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Sovereign House Security Services Ltd v Savage

Court of Appeal (Civil Division)

[1989] IRLR 115

HEARING-DATES: 1 November 1988

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CATCHWORDS:

Unfair dismissal -- Was employee dismissed? -- termination by employer -- Was employee dismissed? resignation -- Employment Protection (Consolidation) Act 1978 section: 55(2)(a)

HEADNOTE:

Mr Savage was employed by the appellant company as a security officer. Following the discovery that money was missing from the company, Mr Savage was telephoned by the head security officer, Mr Price, and told that he was being suspended forthwith pending police investigations. Mr Savage responded by saying, "I am not having any of that, you can stuff it, I am not taking the rap for that". He then telephoned his immediate superior, Mr Scroggie, and told him that he would not be in to relieve him the following morning as arranged. According to Mr Scroggie, Mr Savage agreed that he was "jacking the job in" and asked him to inform the duty inspector of the situation. Mr Scroggie said that he would phone Mr Price to tell him and Mr Savage agreed that he should do so. The employers treated Mr Savage as having resigned.

Mr Savage subsequently made a complaint of unfair dismissal which was upheld by the Industrial Tribunal. The Tribunal rejected the employers' argument that he had not been dismissed but had resigned. The EAT dismissed an appeal against that decision.

The Court of Appeal held:

The EAT had not erred in upholding the decision of the Industrial Tribunal that the respondent security officer was not tendering his resignation when, following his suspension pending police investigations into missing money, he told his immediate superior that he was "jacking the job in" and asked him to pass that message on to the head security officer.

Where unambiguous words of resignation are used by an employee to an employer direct or through an intermediary, and are so understood by the employer, generally the proper conclusion of fact is that the employee has resigned, and

Tribunals should not be astute to find otherwise. In some cases, however, there may be something in the context of the exchange between the employer and the employee, or in the circumstances of the employee himself, to entitle the Tribunal of fact to conclude that notwithstanding the appearances, there was no real resignation despite what it might appear to be at first sight. For example, as was recognised by the Court of Appeal in Sothern v Franks Charlesly & Co, if the case concerned decisions taken in the heat of the moment or involved an immature employee, then what otherwise might appear to be a clear resignation should not be so construed.

In the present case, it was open to the Industrial Tribunal to conclude on the evidence that the words used by the respondent to his immediate superior were used in the heat of the moment and should not have been accepted at full face value by the employers. The Tribunal were entitled to conclude, therefore, that the respondent had not resigned but had been dismissed in law.

CASES-REF-TO:

Sothern v Franks Charlesly & Co [1981] IRLR 278 CA

COUNSEL:

For the Appellants: Mr B KEITH; For the Respondent: Mr M SPENCER.

PANEL: May, Croom-Johnson, Woolf LJJ

JUDGMENTBY-1: MAY LJ

JUDGMENT-1:

MAY LJ: This appeal has been well argued on both sides. It is an employers' appeal from a decision of the Employment Appeal Tribunal of 5.11.87 dismissing their appeal against a decision of an Industrial Tribunal on 19.12.866 that the respondent employee had been unfairly dismissed from his employment which had begun in about 1980 and ended in 1986.

The brief circumstances of the case are these. The employee, as I shall call him, was employed by the employers at their premises in Kings Lynn as a security officer. Immediately senior to him was a senior security officer, a Mr Scroggie. Yet higher in the hierarchy was Mr Price, the head security officer. In July 1986 money of the employers went missing. In consequence, rightly or wrongly it does not matter and we do not know, the employee was telephoned by Mr Price and suspended forthwith. When being told that that was to happen, pending an inquiry by the police, the Industrial Tribunal found as a fact, in paragraph 4(1) of their decision, that the employee replied, 'I am not having any of that, you can stuff it. I am not taking the rap for that'. That happened at about quarter to seven in the evening. Shortly thereafter the employee telephoned his colleague and immediate superior, Mr Scroggie. As the Industrial Tribunal found in paragraph 4(2) of their decision, the employee telephoned Mr Scroggie and told him that he would not be in to relieve him at seven o'clock the following morning as had previously been arranged. Until that time Mr Scroggie had not been so informed. He did not understand the position and he said that the employee told him that he was not coming in again. Mr Scroggie asked the employee whether that meant that he was 'jacking the job in' and Mr Scroggie's evidence was that the employee said'yes'. The employee then asked Mr Scroggie

'to inform the duty inspector at Leeds of the situation' and Mr Scroggie replied that he would telephone Mr Price and tell him. The employee agreed to that. Mr Scroggie did in fact telephone Mr Price, who passed the messages on to head office in Leeds and there was no further contact between the employers and the employee until there was correspondence between the respective solicitors later in the same month when the employers' contention was, and has ever since been, that by the messages relayed from him to his employers by Mr Scroggie, as I have outlined, he had resigned from his employment and not been dismissed as was his contention.

In the event the employee started proceedings in respect of his alleged unfair dismissal in the Industrial Tribunal. It was that application which started the present litigation. In their decision the Industrial Tribunal concluded that there had been no resignation by the employee, but that he had been dismissed at some date after the conversations between him and Mr Scroggie. Ultimately, on a second appearance before the Industrial Tribunal, appropriate compensation for the unfair dismissal, as found, was assessed by the same Industrial Tribunal. It was against that decision that the employers appealed to the Employment Appeal Tribunal and upon its dismissal of their appeal they now appeal to us, contending that on the Industrial Tribunal's findings of fact there was in truth no alternative open to the Industrial Tribunal than to find that there had been a clear resignation by the employee in the message that he gave to Mr Scroggie and knew that Mr Scroggie was going to pass on to Mr Price.

Where there is no ambiguity in a resignation statement such as was made by the employee in the instant case and it is accepted as such by the employer, there is no room for any further inquiry; the employee, it is submitted on the employers' behalf by Mr Keith, resigned; that brought the contract of employment to an end and there can be no question of dismissal, fair or unfair.

Insofar as the Employment Appeal Tribunal's decision is concerned, Mr Keith criticizes the conclusion on p 24 of our bundle (p 5 of the Employment Appeal Tribunal's judgment) that there was any ambiguity about the authority which Mr Scroggie had to pass the employee's statement on to the employers. Alternatively, if there was any ambiguity in that authority, then the only proper course for the Employment Appeal Tribunal in the circumstances was not to dismiss the appeal out of hand but to send the matter back for further investigation, with or without evidence, by the same Industrial Tribunal. He submitted that if this was not the situation and not the law applicable, it was effectively shifting the burden of proving a dismissal from the employee, upon which in law it rests, to the employer. Further, as I say, when one looks in the cold light of this court at the interchange between the employee and Mr Scroggie, he submits that there can be no realistic conclusion on the facts other than that the employee did in truth resign from his employment with the employers, and that both the Industrial Tribunal and the Employment Appeal Tribunal fell into error.

In answer to these submissions Mr Spencer, on the employee's behalf, in effect submits that even where things look as black and white as they do in the findings of fact in paragraph 4 of the Industrial Tribunal's decision in this case, one must bear in mind that one is dealing with an industrial situation. One must bear in mind the function of an Industrial Tribunal, and there may be, even in circumstances as apparently clear cut as those that obtained in the instant case, something to give the lie to the perhaps most obvious conclusion and that there was indeed evidence in the present case upon which the Industrial

Tribunal could come to the conclusion which they did that there had been a dismissal, no resignation and that accordingly it was not for this court, nor for the Employment Appeal Tribunal to interfere.

In my opinion, generally speaking, where unambiguous words of resignation are used by an employee to the employer direct or by an intermediary, and are so understood by the employer, the proper conclusion of fact is that the employee has in truth resigned. In my view tribunals should not be astute to find otherwise. However, in some cases there may be something in the context of the exchange between the employer and the employee or, in the circumstances of the employee him or herself, to entitle the Tribunal of fact to conclude that notwithstanding the appearances there was no real resignation despite what it might appear to be at first sight.

We were referred in this connection to the earlier decision in this court of Sothern v Franks Charlesly & Co [1981] IRLR 278. In that case a partnership secretary to a firm of solicitors had in circumstances into which it is wholly unnecessary to go, said, 'I am resigning'. Both the Industrial Tribunal and the Employment Appeal Tribunal held that those words were ambiguous and that in consequence the employee had been dismissed. When the matter reached this court, it took a different view, concluded that that words were wholly unambiguous and that in the circumstances there had been a resignation and not a dismissal. Nevertheless in his judgment Fox LJ at para 19 in the report said this:

'As regards Mrs Sothern's intentions when she said, "I am resigning", it seems to me that when the words used by a person are unambiguous words of resignation and so understood by her employers, the question of what a reasonable employer might have understood does not arise. The natural meaning of the words and the fact that the employer understood them to mean that the employee was resigning cannot be overridden by appeals to what a reasonable employer might have assumed. The non-disclosed intention of a person using language as to his intended meaning is not properly to be taken into account in determining what the true meaning is.'

I turn to para 21:

'Secondly, this is not a case of an immature employee, or of a decision taken in the heat of the moment, or of an employee being jostled into a decision by the employers.'

The learned Lord Justice was there contemplating the possibility to which I have referred, that if one is concerned with an immature employee or decisions taken in the heat of the moment, then what might otherwise appear to be a clear resignation, should not be so construed.

Dame Elizabeth Lane, in giving the second judgment of the court, agreed with the decision that there had been a resignation, but in the course of her judgment, referring to the words used, she said this:

'Those were not idle words or words spoken under emotional stress which the employers knew or ought to have known were not meant to be taken seriously. Nor was it a case of employers anxious to be rid of an employee who seized upon her words and gave them a meaning which she did not intend. They were sorry to receive the resignation and said so.'

So Dame Elizabeth Lane was again taking the same approach as Fox LJ: generally speaking a resignation is to be imputed, but there may be circumstances in which, notwithstanding what would appear at first sight, the circumstances are such that what occurred was a dismissal rather than a resignation.

Stephenson LJ did not specifically deal with this aspect of the matter, although one can read an echo of the views expressed by the other two members of the court in para 29 on p 280.

In the light of the judgments in that case and having regard to the view that I take of the applicable law, one might have been forgiven, on the findings of fact to which I have referred, contained in paragraph 4 of the Industrial Tribunal's decision of the interchange between Savage and Scroggie, for thinking that there had been a clear resignation. However, there was evidence from the employee himself (at the top of p 30) to this effect:

'I could have said something in the heat of the moment to lead them to think I had resigned. I hadn't resigned as far as I was concerned. In the heat of the moment I don't think anybody could accept that as a formal resignation.'

There was in addition from Mr Price in answer to a member of the Industrial Tribunal at p 33 of the bundle:

'It was a normal reaction of somebody accused of theft -- stuff the job. I would have thought he would have calmed down afterwards. I would have expected him to contact me. I was told not to contact him.'

There was that evidence from those two witnesses on which in my judgment it was possible for the Industrial Tribunal, were they so minded, having seen and assessed the witnesses giving evidence in the witness-box, to conclude that the words actually used by the employee to Scroggie were used in the heat of the moment and should not have been accepted at full face value by the employers. There was thus, in my opinion, evidence entitling the Industrial Tribunal to make the finding which they did in paragraph 7 of their decision which was, as I think, just as much one of fact as their findings of fact set out in paragraph 4 of the decision that 'the applicant was not tendering his resignation to Mr Scroggie'.

In those circumstances, there being evidence upon which the Industrial Tribunal could have come to the conclusions which they did, in my view it is not for us to disturb that clear conclusion of fact and, as was the view of the Employment Appeal Tribunal in relation to the appeal to them, I would dismiss the appeal from the Employment Appeal Tribunal to us.

JUDGMENTBY-2: CROOM-JOHNSON LJ

JUDGMENT-2:

CROOM-JOHNSON LJ:P I agree.

JUDGMENTBY-3: WOOLF LJ

JUDGMENT-3:

WOOLF LJ: I also agree.

DISPOSITION:

Appeal dismissed

SOLICITORS:

Godlove Saffman Lyth & Goldman; Ward Gethin