

16th January, 1956.

Judges:

His Honour Sir L.A. Camilleri, Kt., LL.D., *Chief Justice*;
The Hon. Dr. A.J. Montanaro Gauci, C.B.E., K.M., LL.D.;
The Hon. Dr. W. Harding, K.M., B.Litt., LL.D.

Oreste J. Caruana Scicluna *versus* Edward J. Funicione.

Pension — Gas Company — Gratuity — Manager

The "Malta & Mediterranean Gas Company" was governed by a Board of Directors with a registered office in London; and only that Board could bind the Company to the payment of a pension, gratuity, or other allowance, to its employees.

The manager of a company cannot go beyond the scope of his authority as such; and the company would not be liable for any act of the manager, or for any obligation contracted by him, which goes

beyond the limits of his authority "qua" manager. He may also do by "implied" authority whatever is necessary or ordinarily incidental to the exercise of his "express" authority; but he may do nothing outside the scope of his "express or implied" authority, nothing outside the scope of his business.

It heretofore, as the authority to run a branch of the company cannot be said to include the power to burden the company with a life pension, and there being no "special" authority to contract any such obligation over and above the ordinary course of business, no grant of a pension by the manager to an employee of the Company is binding on the Company, whatever may have been the words which the manager said to that employee at the relevant time. And therefore, that employee has no claim at law against the Company for that pension.

Consequently, an employee of the local branch of the "Malta & Mediterranean Gas Co." has no claim against the Company for a pension which may have been promised to him by the local manager without an express authority to that effect from the Board of Directors; even if no limitation of the local manager's authority was notified to third parties, including the employee concerned.

This is a claim brought before Her Majesty's Commercial Court for the payment of a sum of £20.10.8, which the plaintiff alleges is due to him by the "Malta and Mediterranean Gas Company Limited" in respect of his pension for the months of December, 1952, and January, February and March, 1953;

In his statement of claim the plaintiff submitted that on his retirement from service the Company contracted the obligation to pay him a monthly pension of £5.6.8, which was regularly paid to him down to 30th November, 1952, when an offer was made to him of a single payment of a lump sum in commutation for the pension. He refused to accept it, and therefore the Company stopped the pension;

On the 20th March, 1953, the plaintiff brought this action against the Company to obtain payment of the instalments which had fallen due up to the date;

The defendant nomine pleaded that the plaintiff was not entitled to a pension, but merely to a 'retirement allowance' during the pleasure of the Company;

The First Court, by its judgment of the 31st March, 1955, dismissed plaintiff's claim, with costs; after making the following considerations;

The plaintiff stated in his evidence that he had been thirty two years in the Company's employment, when the local manager, who at that time was a certain Mr. Buckley, asked him, through the chief clerk, if he were willing to retire from service with a pension. He replied that he was; and ever since a monthly pension of £5, subsequently raised to £5.6.8, was paid to him down to the end of November, 1952, when he was told that the Company had decided to pay him a lump sum in commutation for the pension;

The chief clerk mentioned by the plaintiff was Mr. Carmelo Cauchi Gera, who gave evidence in these proceedings, and stated that the local manager wished to reduce the staff, and with that object in view he asked him to find out if there were any employees who would be willing to leave the service with a pension. Thereupon he approached three of them, one of them was the plaintiff, and the three agreed to quit their office with a pension. Mr. Carmelo Cauchi Gera added that at the time he was in charge of the "Rental Department", and one of his duties was that of preparing monthly lists of payments of salaries and wages and of pensions and allowances, and that the money which was paid to the plaintiff fell under the heading "Pensions";

The defendant Edward J. Funicane, who was the local manager when the Company decided to commute the monthly payments for a single payment of a lump sum once for all, stated that the retiring allowance was granted at the discretion of the Managing Board in London, and was not granted for life, but was, on the contrary, renewed every year and could be stopped at any time; that when he took up office as Manager of the Malta Branch he start-

ed calling "retiring allowance" the payment made to a pensioner, and that, as the retiring allowance was granted at the discretion of the Managing Board, and was paid out of the yearly profits — there being no money set apart for that particular purpose — the Managing Board of the Company, which has now gone into liquidation, decided to commute the monthly allowance for one single payment of a lump sum equal to the aggregate sum of the payments which would have been made during a period of eighteen months;

As a matter of fact, on a receipt produced as a specimen, signed by the plaintiff in acknowledgment of the money he received for the month of April, 1948, that money is called "retirement pay";

The following facts have been established by the evidence of Grenville Murray Burton, who is winding up the affairs of the Company; namely:—

That the Company was governed by a Board of Directors, with a registered office in London; and only this Board could bind the Company to the payment of a pension, gratuity, or other allowance;

That this Board never granted to the plaintiff any pension or any other payment for an indefinite period. Witness stated that he does not know of any minute of the Board to that effect;

That the monthly payments which the Company made to their retired employees were a retirement allowance during the pleasure of the Board;

That there was never an agreement with the Company that the plaintiff should be granted life pension. Witness stated that he knows of no such agreement made by Mr. Buckley;

The facts that there has been a Managing Board in London, and that any decision taken by the local manager had to be submitted and approved by that Board, have been established also by the evidence of Edward J. Funicane, the defendant nominee;

There is no regulation or standing rule which entitles an employee to a pension on quitting his office, and there is no special fund set apart for the payment of pensions, gratuities, or other allowances. These gratuities and allowances are paid out of the yearly profits;

Thus it has been established that the monthly payments which the Company made to the plaintiff after his retirement from service were not paid to him by way of pension granted for life, and even if they were called "pension" when they were first mentioned to the plaintiff at the time he was leaving the service and for a certain time thereafter, it cannot be held that the plaintiff had thereby acquired the right to a pension for life, which was not within the power of the local manager, as it was a matter reserved to the Board of Directors, who were never asked to give, and never gave, sanction to a pension for life to the plaintiff;

The monthly payments which the plaintiff received from the Company were retiring allowances granted "ex gratia" by the Board of Directors on the recommendation of the local manager, payable during the pleasure of the Board out of the yearly profits, which can now no longer be realised, as the Company has gone into liquidation;

Plaintiff entered an appeal against the judgment aforementioned, by the petition at page 80, wherein he prayed that the judgment be reversed, and that his claim be allowed; with costs;

Defendant, in his answer at page 85, asked that the judgment be affirmed, and the appeal be dismissed; with costs;

After hearing the submissions of counsel for the appellant and counsel for the defendant Company, this Court is inclined to agree, as in point of fact it agrees, with the conclusion reached by the Court below;

Whatever may have been the words which the former manager of the defendant Company said to plaintiff, through the chief clerk Cauchi Gera, at the relevant time, it is certain that a manager cannot go beyond the scope of

his authority as such. The principal, in this case the defendant Company — would not be liable for any act of the manager, or any obligation contracted by him, which goes beyond the limits of his authority "qua" manager. These limits are those of the business entrusted to him, in the sense that the manager, as agent for the principal, cannot do anything outside the ordinary scope of his employment or duties. He may also do by "implied authority" whatever is necessary or ordinarily incidental to the execution of his "express" authority, but he may do nothing outside the scope of his "express or implied" authority, nothing outside the scope of the business. Now, it is obvious that an agent has no authority to grant a life pension to a retiring employee, as that would be manifestly contracting an obligation which exceeds the scope of his authority, limited, as this is, to the scope of the business. The authority to run a branch cannot be said to include the power to burden the Company with a life pension;

Furthermore, no part of the evidence can be held to disclose that a "special" authority was ever given by the defendant Company to its manager to contract any such obligation over and above the ordinary course of business;

Counsel for the appellant has pressed upon the Court the argument that, as no limitation of the manager's authority was notified to the third parties, consequently such authority must be deemed to be unrestricted with regard to third parties, including plaintiff. This argument is wholly untenable, as the fact remains that the authority of a manager, even if shorn of any limitation notifiable to third parties, cannot go beyond the scope of the business, because it is "of the essence itself" of a manager's authority that his powers do not extend to anything outside the ordinary course of the business;

Nor is there anything in the record which could induce this Court to hold that the defendant Company ever ratified any obligation allegedly contracted by Buckley to pay a life pension to plaintiff. Certainly no inference can be drawn from the fact that in the accounts, periodically

sent to the Head Office, the item relating to plaintiff's retiring allowance was included; because the defendant Company at no time contended that no pension of any kind was payable or had been paid to plaintiff; but the contention was that no allowance was payable so long as the Company did not decide to commute it into a gratuity or lump sum; and consequently there was nothing inconsistent with this latter contention in the knowledge of the inclusion of the plaintiff's allowance in the accounts so long as the Company had not decided to commute it into a gratuity or lump sum. No doubt, plaintiff may have been unvoluntarily misled, and, may be, he would not have taken the decision to retire at the time he did, had the position been more clearly explained to him at the time. But this would be a matter for the Company to consider, by way of a compassionate or "ex gratia" treatment; but it cannot give to plaintiff a legally enforceable claim, or alter the fundamental principle that the agent cannot go beyond the scope of his authority, nor can it upset the other weighty reasons given by the Court below in its judgment;

The Court, therefore, disallows the appeal; with costs.
