

BIZIMANA v. CIMERWA Ltd

[Rwanda HIGH COURT, CHAMBER OF RUSIZI – R.S0C.A 0003/13/HC/RSZ (Kanyegeri, P.J.) January 30, 2014]

Labour law – Termination of employment contract – Gross negligence – The employment contract can be terminated without notice in case of gross negligence by one of the parties – The law regulating labour does not provide that the employer has to pay damages because of failure to inform the employee of the gross negligence within 48 hours – Law n° 13/2009 of 27/05/2009 regulating labour in Rwanda, article 32.

Facts: Bizimana sued CIMERWA Ltd in the Intermediate Court requesting for damages due to unfair dismissal. This Court ruled that his claim has no merit; but CIMERWA Ltd was ordered to pay Bizimana the money for his final dues. Bizimana was not contented with the rulings of the case and appealed in the High Court, Chamber of Rusizi arguing that the Court at first instance held that he committed a gross negligence whereas criminal liability is determined by competent organs and, even though there might have been gross negligence, the termination of the contract requires a notice of 48 hours and if not so damages are charged.

CIMERWA Ltd affirms that the investigation carried out by the court confirmed that Bizimana stole an axle, which is regarded as a gross negligence and he did not suffer any prejudice for not being informed of that gross negligence. Concerning the final dues it states that Bizimana does not demonstrate the loss he incurred due to not getting it.

Held: 1. The employment contract can be terminated in case of gross negligence by one of the parties.

2. The law regulating labour does not provide that the employer has to pay damages because of failure to inform the employee of the gross negligence within 48 hours.

3. The employee should neither be awarded the damages for the employer's failure to deliver the work certificate because it is clear that it was issued nor be awarded extra hours and paid leave damages since they were paid to him as indicated in the final dues document made by employer and the employee does not demonstrate how these fees were wrongly calculated.

**Appeal has no merit;
The appealed judgment is sustained;
Court fees on the appellant.**

Statutes and statutory instruments referred to:

Law n° 13/2009 of 27/05/2009 regulating labour in Rwanda, article 32.

No case referred to.

Judgment

I. BACKGROUND OF THE CASE

[1] Bizimana sued his former employer CIMERWA Ltd claiming for the damages due to the unfair dismissal. The Intermediate Court of Rusizi which was first seized with this claim ruled that it has no merit; but CIMERWA was ordered to pay to Bizimana three hundred eighty thousand, seven hundred and eighty three Rwandan francs (388,783) of final dues.

[2] Bizimana was not satisfied with the court's judgment and appealed in this Court. The issue to be analysed in this case is the grounds of appeal of Bizimana, which is the gross negligence which was not well understood as well as its consequences.

II. ANALYSIS OF THE LEGAL ISSUE

Whether the court misconstrued "gross negligence" and the related damages.

[3] In the hearing of 10/01/2014; Muhimanyi, the counsel for Bizimana submits that the ground of their appeal is that the court erred and held that Bizimana committed a gross negligence irrespective of the fact that criminal liability is confirmed by a competent authorities, because, even if there might have been gross negligence, termination of the contract requires a notice of 48 hours and if this is not the case damages are charged; because even the instrument "axle" which Bizimana took away from the factory was his and he had asked for the permission to use it therein and he was allowed to do so.

[4] Counsel Nyandwi representing CIMERWA submits that the investigation carried out by the Court revealed that Bizimana stole the instrument, which was thus interpreted as a gross negligence, with more reason that Bizimana proved no prejudice resulting from either the fact he was not given his final dues on time or he was not notified of the gross negligence.

[5] Even if Bizimana says that he was unfairly dismissed because the instrument he took away from the factory was his of which he had requested for the permission to use it therein, he does not deny that he failed to produce the receipt thereof. That Cimerwa considered it as theft committed or attempted by Bizimana and immediately dismissed him on the ground of gross negligence is understandable; especially that if these instruments were for Bizimana as he alleges or had he had the permission of taking them away from the factory he would not have failed to adduce evidence thereof.

[6] As explained in the appealed judgment, the termination of employment contract due to gross negligence as provided by article 32 paragraph 2 of Law n° 13/2009 of 27/05/2009 regulating labour in Rwanda does not provide that the employer has to pay damages due to failure to give notice to the employee guilty of this negligence within the 48 hours contrary to the notice provided for in the first paragraph of this provision, especially that the letter dismissing him was written on 27 November 2012, while this gross negligence was committed on 25 November 2012.

[7] Regarding the other claims of Bizimana regarding his former work including the employment certificate, it is obvious that the latter was issued on 08 December 2012 and he cannot, therefore, get the damages for this. As for the extra time he was not paid and paid leave, CIMERWA cannot pay any damages thereof because its representative explains that the dismissal benefits were paid as indicated in the final dues document drafted by CIMERWA and Bizimana has not demonstrated that this amount of money he was given is not sufficient.

III. DECISION OF THE COURT.

[8] It decides that the appeal of Bizimana Antoine has no merit.

[9] It decides that the ruling of judgment n° R.SOC 0005/13/TGI/RSZ rendered by the Intermediate Court of Rusizi on 11/10/2013 is sustained.

[10] It rules that Bizimana has lost the case.

[11] It orders him to pay the court fee equal to eleven thousand two hundred Rwandan francs (11,200Frw) which includes the court fee charged in the appealed judgment; he should pay it beginning with the deposited court fees, failure to pay it within 8 days, that amount will be deducted from his assets through government coercion.