

CASE STUDY
OKUMURA METAL (M) SDN. BHD. V. APARAHU ATHINARAYANAN
2003 2 ILR 160

The claimant in the case has been dismissed from his employment for allegedly involved in the thief of scrap metal from the company store. The claimant is employed as store supervisor and has been in employment with the company since 1996. The fact of the alleged thief is that on 27 November 1999 at or about 12.30 pm, a lorry attempt to leave the company ground was stopped by the company Managing Director at the guard house and examined. It was found the lorry was carrying scrap metal without any proper documentation. The driver of the lorry implicated the claimant on the purportedly illegal removal of the company's property leading to the claimant dismissal. The claimant argument has been that no showcause letter was given to him, no domestic inquiry was held to afford him the opportunity to be heard, the allegation in the letter of dismissal is not been proven and that he was not question in the present of the lorry driver to question the allegation he who load the scarp in the lorry. The company stated the lorry driver and the claimant were taken into room within the factory premise and when questioned again, he implicated the claimant and his subordinate in an uncertain term being responsible for loading the scarp. The claimant nevertheless did not deny to those present that he was party to the unauthorised removal of the scrap from the company. The claimant came to see the company assistant manager and the human resource and apologise for his role in the removal of the scrap after a police report was made and the lorry driver was arrested by the police. He also seeks their assistance for the withdrawal of the police report made against him but both decline to help in view of the seriousness of the offence.

The Court decision

The claimant conduct during and after the incident led the court to the conclusion that he was actively involved in the unauthorised removal of the scrap from the company premises. The court finds that the claimant contention that there was a breach of natural justice cannot be sustained as since no proper inquiry had been held, the entire matter will be open for determination by the court. The court, satisfied that the

claimant had indeed committed the misconduct, found the dismissal justified because the misconduct involving moral turpitude such as theft or assisting in theft can only be punished with dismissal.

Comment

In this case the worker has admitted to the misconduct to his employer in order to avoid police arrest. This admission was used against the worker. The worker's conduct also contributed to the event where he kept quiet when questioned by the company and also his conduct after the lorry driver was brought to the police station where he went and met the company officials. Nevertheless, where the fact of the alleged misconduct is not clear and there are too many unanswered questions, it is advisable to have a domestic inquiry.

Prepared by

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7 November 2022