Privy Council Appeal No. 6 of 1929.

Alexandre Bouzourou - - - - - - - - *Appellant*

v.

The Ottoman Bank - - - - - - - - *Respondents*

FROM

THE SUPREME COURT OF CYPRUS.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 21ST JANUARY, 1930.

Present at the Hearing:

LORD BLANESBURGH.
LORD WARRINGTON OF CLYFFE.
LORD THANKERTON.

[*Delivered by* LORD THANKERTON.]

In the present case the appellant, who appeals by special leave *in forma pauperis*, sues the respondent Bank for damages for wrongful dismissal and for a declaration that he was entitled to be paid a monthly pension of £39 4*s*. 0*d*. by the respondents. He appeals from a decision of the Supreme Court of Cyprus dated the 27th March, 1928, reversing the decision of the Trial Judge.

The appellant, who is a Christian Ottoman subject, entered the service of the Bank in April, 1905, and remained in its service until the 7th March, 1927, when he was dismissed without notice and without pension, because of his refusal to conform to an order by the respondents in January, 1927, for his transfer from the branch at Stamboul, where he was then employed, to the branch at Mersina, a town in the Asiatic provinces of Turkey on the south-east coast of Asia Minor.

The appellant maintains (1) that under the terms of his contract of service, the sphere of his employment did not include the provinces of Turkey, but only the Head Office and branches in Constantinople and its suburbs, which include Stamboul, and (2) *esto* that the provinces of Turkey were included, the particular

order was unreasonable in view of his ignorance of Turkish and the hostile attitude of the Turkish civil authorities, and was one which he was not bound to obey.

On the 25th January, 1905, an advertisement (Ex. A. 1 (1)) appeared in the newspaper *Stamboul* in Constantinople, which stated " The Imperial Ottoman Bank offers under competitive examination five posts in its offices in Constantinople or in the provinces " ; among the subjects of examination set out in the advertisement was included " Languages spoken or written by the candidates and especially Turkish." The appellant, who was then in other employment in Constantinople. but did not know Turkish, applied and was among the successful candidates. In a minute of meeting of the respondents' Management Committee on the 6th April 1905 (Ex. A. 1 (2)) it is recorded :—" STAFF : After inspection of the examination papers of the last competitive examination held, the General Management have decided to engage the following :—Ap. Michaelides, Joachim Levy, Josue Sinai, Jean Ouannou, Alex. Bouzourou, on the permanent staff at a salary of Ltq. 8 per month." On the 17th April, 1905, the following decision (Ex. A. 1 (3)) is found in the respondents' books :—" Decision No. 3186 :—By decision of the Director-General dated 6th April, 1905, Mr. Alex. Bouzourou is engaged in the Bank's service (Head Office) as from the 17th April, 1905, with salary Ltq. 8 per month,—The Director General, (Sgd.) J. Deffes." On the 20th April, the appellant subscribed the printed form of declaration of adherence to the Regulations governing the " Pensions and Superannuation Fund," the provisions of which are therein stated to form an integral part of " my engagement in the Imperial Ottoman Bank." (Ex. A.B. (1).) While the terms of these Regulations (Ex. A.B. 2 (1).) throw no direct light on the contractual sphere of the appellant's employment, it is to be noted that every employee of the Bank, on entering its service, is required to subscribe to them, the whole staff—whether employed in Constantinople or the provinces or abroad—being treated as a unit for the purposes of the Pension and Superannuation Fund. These are the only contemporaneous documents which are relevant to the consideration of the terms of the appellant's engagement, and they are all produced and founded on by the appellant in his evidence.

The appellant, who was the only witness on this point, states :—" I saw a notice calling for candidates for employment in the defendant Bank. (Witness referred to Ex. A. 1 (1)). This looks like the notice. There was a competitive examination. I said I knew no Turkish. I was successful in that examination. I was appointed at the Head Office in Constantinople at a salary of £T.8 a month ; in the defendant's Department of General Correspondence (*vide* A. 1 (2) and (3)). At the time of entering service of defendant Bank, Mr. Maltass asked me ' will you have a post with £8 in Constantinople or £12 in the provinces.' I accepted the post for Constantinople. I signed this declaration.

(Put in and marked Ex. A.B. 1.) These are the Regulations referred to in this declaration. (Put in and marked Ex. A.B. 2.)"

In the Courts below the respondents maintained that the contractual sphere of employment of the appellant was unlimited and that they would have been entitled to transfer him to one of their foreign branches, but in the appeal they maintained mainly that the ambit of employment was Constantinople and the provinces, though they still retained their former view as an alternative.

In their Lordships' opinion the history of the various appointments of the appellant during his 22 years' service does not afford any definite explicatory evidence as to the terms of the original contract. In their Lordships' opinion the evidence shows that transfer is one of the ordinary incidents of the Bank's employment, being usually concurrent with an increase of salary and responsibility, and suggests no more than that the Bank considered their officials' convenience where possible. It is significant that, throughout the correspondence protesting against his dismissal, the appellant did not suggest that the transfer to Mersina was a breach of his contract, and that it was not suggested in his evidence until the cross-examination, when he stated: "When I joined the Bank I did not know that I was liable to be sent into the provinces." and, again, "Employees are not bound to serve the Bank outside the place where the contract was made except with their consent."

The appellant sought to found on a new form of declaration imposed by the respondents on new employees engaged after August, 1926, and a revised form of declaration imposed on those engaged after February, 1927, devised to put beyond doubt the Bank's right to transfer its employees to any branch. In their Lordships' opinion these can have no bearing on the terms of the appellant's engagement in 1905.

It is not unimportant to consider the nature of the service which the appellant entered. The appellant was a young man of 23; as provided in Article 1 of the Regulations, he was engaged without limit to the duration of his engagement, and it is admitted that the Bank was entitled to decide from time to time what particular department of the Bank's service he was to serve in and to move him, for instance, from the Correspondence Department to the Accountancy Department. He may be assumed to have hoped for promotion and thereby to rise high in the service. From the point of view of proper organisation of their staff, it is difficult to assume that the Bank would willingly agree that their employees should not be bound to serve outside the place where the contract was made except with their consent, and, in their Lordships' opinion, such a condition of the contract would require to be clearly established. The nature of the service in this case is different to that of the yearly engagement as a spinner of the defender in the Scottish case of *Anderson* v. *Moon* (1837) 15

Shaw, 412), where it was held that the contract was applicable to one mill only.

Their Lordships are of opinion that the reference to five vacant posts in the advertisement and the choice of posts given to the appellant by Mr. Maltass related merely to the initial step in an unlimited employment in the service of the Bank, which followed on engagement on the permanent staff of the Bank, and that the appellant has failed to establish that the appointment to an initial post at Constantinople involved that no subsequent appointment to another post could be made except to another post in Constantinople. While their Lordships incline to the view that the terms of the advertisement might be held to limit the service to Constantinople or the provinces, it is unnecessary to come to a definite conclusion on that point.

The appellant further maintains that, even if Mersina was within the contractual ambit of his employment, he was not bound to obey the order of transfer to that place on the ground that the order was so unreasonable as to be unlawful, and his disobedience could not be held by the respondents to constitute *faute grave* within the meaning of Article 5 of the Regulations.

The only case referred to on this point was *Turner* v. *Mason* (1845) (14 M. & W. 112), where a domestic servant sued in respect of alleged wrongful dismissal. The plaintiff had requested her master's leave to absent herself for the night, her mother having fallen ill and being in peril of her life ; it was not clearly alleged that the plaintiff had communicated this reason to her master. The latter refused leave, and the plaintiff nevertheless absented herself, whereupon she was dismissed. It was held that a plea of demurrer was good, as showing a dismissal for disobedience to a lawful order of the master, and that the replication was bad, as showing no sufficient excuse for such disobedience. Pollock C.B. said :—

> " It is very questionable whether any service to be rendered to any other person than the master would suffice ; she might go but it would be at the peril of being told that she could not return."

Parke B. says :—

> " Even if the replication showed that he had notice of the cause of her request to absent herself, I do not think it would be sufficient to justify her in her disobedience to his order ; there is not any imperative obligation on a daughter to visit her mother under such circumstances, although it may be unkind and uncharitable not to permit her."

Alderson B. says :—

> " There may undoubtedly be cases justifying a wilful disobedience of such an order, as where the servant apprehends danger to her life, or violence to her person, from the master, or where, from an infectious disorder raging in the house, she must go out for the preservation of her life."

Rolfe B. says :—

> " In truth the cases suggested by my brother Alderson are cases in which there is not legally any disobedience, because they are cases not of lawful orders. It is an unlawful order to direct a servant to continue where she is in danger of violence to her person, or of infectious disease."

Their Lordships agree with the view that there must be an immediately threatening danger by violence or disease to the person of the servant before an order to remain in the zone of danger can be held to be unlawful.

None of the reasons put forward by the appellant in excuse of his refusal to go to Mersina comes within the above category ; the two main reasons given by the appellant were his ignorance of Turkish and the unfavourable attitude of the Turkish authorities : he did not suggest that the latter involved any personal danger to him. The only other reason, which was not stated prior to the dismissal, was that he would have been obliged to leave his family in Constantinople. Accordingly their Lordships are of opinion that, in ordering the appellant to go to Mersina, the respondents were giving a lawful order, which the appellant was bound to obey, that his disobedience was justifiably treated by the respondents as *faute grave* under Article 5 of the Regulations, and that his dismissal was justified.

For these reasons their Lordships are of opinion that the appeal should be dismissed, and they will humbly advise His Majesty accordingly.

In the Privy Council.

ALEXANDRE BOUZOUROU

v.

THE OTTOMAN BANK.

DELIVERED BY LORD THANKERTON.

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