matters. He added that as the SIASU has had a practice of interceding with

Singapore Airlines in a number of cases involving the reinstatement of employees whose services had been terminated for one reason or other, the SIASU were thus bound to take up the matter for him and act pursuant to his request that the SIASU file an application with the IAC to hear the dispute.

We cannot agree with the appellant. In our judgment, art 3.2(iii) cannot be read as being a mandatory order to the SIASU that they have to represent an employee in every case that is brought to their attention. A reasonable interpretation of the provision indicates that some discretion was built into the provision by its drafters through the words `whenever necessary or desirable in their interest`. Simply because there were some cases in the past where the SIASU may have chosen to take an active role in seeking the reinstatement of employees whose services had been terminated does not mean that they are thus bound to do so in every case. The objects of the SIASU are to protect the interests of its members and obviously in quite a number of cases, the SIASU would have felt that it was appropriate to intercede with Singapore Airlines on behalf of some of the employees. However, it is just as likely that there were other cases where the SIASU did not feel that it was necessary or desirable in the member`s interest to represent him before Singapore Airlines. Saying that it is a practice or custom for the SIASU to do so in some situations is insufficient to establish the appellant`s contention that they are contractually obligated to represent him in this particular case. The evidence of practice and custom is not adequate to establish the existence of an implied rule that the SIASU is bound to intercede with Singapore Airlines in all cases involving the termination of an employee`s services. All that the SIASU is required to do is to consider the matter and assess if it is an appropriate one in which it should intercede. That is the entire scope of art 3.2(iii). As such, we do not think this ground of appeal can succeed.

Whether this case amounts to a trade dispute and meets the jurisdictional requirements of the IRA

Section 31 of the IRA states that the IAC shall have cognizance of a trade dispute under certain circumstances. In other words, the matter sought to be brought before the IAC must first be described as a `trade dispute`. In s 2 of the IRA, `trade dispute` is defined as `a dispute as to industrial matters`. `Industrial matters` is likewise defined in s 2 as `matters pertaining to the relations of employers and employees which are connected with the employment or non-employment or the terms of employment, the transfer of employment or the conditions of work of any person`.

We are of the opinion that the appellant`s case is a trade dispute as defined by the IRA. However, this does not mean that the appellant is entitled to a declaration in those terms if that declaration serves no purpose. The appellant is essentially asking this court to procure the SIASU to make an application for his case to be heard before the IAC. Even though this matter can be defined broadly as a trade dispute, the other jurisdictional provisions have to be met before the IAC can have cognizance of the matter. A declaration alone that the appellant`s case is a trade dispute is pointless unless the other jurisdictional provisions in the IRA are shown to have been met.

The IAC has cognizance of a trade dispute under the following circumstances listed in s 31 of the IRA:

> *(a) all the trade unions and employers who are parties to a trade dispute jointly make a request in writing to the Registrar that the trade dispute be submitted to arbitration;*
>
> *(b) a trade union or an employer who are a party to a trade dispute makes a request in writing to the Registrar that pursuant to s 50(1) of the Employment Act (Cap 91) the trade dispute be submitted to arbitration;*

(c) a trade union which or an employer who is a party to a trade dispute as to any matter arising from or connected with a transfer of employment makes a request in writing, whether before or after the transfer of employment, to the Registrar that the trade dispute be submitted to arbitration;

(d) the Minister by notice in a Gazette directs that the trade dispute be submitted to arbitration; or

(e) the President of Singapore by proclamation declares that by reason of special circumstances it is essential in the public interest that a trade dispute be submitted to arbitration.

More importantly, under s 35 of the IRA, the IAC may only consider a dispute relating to the dismissal of an employee under certain circumstances. This section in effect acts as a restriction on the IAC`s jurisdictional powers under s 31. The relevant portions of s 35 read:

...

(1A) A Court shall not consider a dispute relating to the dismissal of an employee or make an award relating to the reinstatement of an employee except in circumstances arising out of a contravention of section 82.

(2) Notwithstanding subsection (1A), where an employee considers that he has been dismissed without just cause or excuse by his employer, in circumstances other than those arising out of a contravention of section 82, he may, within one month of such dismissal, make, through his trade union, representations in writing to the Minister to be reinstated in his former employment.

Section 82 deals with situations concerning the injuring of an employee on account of industrial action and reads:

(1) An employer shall not dismiss or threaten to dismiss an employee or injure or threaten to injure him in his employment or alter or threaten to alter his position to his prejudice, by reason of the circumstance that the employee

(a) is, or proposes to become an officer or member of a trade union or an association that has applied to be registered as a trade union;

(b) is entitled to the benefit of a collective agreement or an award;

(c) has appeared or proposes to appear as a witness, or has given or proposes to give evidence, in any proceedings under this Act;

(d) being a member of a trade union which is seeking to improve working conditions, is dissatisfied with such working conditions;

(e) is a member of a trade union which has served notice under section 17 or

which is a party to negotiations under this Act or to a trade dispute which has been notified to the Registrar in accordance with Part III;

(f) has absented himself from work without leave for the purpose of carrying out his duties or exercising his rights as an officer of a trade union where he has applied for leave in accordance with section 81 before he absented himself and leave was unreasonably deferred or withheld; or

(g) being a member of a panel appointed under section 6 has absented himself from work for the purpose of performing his functions and duties as a member of a Court and has notified the employer before he absented himself.

The appellant argued that the judge should have declared the dispute between him and Singapore Airlines to be a trade dispute falling under s 31 and then directed the SIASU to refer the dispute to the IAC under s 31(d) of the IRA, ie through a referral by the Minister. In response to the restrictions to the IAC`s jurisdiction in cases involving the termination of employment imposed by ss 35 and 82 of the IRA, the appellant submitted that his case does fall within the circumstances listed in s 82 of the IRA. This is on the basis that in his second affidavit, the appellant had listed certain grounds in support of his claim that the dispute falls within the scope of s 82. He stated that:

a Under s 82(1)(a): I was a member of SIASU at the material time.

b Under s 82(1)(b): I will be entitled to the benefit of the recently concluded Collective Agreement which is a court award under s 26 of the Industrial Relations Act.

c Under s 82(1)(d): I was an official with the defendants (SIASU) seeking for better working conditions in the Marketing Division of SIA, namely, Passenger Relations Department, AULD Department, Cargo and Route Revenue Departments.

d Under s 82(1)(e): I was an official with the defendants (SIASU) which served notice under s 17 (to invite the company SIA to negotiate for a new collective agreement) and was also a party with the defendants (SIASU) which is a party to the negotiations under this Act.

The problem with the appellant`s submissions on this issue is the wording of s 82(1). This provision expressly states that the employer shall not dismiss or threaten to dismiss the employee `by reason of` the circumstances listed in sub-ss (a) to (g). The appellant was not dismissed from Singapore Airlines because he was a member of the SIASU or that he was entitled to the benefit of the Collective Agreement, his services were terminated because he was absent from work without leave. This is clearly the case from the face of the dismissal letter sent to the appellant by the Personnel Manager on 5 March 1997 as well as the actual events that took place. Crucially, the appellant does not deny the fact that he was absent from work without authorisation as stated in the dismissal letter. As for the other two reasons given by the appellant that he was an official with the SIASU, this could not form any alleged reason for his dismissal as he had resigned from these posts in 1996, long before Singapore Airlines decided to terminate his services. Furthermore, s 35(2) of the IRA,

which is the only relevant section to the appellant`s situation, cannot apply such that the appellant could ask the SIASU to make representations to the Minister about his reinstatement, as the appellant only sought reinstatement more than a month after he had been dismissed. The appellant was caught by the time limit in s 35(2).

We agree with the judge that the appellant has not been able to make out a prima facie case that his case is one fit to be brought before the IAC. Thus, there is no substantive basis on which any declaration ought to be granted that the SIASU be ordered to refer the matter to the IAC by writing in to the Minister for Manpower on behalf of the appellant and requesting that the matter be brought before the IAC for arbitration under s 31(d) of the IRA.

Alleged breaches of the rules of natural justice

The appellant`s final ground of appeal is that the SIASU never deliberated on his request made in his two letters addressed to the president and the general secretary of the SIASU in the manner that the SIASU claimed to have done in its reply to the appellant. Furthermore, he alleged that the members of the executive council of the SIASU who came to the decision not to pursue the matter further were not aware which sections of the IRA applied to the appellant`s case and thus acted unfairly, unreasonably, in bad faith, ultra vires their powers and in a manner that no reasonable committee would have in arriving at their decision. The appellant argued that it was not up to the executive council to interpret the IRA as that involved a consideration of questions of law. He also said that they had erred by taking into account wrong facts in arriving at their decision and asked that their reply to the appellant dated 1 September 1998 be declared null and void.

The minutes of two meetings held by the executive council show the following facts. The executive council of the SIASU first considered the matter in a meeting on 31 August 1998 and decided to seek legal advice. It was presumably after seeking legal advice that the executive council replied to the appellant on 1 September 1998 informing him that based on the facts, there were no grounds to support the application to the IAC. At a second meeting on 21 September 1998, this matter was discussed further and the general secretary commented that he did not know under which section of the IRA the executive council could refer the appellant`s case to the IAC as the appellant was no longer an official of the trade union at the time of his dismissal. It was also reiterated at this meeting that the SIASU could not find any prima facie evidence that s 82 of the IRA had been contravened by Singapore Airlines.

In our view, the appellant had no basis on which he could say that the SIASU acted in breach of the rules of natural justice based on the facts related above. The minutes of the meeting show that the executive council sufficiently considered the matter, sought legal advice and correctly came to the conclusion that the appellant`s case did not fall within the purview of the IAC through the relevant provisions of the IRA. The dispute was not one in which the IAC had jurisdiction to make an award. The appellant had obviously placed a very strained interpretation on the comment of the general secretary about not knowing which section of the IRA applied to the appellant`s case. A realistic interpretation of this comment indicates the general secretary`s view that the SIASU could not make an application to the IAC on the appellant`s behalf because no section in the IRA applied to the appellant`s case. The appellant`s argument that the executive council should not have interpreted the IRA as it was an issue of law is also misconceived as they would not have been able to come to a decision on whether it was appropriate to apply to the IAC on the appellant`s behalf if they did not first consider whether the appellant`s case fell within the jurisdictional provisions of the IRA.

As such, we do not think that the appellant`s claim that the SIASU had acted in breach of the rules

of natural justice in deciding not to make an application to the IAC on his behalf can succeed. Accordingly, we agree with the judge and hold that there should be no declaration that the SIASU`s reply to the appellant is null and void.

Conclusion

While we sympathise somewhat with the appellant`s position given the circumstances under which he lost his job, we cannot find a legal basis on which to make the declarations he applied for which compel the SIASU to make arrangements such that his case may be brought before the IAC. If at all, the proper party against whom the appellant should pursue his redress, if he feels that he has been done wrong by, is Singapore Airlines. In the premises, we dismiss the appeal with costs to be taxed. We make the usual consequential order that the security deposit be released to the respondents or their solicitors on account of costs

Outcome:

Appeal dismissed.