

1979 May 30

[STAVRINIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

IOANNIS PETOUSIS,

Applicant.

v.

THE ELECTRICITY AUTHORITY OF CYPRUS,

Respondents.

(Case No. 297/74).

Accord and satisfaction—Withholding of employee’s annual increments on ground of inability to carry out all duties of job due to injuries sustained in an accident—Award of damages, in respect of said injuries, in a civil action which included a claim for damages for loss of further earning capacity—No right to complain against decision withholding increments by means of a recourse because right to all increments has been abandoned by accord and satisfaction.

5

On September 20, 1968, the applicant met with an accident in the course of his employment by the respondents as a “linesman/ service and meter installer” and as a result he sustained injuries “preventing him from climbing poles and ladders”, which was one of the duties of his job. On being informed of the decision of the respondents that in view of his condition “it was appropriate that he should submit a claim for compensation commensurate with the percentage of his permanent incapacity rather than be allowed to continue on the scale of his present grade” he sued the respondents in the District Court of Nicosia claiming general and special damages for negligence in respect of the accident. In his statement of claim* the applicant pleaded, *inter alia*, that “the plaintiff, besides general damages for his injuries, pain and suffering and permanent incapacity, is entitled to general damages for loss of future earnings and loss of promotion”.

10

15

20

* See particulars of his claim at pp. 204–5 *post*.

The respondents wholly opposed the claim, but eventually, on October 26, 1971, the action was settled on the terms that the defendants were to pay him £450.— damages and £100.— costs, which they did, without any reservation by the applicant as to future increments, or as to a right of further employment of him by the respondents.

On May 26, 1974, the respondents wrote to the applicant informing him that they had decided to withhold his annual increment "because they found that he was unable to carry out all the duties" of his job, and hence this recourse.

Held, dismissing the recourse, that the applicant abandoned the right to all increments by accord and satisfaction; that having regard to the wide scope of the claims in the action (as including damages for loss of further earning capacity) the applicant has no right to complain of the subject decision; and that, accordingly, his application must fail.

Application dismissed.

Recourse.

Recourse against the decision of the respondents to withhold the annual increment of the applicant.

L. Papaphilippou, for the applicant.

A. Dikigoropoulos, for the respondents.

Cur. adv. vult.

STAVRINIDES J. read the following judgment. On September 20, 1968, the applicant met with an accident in the course of his employment by the respondents as a "linesman/service and meter installer". As a result he sustained injuries "preventing him from climbing poles and ladders", which was one of the duties of his job. On November 28 of the following year the Standing Sub-committee on Staff Matters of the respondents decided that in view of his condition "it was appropriate that he should submit a claim for compensation commensurate with the percentage of his permanent incapacity rather than be allowed to continue on the scale of his present grade". On December 3, 1969, he was informed of that decision and on the following January 30 he sued respondents in the District Court of Nicosia claiming general and special damages for negligence in respect of the accident (action 517/70, exhibit 11). The respondents wholly opposed the claim, but eventually, on October 26, 1971, the

action was settled on the terms that the defendants were to pay him £ 450.- damages and £ 100.- costs, which they did.

On May 26, 1974, the respondents wrote to him informing him that they had decided to withhold his annual increment "because they found that he was unable to carry out all the duties" of his job, and this application is for a declaration that that "act or decision" is "null and void and of no legal effect". 5

Numerous points have been raised by counsel on either side in their addresses, which, as agreed between them and approved by the Court, were made in writing. Interesting as some of those points may be it would serve no purpose to deal with each one of them because on careful consideration I have concluded that the applicant must fail on the ground that he abandoned the right to all increments by accord and satisfaction: By the actio referred to he claimed against the respondents (i) £ 224.500 mils special damages and (ii) an unspecified amount of general damages. Paras 6-8 of the statement of claim read: 10

" 6. In consequence of the said permanent incapacity, the plaintiff cannot perform his duties as a linesman, properly. As a result the defendants on the 3rd of December, 1969, by their letter under ref. 5 3/E 20 informed the plaintiff that they decided to withhold his increments which he would be entitled to under normal conditions as from 1st July, 1969. 20

The defendants as a reasoning to their above decision state in their said letter the following: 25

' Η Αρχή κατέληξε εις την έν λόγω απόφασιν άφοϋ διεπίστωσησεν ότι κατά την περίοδον 1.7.68 - 30.6.69 δέν ήδυνήθητε να έκτελήτε και να αναλαμβάνητε πλήρως και εις τό άκέραιον άπαντα τά καθήκοντα και τας εύθύνας τής τάξεως του τεχνίτου γραμμών/τεχνίτου δια την εγκατάστασι' παροχών και μετρητών την όποιαν κατέχετε, λόγω σωματικής βλάβης την όποιαν έχετε ύποστη.' 30

(' The authority reached the said decision after ascertaining that during the period 1. 7. 68-30. 6. 69 you have been unable to perform and undertake fully and wholly all the duties and responsibilities of the post of linesman, for the installation of supplies and 35

meters, which you are holding, due to bodily injury that you have suffered.').

7. The plaintiff further was put to expense and suffered special damages.'

5

Particulars of Special Damage.

	a) Doctor's fees and expenses	£ 50.000
	b) Loss of earnings for 13 weeks @ £10.500	£136.500
10	c) Loss of increments from 1. 7. 69 - 1. 7. 70 @ £18.-	£ 18.000
	d) Travelling expenses	£ 10.000
	e) Travelling expenses	£ 10.000
		<u>£224.500</u>

8. The plaintiff, besides general damages for his injuries, pain and suffering and permanent incapacity, is entitled to general damages for loss of future earnings and loss of promotion."

On October 25, 1971, the action was settled for £ 450 with £ 100 costs, which the defendants duly paid, without any reservation by the plaintiffs as to future increments, or indeed as to a right of further employment of him by the respondents.

In my view having regard to the wide scope of the claims in the action (as including damages for loss of further earning capacity) the applicant has no right now to complain of the subject decision, and accordingly this application must fail.

In view of the foregoing it is unnecessary to go into any other matter raised in the addresses of either side.

Application dismissed without costs.