IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1994] SGHC 36

OS 138/1993

Between

Cheong Fook Chee

… *Plaintiff*

And

Sea-Land Service Inc

… *Defendant*

GROUNDS OF DECISION

Contract — Consideration; Employment Law — Benefits — Retrenchment

Version No 1: 29 Oct 2026 (23:45 hrs)

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Cheong Fook Chee v Sea-Land Service Inc

[1994] SGHC 36

OS 138/1993
Kan Ting Chiu JC
18 February 1994

1 This case deals with the effect of a variation to a term of employment regarding redundancy benefits. The defendant, Sea-Land Service Inc, employed the plaintiff as a maintenance mechanic in April 1972. Under the defendant`s ***Employee Rules and Benefits Handbook*** (hereinafter referred to as `the handbook`), a severance pay equivalent to half a month`s salary for each year`s service is payable when an employee is made redundant.

2 In 1989, the defendant company underwent a restructuring program which resulted in some employees being rendered redundant. By a letter dated 11 December 1989, Alex J Mandl, chairman and chief executive officer of the company, informed its employees that those affected will be offered an enhanced severance program which will provide severance payment computed in relation to the length of service (affidavit of the plaintiff filed 14 August 1992, pp 16-18).

3 On 1 November 1991, the plaintiff received a letter informing him that his employment with the defendant would be terminated on 30 November 1991 (the same affidavit, p 11). Together with this notice, there was a computation of

his final payment of salary (same affidavit, p 12) in which he was to receive severance pay of $23,900 and an enhanced severance payment of $14,340. There was also an ` Enhanced Redundancy Program Singapore` which gave notice of a pending redundancy exercise and provided that an affected employee would receive severance pay equivalent to half month`s salary for each year of service and enhanced severance pay of another half month`s salary for each year`s service, up to a maximum of six months` additional salary (same affidavit, pp 13-15).

4 When the plaintiff went to collect his final payment of salary, he was in for a surprise. He was served another letter by the defendant dated 13 December 1991 (same affidavit, p 19) telling him, inter alia:

> *Please be informed that the said enclosure titled `Final Payment of Salary` was calculated in error. Please treat the said enclosure as withdrawn and of no effect.*

5 Under art 3.12(B) of the ***Rules of Employment Handbook*** (which sets out various terms of your previous employment with our company), you are entitled to severance pay calculated at half a month`s salary for each calendar year of your service with our company.

6 We enclose herewith a new ` Final Payment of Salary` which complies with art 3.12(B) of the ***Rules of Employment Handbook*** . In pursuance of our revised computation, we enclose herewith our cheque for $33,707.15 as full and final payment of salary, severance pay and other allowances due to you.

7 Together with this letter, there was a revised final payment of salary also dated 13 December 1991. The difference between this and the earlier computation was that the enhanced severance pay of $14,340 was omitted, and there was an ex gratia allowance of $4,780 in its place.

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8 The reason for the revision is interesting. The letter said that the previous final payment `was calculated in error`, but did not identify the error. It made reference to art 3.12(B) of the handbook, but it did not mention the enhanced redundancy program or explain why it had ceased to apply. In the revised computation, an ex gratia allowance equivalent to two months` salary was substituted for the enhanced severance pay, also without explanation.

9 The plaintiff accepted the reduced final payment under protest, and took out these proceedings for a declaration that he was entitled to the enhanced severance pay.

10 The defendant filed an affidavit through its regional human resources manager, Mr Yeo Chee Kwong. Mr Yeo said in paras 7 to 12 of his affidavit that:

> (7) The defendant say that the plaintiff`s contractual entitlement to severance pay is as provided in art 3.12 of the handbook. Anything over and above that entitlement was solely ex gratia and at the defendant`s sole discretion.
>
> (8) The enhanced severance pay which the plaintiff claims and the enhanced redundancy program which the plaintiff relies on are not contractually binding on the defendant.
>
> (9) Article 1.3 of the handbook provides the method of amendment of the rules in the handbook. As the handbook represents the contractual document binding on both parties, only amendments effected in accordance with art 1.3 would form part of that contractual document and thereby bind the defendant.
>
> (10) The enhanced redundancy program relied on by the plaintiff does not form part of the handbook as art 1.3 is not complied with. It remains an ex gratia offer by the defendant.
>
> (11) I am verily advised that, in the premises, the enhanced redundancy program does not bind the defendant unless the plaintiff has furnished valid consideration for the same.

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> (12) I am verily advised that the plaintiff has, on the facts, not furnished any consideration. Neither was there any compromise or forbearance to sue or to take action in respect of the termination of the plaintiff`s services, capable in law of amounting to valid consideration.

11 I will first deal with the amendment issue raised in paras 9 and 10 of the defendant`s affidavit. The provisions of the handbook dealing with its scope of application and its amendments are arts 1.1 and 1.3, which read:

> *1.1 Purpose*
>
> *These rules establish the basic terms and conditions of employment of all `employees` hired by Sea-Land Service and its subsidiaries, hereinafter referred to as `employer`. The matters regarding employment which are not set forth herein shall be as provided for in governmental regulations.*
>
> *1.3 Obligation and knowledge of rules of employment*
>
> *... In the event that any subsequent alterations are made to the rules, copies thereof will be furnished to each employee and certification of acceptance duly signed.*

12 On a careful reading of these provisions, it is clear that the handbook was not intended to be exhaustive of all the terms of employment and did not impugn the validity of any extraneous terms that may be agreed to between the defendant and its employees. For this reason, I found that there was no substance in the contention that anything over and above what was provided for in the handbook was not binding on the defendant. I would add that even if the handbook was intended to be exhaustive, I was not persuaded that the amendment embodied in the enhanced redundancy program was ineffectual unless the formalities of art 1.3 were followed. If there was an amendment to the handbook accepted by an employee on which the defendant had neglected to obtain his formal acceptance, the defendant cannot evade giving effect to the amendment by relying on its own negligence.

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13 On the question of consideration, the argument was that there was no consideration for the enhanced severance pay. The defendant relied on art 3.12 of the handbook, the relevant parts of which read:

> *Severance pay*
>
> (A) Severance pay will be granted to permanent, full-time salaried employees whose termination results from the installation of labour-saving devices, redundancy, retrenchment, or termination without prejudice. Severance pay for termination with prejudice is at the absolute discretion of employer. ***Further definition is provided in the section entitled `Termination of employment`*** .
>
> (B) Severance pay will be equivalent to at least one month`s salary, or to one-half month`s salary for each calendar year of service, whichever is higher. [Emphasis added.]

14 The argument raised on the defendant`s behalf was that it was only obliged to pay the severance pay provided for in this provision but it was not obliged to pay the enhanced severance benefits because this variation of its obligation was not supported by consideration.

15 Article 3.12(A) stipulated that redundancy, retrenchment and termination without prejudice were to be construed as defined in the section of the handbook entitled `Termination of employment`. Article 5.3(A) in that section defined redundancy/retrenchment as:

> *When the business no longer requires [the] employee`s services* ***and [the] employee cannot be placed elsewhere within the business, within the particular country employed.*** *[Emphasis added.]*

16 The combined effect of arts 3.12 and 5.3(A) is that when an employee`s employment is terminated on the ground of redundancy as defined in art 5.3(A), he will receive to severance pay under art 3.12(B).

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17 Redundancy was perceived differently under the enhanced redundancy program. The opening paragraph of the program explained that:

> *The purpose of this enhanced redundancy program is to be part of the Pacific Division refinement program designed to streamline and reorganize Sea-Land`s operations, improve internal and external communications, and increase its efficiency and ability to compete effectively. In this process, employees may be terminated as a number of positions will be eliminated or an employee may no longer meet the skills required of the revised position. Benefits paid under the enhanced redundancy program are intended to treat all employees fairly and with dignity while compensating affected employees in Singapore for termination of their employment.*

18 Employees were to be declared redundant as part of an exercise to streamline and reorganize the defendant and to improve its communications, efficiency and competitiveness. Unlike art 5.3(A), there was no obligation to try to deploy the employee elsewhere within the business before terminating his employment.

19 The contention made in para 7 of Mr Yeo`s affidavit was flawed in that it equated redundancy in the context of the redundancy program with redundancy as defined in the handbook without considering this difference. When the difference is recognized, it can be seen that art 3.12 cannot apply without modification to an employee declared redundant under the program. The defendant apparently realized that when it provided that an employee made redundant under the program shall receive not only his severance pay, but he shall also receive enhanced severance pay.

20 After the plaintiff had accepted the termination under the program, it did not lie in the mouth of the defendant to say that it was only obliged to pay severance benefits according to the handbook and to resile on its commitment to pay enhanced severance pay under the program. There was consideration for

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the enhanced benefits when the plaintiff accepted the termination of his employment under the program in the expectation of receiving the enhanced severance benefits.

21 I therefore made the declaration sought by the plaintiff and ordered the defendant to pay the costs of the application.

22 ***Plaintiff`s claim allowed.***

Kan Ting Chiu JC

Malcolm Lim (Khattar Wong & Pnrs) for the plaintiff
Chua Lee Ming (Lee & Lee) for the defendant

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