

The Oriental Carpet Manufacturers, Limited - - - *Appellants*

*v.*

Dicran Dedeyan - - - - - *Respondent*

FROM

HIS BRITANNIC MAJESTY'S SUPREME COURT FOR THE DOMINIONS OF  
THE SUBLIME OTTOMAN PORTE.

---

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL, DELIVERED THE 10TH JULY, 1923.

---

*Present at the Hearing :*

VISCOUNT HALDANE.

LORD PARMOOR.

LORD CARSON.

[*Delivered by* LORD CARSON.]

---

This is an appeal by the appellants from a judgment of His Britannic Majesty's Supreme Court for the Dominion of the Sublime Ottoman Porte dated the 1st August, 1922, whereby the appellant Company was ordered to pay to the respondent the sum of £4,800 and the sum of 535,715 Turkish piastres, as arrears of salary and allowances and damages for wrongful dismissal.

The appellant Company, which was incorporated in the year 1907 under the English Companies' Acts, carried on business in (amongst other places) Constantinople and Smyrna. The respondent is an Ottoman subject, who was since 1890 in the employment of Spartali and Company, until its business was absorbed by the appellant Company upon its formation, when he was taken over as chief accountant at the Smyrna branch, where the chief office of the Company was.

The respondent had no written contract, and was paid partly by a fixed salary and subsequently by a percentage upon

the profits of the Company's sales, and to endeavour to ascertain the nature of his position with a view to adjudicating upon his rights, it is necessary to consider the course of dealing between him and the appellants whilst he was in their employment.

On the 22nd February, 1909, a resolution of the board of directors concerning "remuneration and participations for chiefs of departments" was passed, whereby the Company, with the object of interesting chiefs of departments at the head office in the business, agreed to provide that the respondent, amongst others, should receive a salary fixed at £T.25 per month and a bonus of .40 per cent. to be reckoned on the net profits of the Company after deduction of certain depreciations. It was further provided that any member might tender his resignation provided he gave suitable notice as might be required by the Company; such notice, however, should not be required to exceed the term of six months. It was also by the same resolution provided that in case of sickness or infirmity that might render any member unfit for service, such member might be asked by the Company to retire, and any sums due held by the Company would be immediately surrendered to him; and, further, that the term of the present agreement was fixed for one year from the 1st January, 1909, but the principles therein laid down were proposed to be passed for a term of ten years, a definite decision to be taken at the close of next year's balance sheet, the agreement being subject to any modifications which might then be considered necessary, and that the above term should be embodied in writing in the form of an agreement and be signed by the parties concerned. No such agreement in writing was, however, drawn up, but the respondent for some time thereafter received the salary and bonus specified in the resolution.

On the 11th February, 1913, by another resolution, it was resolved that certain percentages of participations in profits should come into force for the coming year, the respondent's participation, as well as that of other members of the staff, being fixed at 2 per mille.

By a further resolution of the 7th January, 1914, it was resolved to ask the respondent, then chief accountant of the Company, to look after the administration and financial questions as sub-manager, and that he should attend in a consultative capacity all the meetings of the board of directors, and, further, that in case of the absence of Mr. Allotti, the general manager and a director, the general management should be secured by a committee composed of the directors fulfilling active duties in Smyrna and sub-manager the respondent.

On the 13th June, 1914, it was resolved to allow the respondent annually "*sous forme de gratification*," a sum equal to the total amount of a director's fees in recognition of his distinguished service and devotion, and on the same date it was further resolved to allow the respondent annually and in the form of a bonus a sum equal to the total amount of a director's fees in

recognition of his devotion and of the intelligent service rendered by him, and he, in common with other members of the staff, was entitled to draw an advance against profits of £T.20 per month.

On the outbreak of war, however, new arrangements were come to in order to meet the financial difficulties of the Company occasioned by that event.

From the 10th August, 1914, to the 5th September, 1914, after the outbreak of war between the Allies and Central Powers, board meetings of the Company were held at Smyrna, and resolutions were passed whereby after reciting that, owing to the Company's situation as a result of the European war, the declaration of a moratorium and the absolute impossibility of making any forecast as to the duration of the situation, the board was obliged to consider the question of reducing to a minimum the running expenses in order to husband the resources which the Company disposed of at the present moment, and which were thereafter specified. It was provided that the whole of the Smyrna staff should be considered dismissed after settlement of all salaries up to the month of August in full, and notice to that effect was duly given to the staff on the 15th August:—  
 "Members of the staff [the resolution continued] will be absolutely at liberty to find other work if they can do so, the Company being under no obligation to take back a clerk dismissed at the present moment." After careful deliberation, it was further resolved to grant all members dismissed a bonus of one and a half month's salary, a very limited number of clerks indispensable for the carrying on of business being retained in the Company's service with salaries reduced to the extent of from 40 to 60 per cent. "Further, all monthly advances drawn by members of the staff participating in the profits are discontinued as from the 1st September." It is not necessary to consider whether, as was raised in the argument, the respondent was or was not included in that resolution, as he does not appear to have been dismissed under the resolution but to have continued on in the employment of the Company. His salary, however, was reduced to £T.25 per month, and, as stated by himself in his evidence, he consented to such reduction of salary as other chiefs of departments did, and all advances against shares of the profits as provided by the resolution were stopped. The respondent stated, also, in his evidence, that he considered that the reduction was to be temporary until the Company was on a pre-war basis, "at least that was the prevailing idea," but there is no evidence of any agreement to that effect. The respondent appears to have continued at work in Smyrna until July, 1916, upon the terms aforesaid, when he was taken ill with tuberculosis, and was granted three months' sick leave. In fact, he remained absent on full pay until the 8th April, 1918. During his absence he applied to the representative of the Company for assistance on the ground of his

destitution, and was granted an advance of £T.100 upon his providing security for the repayment of the advance. It is to be noted that in the correspondence which ensued with reference to this matter, no claim of right was put forward by the respondent for any further remuneration than the salary which he was receiving.

After the respondent returned to business in April, 1918, he complained of certain obstruction on the part of certain officials in the appellant Company, and wrote suggesting that perhaps in view of the state of his health he should again go on sick leave, and to this proposal the Company's representative assented on the 22nd May, 1918, and thereafter the respondent again went on leave and never returned to work.

In these circumstances, and while the respondent was on sick leave, on the 17th July, 1919, it was resolved at a board meeting to adopt as a basis the fixed salary earned by the staff who remained in Smyrna, plus the participation of their shares—that is, £T.30, plus £T.20, or £T.50, the including of the participation being intended to cover the higher cost of living. Such salaries were to be totalled up for all the length of the war and the total amount to be included at the fixed rate of 400 piastres per Turkish lira; after deduction of the sums received by each of them during these five years, the difference was to be paid in paper. The resolution continued as follows:—

“Moreover, each of these gentlemen shall have his participation, as previously agreed upon, on the profits shown by the balance-sheet, that is to say, that the £T.20 paid to each of them shall not be deducted from the percentage.”

By a resolution adopted by the directors at a meeting held in Smyrna in 1919, and whilst the respondent was still absent as aforesaid, it was resolved as follows:—

“Dicran Dedeyan décidé de lui allouer pour le passé la même gratification que celle accordée aux autres membres de personnel supérieur; décidé aussi de lui remercier et de cesser de payer ses appointements après le 31 décembre, 1919.”

The purport of this resolution was communicated to the respondent in a letter addressed to him at Geneva, where he was at the time residing, by two directors of the Company, and the allowance to be paid to the respondent was therein fixed at £T.6,557.15, which sum was stated in the letter to be held at the respondent's disposal, with a request that he should send instructions on the subject, and by a telegram dated the 15th January, 1920, the respondent requested that the appellant Company pay the sum offered to his father-in-law, Ekişler. This is of importance, and it is also of importance to observe what followed, having regard to the necessity of ascertaining under the circumstances already related what could be reasonably considered as to the amount of arrears to which the respondent might be held entitled.

After receipt of the telegram referred to, the appellant Company wrote again to the respondent on the 27th January,

1920, requesting him to forward either direct, or through the said Ekisler, a duly stamped receipt in the following terms :—

“ Reçu de The Oriental Carpet Manufacturers, Limited, en solde de tous comptes la somme de £T.6,557.15 en espèces représentant le solde du montant me revenant en vertu des décisions, prises par le Conseil d'Administration et donne par le présent a la Société pleine, entière et définitive décharge.”

Upon receipt of which they undertook to pay over the sum as directed.

On the 23rd March, 1920, Ekisler wrote to the appellant Company saying that he held at their disposal a receipt signed by the respondent and requesting them to forward to him the sum of £T6,557.15 as the respondent's attorney. In the meanwhile, however, on the 17th March, 1920, the appellant Company had received a communication from the representative of the British High Commissioner at Smyrna, requesting them not to pay over any moneys to the respondent which they might hold to his credit as a result of transactions prior to the conclusion of the Armistice, and, as a result of this embargo, the sum was not, and never has been, paid over. It is, however, evident that the respondent at the time made no objection to the computation made by the board as to what he was entitled to as arrears of salary, the details of which are set out in the letter of the 27th January, 1920, nor, indeed, until the 11th December, 1920, does there appear to have been any complaint upon his part that he was being unfairly treated.

Further, on the 23rd October, 1920, he applied to the board requesting to be allowed to resume his duties, a request which was not acceded to ; but it was decided in view of the respondent's financial position, to offer him a final grant of £500 sterling.

There is a draft letter dated the 12th November, 1920, in which the respondent stated that with regard to the formal receipt referred to in the letter of the 27th January, 1920, he could not at present sign this in view of the embargo which had been notified to the appellants by the British High Commissioner, but that on the date that embargo was lifted he declared himself ready to sign the said receipt against payment by the Company of the sum mentioned ; that is, £T.6,557.15, and he added in that letter a statement referring to the liberal treatment which had been extended to him. It is apparent that he was prepared to sign at that date a receipt for the sum of £500 “ à titre de gratification à l'occasion de mon retrait de la dite Société.”

It appears, however, that by the 11th December, 1920, he had changed his mind, as by a letter of that date he claimed that at the date of his dismissal on the 1st January, 1920, there was due to him the following sums :—

£T.6,557.15—balance of salary.

£1,827 sterling—share of profits.

£1,200 sterling—the equivalent of directors' fees for that period.

And he also claimed that, instead of the sum of £500 sterling which he had been offered he was entitled to twelve months' salary in lieu of notice, together with a sum representing his share of the profits and his allowance in lieu of directors' fees for such period, and he based this claim mainly on resolutions passed by the directors in June of 1920, six months after he had been dismissed, whereby the directors authorised certain payments to certain of the staff at rates appearing in that resolution, claiming that the resolution applied to him although his name was not mentioned in it.

In consequence of the claim put forward, the appellant Company, on the 17th December, 1920, wrote to the respondent formally withdrawing the offers of £T.6,557.15 and £500 sterling, whereupon the respondent brought the present action.

There are two questions to be considered. First, the question of wrongful dismissal. It has been argued that the appellants had a right to dispense with his services on two grounds. First because it was alleged the appointment was merely for a year, and the appellants were entitled to terminate it at the end of any year, and, secondly, because under the resolutions already referred to of the 22nd February, 1909, they were entitled to determine his employment on the ground of sickness.

Their Lordships are of opinion that neither of such contentions can prevail, and that they see no grounds for holding that the respondent's office was merely for a year, having regard to the continuance and nature of his office and the whole course of dealing between him and the Company, nor do they consider that there is any evidence to show that the real reason of the termination of the contract was the illness of the respondent. It is quite true that he was absent for a long time on sick leave, but this was with the entire concurrence of the Company, and, indeed, as regards the latter part of his leave it was to suit their convenience.

The question then arises as to what notice the respondent was entitled as being reasonable, having regard to the terms on which he held his employment.

The learned Judge who heard the case decided that a reasonable notice would be a year's salary at the rate of £100 per month, which was the sum voted to themselves by the directors in the resolution passed after his dismissal.

Their Lordships cannot agree with this view of the learned Judge. Their Lordships are of opinion that, having regard to the nature of the employment, and to the terms of the resolution of the 22nd February, 1909, under which any member might retire on giving suitable notice not to exceed six months, that a reasonable notice in the present case ought to be fixed at six months. Nor can their Lordships see on what grounds the respondent is entitled to fix his emoluments upon the basis adopted by the trial Judge, namely, a similar sum as that which was awarded rightly or wrongfully by the directors to themselves after the respondent had left their employment.

The appellants, however, had offered a sum of £500 as a final grant, and their Lordships in the sum which they have to estimate are entitled to take that offer into consideration.

The other question to be decided is, as to the amount due for arrears of salary and other emoluments. It is not easy to follow out the effects of the various resolutions which have already been referred to, and as to how far some of them constituted a contractual relation between the appellants and the respondent, or how far some of the resolutions applied to the respondent having regard to the fact that he was on sick leave. For instance, one of them, viz., that of the 17th July, 1919, is stated on its face to be applicable only to members of the staff who remained in Smyrna.

Their Lordships, therefore, in trying to estimate as best they can what is fairly to be deduced from the position of the respondent think it unnecessary to go into details having regard to the offer made in the letter of the 11th December, 1919, which seems to have not unfairly attempted to estimate the sum due to the respondent, and which seems to have been willingly agreed to by him, but which was unfortunately unable to be carried out owing to the embargo placed upon it by the representative of the British High Commissioners at Smyrna.

On the whole, therefore, making the best estimate they can, their Lordships are of opinion that the judgment given by the trial Judge should be reduced from the sum of £4,800, plus the sum of 535,715 Turkish piastres to the sum of £2,250 as arrears of salary and allowances and damages for wrongful dismissal, and that there should be no costs to either party of the present appeal, and their Lordships will humbly advise His Majesty accordingly.

It is unnecessary to deal further with the application made on behalf of Mr. James Baker and others, with reference to certain charges made against them by the trial Judge. Their Lordships have already at an early stage of the argument expressed their views as to these matters, and they think it unnecessary now to refer to them at any greater length.

In the Privy Council.

---

---

THE ORIENTAL CARPET MANUFACTURERS,  
LIMITED,

2.

DICRAN DEDEVAN.

---

---

DELIVERED BY LORD CARSON.

Printed by  
Harrison & Sons, Ltd., St. Martin's Lane, W.C. 2.  
1923.