[VASSILIADES P., TRIANTAFYLLIDES, JOSEPHIDES JJ.]

KEM (TAXI) LIMITED,

Appellant,

v.

ANASTASSIS TRYPHONOS,

Respondent.

(*Case Stated No.* 144).

Master and Servant—Dismissal—Misconduct—Isolated act—Employee summarily dismissed without notice for misconduct in the presence of employer's customers—In the instant case the employee by his misconduct rendered himself liable to be so dismissed—Such dismissal not giving rise to a right to compensation or to like benefit—Section 5(*e*) (*f*) *of the Termination of Employment Law,* 1967 (*Law* 24/67)—*The question whether or not the conduct of the employee is such as would justify dismissal without notice has to be determined on the principles of the common law—There being no doubt that the legislature by section* 5(*e*)(*f*) supra *intended to incorporate in this connection the common law—Test to be applied in determining the degree of misconduct which would justify summary dismissal—No fixed rule of law—Test varies with the nature of the business, the position held by the employee, time and place and numerous other relevant circumstances—See, also, herebelow under Master and Servant; Jurisprudence.*

Master and Servant—Arbitration Tribunal—Summary dismissal of employee—Award of compensation—Sections 3 *and* 9(1)(*c*) *of the aforesaid Law* 24/67 (supra)—*Case stated by the Tribunal at the request of the employer for the opinion of the Supreme Court and consequential order—Rule* 17 *of the Arbitration Tribunal Rules of* 1968—*Made under section* 12 *of the Annual Holidays with Pay Law,* 1967 (*Law* 8/67)—*Cf. sections* 2, 15 *and* 30 *of the Termination of Employment Law,* 1967 (*Law* 24/67).

Dismissal—See above.

Wrongful dismissal—See above.

Summary dismissal without notice—See above.

Arbitration Tribunal—See above.

Jurisprudence—Common law—The common law is not static—It is a growing organism which continually adapts itself to meet the changing needs of time—Cyprus Courts in adapting the English common law as aforesaid, must also take into account local conditions—Including the question that a reasonable employer or employee in Cyprus may not act or react in the same way as a reasonable employer or employee in England.

Common Law—Not static etc. etc.—See above under Jurisprudence.

Observations of Josephides J. as to the desirability of amending the Termination of Employment Law, 1967 (Law 24/67) to enable the Tribunal to do justice in appropriate cases, by awarding the employee compensation in full or in part, in its discretion, under section 3 of the said Law, having regard to all the circumstances of the case, including the employee's length of service with the employer; notwithstanding that such employee has rendered himself by his conduct liable to summary dismissal. Cf. the Public Service Law, 1967 (Law 33/67) whereby the Public Service Commission may, in a proper case impose as disciplinary punishment "compulsory retirement" without loss of retirement benefits (under section 79 (1)(i) and (6) instead of "dismissal" with consequential forfeiture of all retirement benefits (under section 79(1)(j) and (7)).

In this case stated under rule 17 of the Arbitration Tribunal Rules, 1968, the employers, a public transport company appeal from the decision of the Arbitration Tribunal dated June 19, 1968, whereby they awarded compensation to their driver – employee (the respondent) for unjustified dismissal (£107.250 mils) and payment in lieu of notice (£33) under the provisions of sections 3 and 9(1)(c), respectively, of the Termination of Employment Law, 1967 (Law 24/67). The employers (appellants) contended that the employee (respondent) was not entitled to his claim because his services were terminated for one of the reasons allowed by section 5 of the Law, namely, on the ground that the employee so conducted himself on the 13th February, 1968, as to render himself liable to dismissal without notice.

Section 3 of the said Law provides:

"3. Where.....an employer terminates for any reason other than those in section 5, the employment of an employee who has been continuously employed by him for not less than

twenty-six weeks, the employee shall have a right to compensation payable by his employer and calculated in accordance with the First Schedule".

The material part of section 5 reads:

"5. Termination of employment for any of the following reasons shall not give rise to a right to compensation —

.....

(e) Where the employee so conducted himself as to render himself liable to dismissal without notice: Provided that

.....

(f) without prejudice to the generality of the immediately foregoing paragraph, the following may, *inter alia,* be grounds for dismissal without notice, all the circumstances of the case being taken into consideration:—

(i) any conduct on the part of the employee which makes it clear that the employer-employee relationship cannot reasonably be expected to continue;

(ii).....(iii).....(iv) is improper conduct by the employee during the performance of his duties (v)....."

It is common ground that paragraphs (e) and (f) of the said section 5 reproduce substantially the English common law regarding summary dismissal for misconduct; and in fact this is the position upon which the Arbitration Tribunal purported to determine the case. What falls to be determined, therefore, in this appeal by way of case stated is whether or not the employee's conduct as found by the Tribunal in this case amounted to misconduct which would justify summary dismissal without notice at common law.

The facts as found and stated by the Tribunal are set out *post* in the judgments of Vassiliades P. and Josephides J. In the circumstances as found, the Tribunal took the view that "some bad temper (on the part of the employee) was not surprising"; and after citing certain authorities came to the conclusion that in such cases the question whether the misconduct proved establishes the right to dismiss the employee "must depend upon facts and is a question of fact". And in this case, the tribunal being of the opinion that the dismissal was wrongful under the common law, held that the employers

(appellants) terminated the employment "for reasons other than those set out in section 5"; and were therefore liable to the payment of compensation under section 3 (*supra*).

Reversing the decision of the Arbritration Tribunal the Supreme Court:—

Held, (1) (a). There can be no doubt that paragraphs (e) and (f) of section 5 of the Termination of Employment Law, 1967 (*supra*) reproduce substantially the English common law regarding grounds justifying dismissal without notice. In fact this is the position upon which the Tribunal purported to determine the case.

(b) The question to be determined, therefore, is whether the employee's (respondent's) conduct in the present case, as stated by the Tribunal, amounted to misconduct which at common law would justify summary dismissal without notice.

(2) *per Vassiliades P.:*

(a) There can be no doubt, I think, that the tribunal rightly took the view that under the common law the answer to the question whether the conduct of the employee was such as to "make it clear that the employer—employee relationship cannot reasonably be expected to continue" must depend upon the facts and circumstances of the particular case; as seen, of course, by the Court, in the conditions prevailing at the time and place where the matter has occurred. Conduct which in England or some other distant country may have been held by their Courts sufficient to justify immediate dismissal thirty or fifty years ago, may not be sufficient to justify the dismissal under consideration; and *vice versa.*

(b) The conduct of the respondent employee, as stated by the tribunal (*see post in the judgment of the learned President*), clearly shows, in my opinion, vulgar disrespect to the business of the employer and its management, dissatisfaction and contempt tending to undermine the business of the employer and its reputation as a public transport company; a business largely depending on the confidence of the public in the safety of the company's vehicles and the reliability of its timetables. Shouting in the company's waiting room, in the presence of its customers, that he will never drive such vehicles again, was undoubtedly a most objectionable behaviour on the part of the company's driver; and completely inconsistent with good discipline in the employer's business.

(c) The importance of good discipline and proper behaviour in a business such as that of the employers (appellants) in the present case, is surely fundamental; it goes to the root of its success or failure.

(d) Good discipline and responsible behaviour at all levels are both, in my opinion, implied conditions in most, if not all, contracts of employment of this nature. The test, I think, is:— Had the employer known that this would be the conduct of the employee, would he have agreed to take such employee in his employment? If the answer to this question is in the negative, then "the employer–employee relationship cannot reasonably expected to continue" (*supra*). And it should not have to continue (or be awarded the prize of compensation and other like benefits) if business in this country is to receive the protection of the law against anarchy to which it is entitled in the public interest.

(e) Without the slightest difficulty or hesitation I would allow this appeal and remit the case to the tribunal to be dealt with accordingly.

(3) *per Triantafyllides J.:*

(a) In the present case we have to deal with an issue of mixed law and fact, namely, to apply the law to the facts as ascertained by the Tribunal.

(b) As to the position at common law I have found especially useful the reference made by the learned Chairman of the Tribunal to the two English cases: *Clouston and Co. Ltd.* v. *Corry* [1906] A.C. 122 P.C. at p. 129; and *Jupiter General Insurance Co. Ltd.* v. *Shroff* [1937] 3 All E.R. 67 (P.C.) at p. 74.

(c) The respondent employee has not only used very vile language, but he has used such specific expressions, while on duty in the office of his employers, (the appellants) and in the presence of customers, which tended obviously to show that the vehicles used by the appellants (a transport concern) were unsuitable; moreover, his said behaviour was, in general, utterly incompatible with the interests and proper functioning of the appellants' business.

(d) In the circumstances, and bearing fully in mind that an isolated outburst of bad temper should not, as a rule, be treated as sufficient to justify dismissal without notice, I am of the

view that on account of the respondent's said misconduct one could not reasonably expect the master and servant relationship to continue thereafter; moreover such misconduct constituted a very serious one on the part of the respondent in the course and in the performance of his duties when as a driver of a bus of the appellants he was reporting what had happened on a trip just completed to a clerk in the office of the appellants.

(e) In concluding, I am of the opinion that the conduct of the respondent was such as to justify his dismissal without notice, both under the common law and the relevant provisions of section 5 of Law 24/67 (*supra*).

(4) *per Josephides J.:*

(a) The principles of law to be applied are laid down in the cases of *Clouston supra; Jupiter supra;* and in the case of *Laws* v. *London Chronicle Ltd.* [1959] 2 All E.R. 285 at pp. 287, 288. See, also, Halsbury's Laws of England, 3rd edn., volume 25, pp. 485–6.

(b) This is the English common law which we have to apply in this case. It has often been stated that the common law is not static.. It is a growing organism which continually adapts itself to meet the changing needs of time (per Salmon L.J. in *Chick Fashions (West Wales) Ltd.* v. *Jones* [1968] 2 W.L.R. 201 at p. 214); and as Diplock L.J. (as he then was) said in the same case at p. 221; "The Society in which we live is not static, nor is the common law, since it comprises those rules which govern men's conduct in contemporary society on matters not regulated by legislation". Cf. also *Indyka* v. *Indyka* [1967] P. 233 (H.L.) at p. 262 where the same judge said: "For let us not pretend that the common law is changeless. If it were, it would have long ago been replaced by statutory codes. It is the function of the courts to mould the common law and to adapt it to the changing society for which it provides the rules of each man's duty to his neighbour".

(c) In Cyprus the Courts, in adapting the English common law to meet the changing needs of time, must also take into account local conditions, including the question that a reasonable employer or employee in Cyprus, in given circumstances may not act or react in the same way as a reasonable employer or employee in England. In referring to English authorities

as to what amounts to misconduct justifying summary dismissal at common law, we must bear this in mind and that the test to be applied must vary with the nature of the business, the position held by the employee and other relevant circumstances.

(d) In deciding whether bad language, insolence or insubordination in the course of employment amounts to misconduct, regard must be had not only to the words but the place or environment in which they were used. One cannot expect the same moderation of language, say, in a mine in the absence of any customers of the master's business, as in a transport office in the presence of customers.

(e) In the present case the language used by the employee (respondent) in the presence of the employer's customers was terribly obscene, blasphemous and insolent (see post in the judgments of Vassiliades P. and Josephides J.). The employee's conduct was on this occasion insulting and insubordinate to such a degree as to be incompatible with the continuance of the relation of master and servant. Although this was an isolated act of misconduct of the employee, it was such as to interfere with and prejudice the proper conduct of the master's business; it amounted to such a deliberate disregard of the conditions of service, as justified the employer in accepting the employee's repudiation, treating the contract as ended and summarily dismissing him.

Appeal allowed.

Cases referred to:

Clouston and Co. Ltd. v. *Corry* [1906] A.C. 122 (P.C.) at p.129;

Jupiter General Insurance Co. Ltd. v. *Ardeshir Bomanji Shroff* [1937] 3 All E.R. 67 (P.C.) at p. 74;

N.A.A.F.I. (Navy Army and Air Force Institutes) v. *Tassos Ioannides* (1968) 1 C.L.R. 147;

Tomlinson v. *The London Midland and Scottish Railway Co.* [1944] 1 All E.R. 537;

Sinclair v. *Neighbour* [1967] 2 W.L.R. 1;

Laws v. *London Chronicle Ltd.* [1959] 2 All E.R. 285 at pp. 287, 288;

Chic Fachions (West Wales) Ltd v. *Jones* [1968] 2 W.L.R. 201 at p. 214 per Salmon L.J. at p. 221 per Diplock L.J. (as he then was);

Indyka v. *Indyka* [1967] P. 233 (H.L.) at p. 262.

Case stated.

Case stated by the Arbitration Tribunal under rule 17 of the Arbitration Tribunal Rules, 1968 for the opinion of the Supreme Court of the question of law whether the summary dismissal of an employee constitutes in the circumstances termination of employment under section 3 of the Termination of Employment Law, 1967.

M. Christofides, for the appellant.

A. Lemis, for the respondent.

Cur. adv. vult.

The following judgments were read:

VASSILIADES, P.: At the request of the employer, the Arbitration Tribunal stated under rule 17 of the Arbitration Tribunal Rules of 1968, the present case for the opinion of the Supreme Court and the appropriate consequential order, on the question of law whether the summary dismissal of the employee constituted, in the circumstances, termination of employment under section 3 of the Termination of Employment Law, 1967, entitling the employee to the benefits awarded by the tribunal, against the employer.

The award, amounting to a total of £140.250 mils (made on June 19, 1968, at the instance of the employee through his trade union) was made under two heads:

(a) Compensation under section 3 of the Termination of Employment Law, 1967 (Law 24 of 1967) £107.250 mils; and

(b) Payment in lieu of notice, under section 9(1)(c) of the same Law – £33.

The case came before us under rule 17 of the Arbitration Tribunal Rules of 1968, made under section 12 of the Annual Holidays with Pay Law, 1967 (Law 8 of 1967) as all disputes

arising out of the operation of the Termination of Employment Law, are decided by the tribunal established under section 12 of the Annual Holidays with Pay Law. (Section 2 and section 30 of Law 24 of 1967). The matter looks somewhat confusing, but it gave rise to no argument in the present case. One may wonder why it had to be so? But no answer to the question is necessary for the purposes of this case.

Section 3 of the Termination of Employment Law, 1967, under which the main part of the award was made, provides that –

> "Where.....an employer terminates for any reason other than those in section 5, the employment of an employee who has been continuously employed by him for not less than twenty–six weeks, the employee shall have a right to compensation payable by his employer and calculated in accordance with the First Schedule."

Section 5 specifies the reasons for which dismissal does not give right to compensation under section 3, one of which section 5(e) is –

> "where the employee so conducts himself as to render himself liable to dismissal without notice."

It is common ground in the case before us, that the question whether an employee has rendered himself liable to dismissal without notice, must be determined on the principles of the common law, as accepted and applied in this country; and in fact this is the position upon which the Tribunal purported to determine the case.

That the legislature intended to incorporate in this connection, the common law, is clear from the provisions of section 5(f)(i) that –

> "without prejudice to the generality (of the earlier paragraph) the following may be grounds for dismissal without notice –
>
> ....
>
> " (i) any conduct on the part of the employee which makes it clear that the employer–employee relationship cannot reasonably be expected to continue."

This incorporation of the common law (which in this respect

forms part of our contract law as applied to contracts of employment) was made with certain drafting touches originating in the common law, such as that "all the circumstances of the case being taken into consideration"; and the proviso to section 5(e) that –

> "where the employer does not exercise his right of dismissal within a reasonable period following the matter which gave rise to this right, he shall be deemed to have waived his right to dismiss the employee."

In substance, the matter under consideration is, undoubtedly, governed by the principles of the common law; the law as commonly accepted and found declared in actual cases, by the competent Courts.

In the present case, the question is whether the employee was guilty of conduct entitling the employer to dismiss him without notice; such conduct having made it "clear that the employer–employee relationship cannot reasonably be expected to continue."

The facts as stated by the Tribunal are:

> "The employers are a transport company who carry on business all over the island. The employee was employed by them from 12th March, 1960, until his dismissal, as a taxi driver. He worked for the employers' Limassol Office. He is 48 years old and his wage, for the purposes of the Law, was £8.250 mils per week.
>
> On the 13th February, 1968 the employee drove a party of tourists to Nicosia. They had to be back in Limassol by 3 p.m. to catch their boat. On the way back the car broke down. The employee repaired it but in trying to make up for lost time he exceeded the speed limit and was reported by the police. He was subsequently fined £8 for the offence.
>
> The employee got back to the office between 3.30 p.m. and 4 p.m. and said to the clerk in a loud voice:
>
> 'γαμῶ τὸν Θεὸν σας, γαμῶ τὴν Παναγίαν σας. Τὰ αὐτοκίνητα ἂς μείνουν μαῦρα καὶ σκοτεινὰ ποὺ τὴν κκελὲν τους γι' αὐτοκίνητα. Ὅποιος πιάνει δουλειὰν ἄλλην φορὰν νὰ τὴν παίρνῃ ὁ ἴδιος. Ἐγὼ γιὰ νὰ πάω δουλειὰν ἄλλην φορὰν πρέπει νὰ μοῦ δώσουν ἄλλον αὐτοκίνητον'.

"At the time there were customers, including women, in the office and they must have heard what the employee said.

The next day the managing director of the employer company went to Limassol from Nicosia, enquired into the incident and dismissed the employee summarily."

In these circumstances, the tribunal took the view that "some bad temper was not surprising;" and after citing from the judgments in one or two Privy Council cases (*Jupiter General Insurance Co. Ltd.* v. *Ardeshir Bomanji Shroff* [1937] 3 All E.R. p. 67 at p. 74; and *Clouston & Co. Ltd.* v. *Corry* [1906] A.C p. 122 at p. 129) came to the conclusion that in such cases the question whether the misconduct proved, establishes the right to dismiss the employee "must depend upon fact and is a question of fact". And in this case, the tribunal being of opinion that the dismissal was wrongful, under the common law, held that the employer terminated the employment "for reasons other than those set out in section 5;" and was, therefore liable to the payment of compensation under section 3. The tribunal then proceeded to make the award stated earlier in this judgment; and now challenged by the present proceeding.

There can be no doubt, I think, that the tribunal rightly took the view that under the common law, the answer to the question whether the conduct of the employee which resulted in his dismissal, was such as to "make it clear that the employer—employee relationship cannot reasonably be expected to continue," must depend upon the facts and circumstances of the particular case; as seen, of course, by the Court, in the conditions prevailing at the time and place where the matter has occurred. Conduct which in England or some other distant country may have been held by their Courts, sufficient to justify immediate dismissal thirty or fifty years ago, may not be sufficient to justify the dismissal under consideration; and *vice versa.*

The tribunal do not give in their decision the facts of the cases which led them to their conclusion. I find it unnecessary to take time in discussing them here. The legal aspect in cases of this nature, was recently discussed in this Court in the *N.A.A.F.I. (Navy, Army and Air Force Institutès)* v. *Tassos Ioannides* (1968) 1 C.L.R. 147, where reference was made to

Tomlinson v. *The London, Midland and Scottish Railway Co.* [1944] 1 All E.R. p. 537; and to *Sinclair* v. *Neighbour* [1967] 2 W.L.R. p. 1.

In the present case, the tribunal did not include any finding regarding the employee's attitude at the time of his dismissal by the employers' managing director, when the latter went to enquire into the incident of the previous day; nor do they say how long after the dismissal was the employee fined £8 by the District Court for exceeding the speed on the day of the incident, which in the view of the tribunal operated as "quite severe provocation" which made "some bad temper, not surprising." Be that as it may, however, this case was argued, and it must be decided, on the material before us.

The conduct of the employee, as stated by the tribunal, clearly shows, in my opinion, vulgar disrespect to the business of the employer and its management. It, moreover, shows dissatisfaction and contempt on the part of the employee, tending to undermine the business of the employer and its reputation as a public transport company; a business largely depending on the confidence of the public in the safety of the company's vehicles and the reliability of its time–tables. Shouting in the company's waiting room, in the presence of its customers, that he will never drive such vehicles again, was undoubtedly a most objectionable behaviour on the part of the company's driver; and completely inconsistent with good discipline in the employers' business.

The importance of good discipline and proper behaviour on the part of its employees, in a business such as that of the employers in the present case, is surely, fundamental; it goes to the root of its success or failure. The measure of efficiency in most business organizations, is that of good discipline and responsible behaviour by its employees at all levels. They are both, implied conditions, in my opinion, in most, if not all, contracts of employment of this nature. The test, I think, is:– Had the employer known that this would be the conduct of the employee, would he have agreed to take such employee in his employment? If the answer to this question is in the negative, "the employer–employee relationship cannot, I think, reasonably be expected to continue." And it should not have to continue, (or be awarded the prize of compensation and other like benefits) if business in this country is to receive the

protection of the law against anarchy, to which it is entitled in the public interest.

Without the slightest difficulty or hesitation, I would allow this appeal and remit the case to the tribunal, for determination of the claim accordingly.

TRIANTAFYLLIDES, J.: In this case I agree with the conclusion reached by the learned President of the Court; and as all essential facts are set out in his judgment I need not repeat them.

My reasons, for coming to such conclusion, are as follows:—

There can be, indeed, no doubt that it was the intention of the relevant provisions in section 5 of the Termination of Employment Law, 1967 (Law 24/67) to reproduce substantially the Common Law of England, regarding grounds justifying dismissal without notice; and the learned Chairman of the Tribunal has, obviously, and very correctly, taken the same view, and he has relied on the proper principles governing such a matter under the Common Law.

I have found especially useful the reference made by him to the two English cases of *Clouston & Co. Limited* v. *Corry* [1906] A.C. 122 and *Jupiter General Insurance Co. Ltd.* v. *Ardeshir Bomanji Shroff* [1937] 3 All E.R. 67.

As it was stated by Lord James of Hereford in delivering the judgment of the Privy Council in the *Clouston* case, *supra* (at p. 129): "There is no fixed rule of law defining the degree of misconduct which will justify dismissal. Of course there may be misconduct in a servant which will not justify the determination of the contract of service by one of the parties to it against the will of the other. On the other hand, misconduct inconsistent with the fulfilment of the express or implied conditions of service will justify dismissal ..... the question whether the misconduct proved establishes the right to dismiss the servant must depend upon facts....."

Lord Maugham, in delivering the judgment of the Privy Council in the *Jupiter* case, *supra*, stated (at p. 74) that "..... their Lordships would be very loath to assent to the view that a single outbreak of bad temper, accompanied, it may be, with regrettable language, is a sufficient ground for dismissal" but he went on to point out that: "It must be remembered that

the test to be applied must vary with the nature of the business and the position held by the employee, and that decisions in other cases are of little value".

Under section 5(f) of Law 24/67, it is provided, in particular, that, taking into account all the circumstances of a case, there may constitute a ground of dismissal without notice conduct on the part of an employee which renders it clear that the master and servant relationship cannot be reasonably expected to continue (see sub–paragraph (i)) or improper conduct by the employee during the performance of his duties (see sub–paragraph (iv)).

In the present case we have to deal with an issue of mixed law and fact, namely, to apply the law to the facts as ascertained by the Tribunal:

The respondent employee has not only used very vile language, but he has used such specific expressions, while on duty in the office of his employer, the appellant, and in the presence of customers, which obviously tended to show that the vehicles used by the appellant – a transport concern – were unsuitable; moreover, his said behaviour was, in general, such as to be utterly incompatible with the interests and proper functioning of the business of the appellant.

In the circumstances, and bearing fully in mind that an isolated outburst of bad temper should not, as a rule, be treated as sufficient to justify dismissal without notice, I am of the view that the misconduct in question of the respondent was such that one could not, reasonably, expect the master and servant relationship, between him and the appellant, to continue thereafter; moreover, it constituted very serious misconduct in the course of his being on duty – because his being on duty should not be taken as limited only to the time when he was actually driving the appellant's vehicles, but must be taken to cover an instance, such as the one in question, when as a driver of a bus of the appellant he was reporting, regarding what happened on the trip just completed, to a clerk in the office of the appellant.

The respondent's conduct was, in my opinion, such as to justify his dismissal without notice, both under the Common Law and the relevant provisions of section 5 of Law 24/67; and I am, therefore, of the view that, on a proper application,

of the law, the Tribunal should have found accordingly; I would add, however, that such a case does constitute an exception – in view of its nature – to the general rule which has led the Tribunal to the opposite result.

JOSEPHIDES, J.: In this case stated the employer appeals from the decision of the Arbitration Tribunal given on the 19th June, 1968, whereby they awarded compensation to his employee (respondent) for unjustified dismissal (£107.250 mils), and payment in lieu of notice (£33.–), under the provisions of sections 3 and 9(1)(c), respectively, of the Termination of Employment Law, 1967.

The employer contended that the employee was not entitled to his claim because his services were terminated for one of the reasons allowed by section 5 of the Law, namely, on the ground that the employee so conducted himself as to render himself liable to dismissal without notice.

The material part of section 5, which we have to consider in this case, reads as follows:–

"5. Termination of employment for any of the following reasons shall not give rise to a right to compensation–

.....

(e) where the employee so conducts himself as to render himself liable to dismissal without notice:–

Provided that.....

(f) without prejudice to the generality of the immediately foregoing paragraph, the following may, *inter alia*, be grounds for dismissal without notice, all the circumstances of the case being taken into consideration:–

(i) any conduct on the part of the employee which makes it clear that the employer–employee relationship cannot reasonably be expected to continue;

(ii) ..... (iii) ..... (iv) ..... (v)....."

Paragraphs (e) and (f) of section 5 reproduce substantially the English common law regarding summary dismissal for misconduct. What falls to be determined, therefore, is whether

the employee's conduct in the present case amounted to misconduct which would justify summary dismissal without notice at common law.

The facts as found by the Tribunal were that the employers are a transport company who carry on business all over the island. The employee was employed by them from the 12th March, 1960, until his dismissal on the 14th February, 1968, as a taxi–driver, working for the employers' Limassol office. The employee is 48 years old and his wages for the purposes of the Law were £8.250 mils per week. On the 13th February, 1968, the employee drove a party of tourists to Nicosia. They had to be back in Limassol by 3 p.m. to catch their boat. On the way back the car broke down. The applicant repaired it but in trying to make up for lost time he exceeded the speed limit and was reported by the police. After his dismissal he was fined £8 for the offence.

The employee got back to the office in Limassol between 3.30 and 4 p.m. and said to the clerk in a loud voice: «γαμῶ τὸν Θεὸν σας, γαμῶ τὴν Παναγίαν σας. Τὰ αὐτοκίνητα ἂς μείνουν μαῦρα καὶ σκοτεινὰ ποὺ τὴν κκελὲν τους γι' αὐτοκίνητα. Ὅποιος πιάνει δουλειὰν ἄλλην φορὰν νὰ τὴν παίρνῃ ὁ ἴδιος. Ἐγὼ γιὰ νὰ πάω δουλειὰν ἄλλην φορὰν πρέπει νὰ μοῦ δώσουν ἄλλον αὐτοκίνητον».

At the time there were customers, including women, in the office and they must have heard what the employee said. The next day the Managing Director of the employers enquired into the incident and dismissed the employee summarily.

The Tribunal found that summary dismissal was unjustified in the circumstances. Their reasons were, firstly, that the employee had worked for the employers for nearly eight years, that he was their only long service taxi driver in Limassol, that no evidence was offered to the Tribunal that his services had been in any similar way unsatisfactory prior to this incident, nor that there had been any previous warnings about bad language; and that, therefore, the tribunal regarded this as a single isolated incident; secondly, that the employee was "under quite severe provocation". His story about the car breaking down was accepted by the Tribunal and that he had been reported by the police on that day; and, in the circumstances, the Tribunal said that "some bad temper was not surprising". In reaching their decision the Tribunal stated

that they relied on the principles laid down in *Jupiter General Insurance Co. Ltd.* v. *Shroff* [1937] 3 All E.R. 67, (P.C.) at page 74 (a case of negligence); and they also referred to *Clouston and Co. Ltd.* v. *Corry* [1906] A.C. 122, (P.C.) at page 129 (a case of drunkenness).

Let me first try to state correctly the basis of the law to be applied. A summary of the principles is to be found in Halsbury's Laws of England, third edition, volume 25, pages 485–6. In paragraph 933 it is stated that wilful disobedience to the lawful and reasonable order of the master justifies summary dismissal.

From the case of *Clouston & Co.* v. *Corry* [1906] A.C. 122 it appears that –

(a) there is no fixed rule of law defining the degree of misconduct which will justify dismissal without notice;

(b) misconduct inconsistent with the fulfilment of the express or implied conditions of service will justify dismissal;

(c) the question whether an isolated act of drunkenness (committed under circumstances of festivity and in no way connected with or affecting the employers' business) establishes the right to dismiss the servant is a question of fact.

The case of *Jupiter General Insurance Co. Ltd.* v. *Shroff* [1937] 3 All E.R. 67 (a case of negligence on the part of the manager of life insurance) establishes that –

(d) an isolated act of neglect or misconduct will not justify summary dismissal unless attended by serious consequences. The Court will have to determine whether the misconduct of the servant is not such as to interfere with and to prejudice the safe and proper conduct of the master's business and, therefore, to justify immediate dismissal;

(e) the test to be applied must vary with the nature of the business and the position held by the employee.

Finally, the case of *Laws* v. *London Chronicle Ltd.* [1959] 2 All E.R. 285 (a case of disobedience by a junior employee) lays down that –

(f) a single act of disobedience or misconduct can justify dismissal only if it is of a nature which goes to show (in effect) that the servant is repudiating the contract, or one of its essential conditions, as would an act of wilful disobedience (at page 288 of the report);

(g) disobedience must be "wilful"; this connotes a deliberate flouting of the essential contractual conditions (*ibid.*): and

(h) wilful disobedience of a lawful and reasonable order is such a flouting – as it shows a complete disregard of a condition essential to the contract of service, that is, the condition that the servant must obey the proper orders of the master and that, unless he does so, the relationship is, so to speak, struck at fundamentally (at page 287 of the report).

This is the English common law which we have to apply to this case. It has often been stated that the common law is not static. It is a growing organism which continually adapts itself to meet the changing needs of time (per Salmon L.J. in *Chic Fashions (West Wales) Ltd.* v. *Jones* [1968] 2 W.L.R. 201, at page 214); and, as Diplock L.J. (as he then was) said in the same case, at page 221, "The society in which we live is not static, nor is the common law, since it comprises those rules which govern men's conduct in contemporary society on matters not expressly regulated by legislation".

It was the same judge who, in *Indyka* v. *Indyka* [1967] P. 233, H.L., at page 262, said: "For let us not pretend that the common law is changeless. If it were, it would have long ago been replaced by statutory codes. It is the function of the Courts to mould the common law and to adapt it to the changing society for which it provides the rules of each man's duty to his neighbour".

In Cyprus the Courts, in adapting the English common law to meet the changing needs of time, must also take into account local conditions, including the question that a reasonable employer or employee in Cyprus, in given circumstances, may not act or react in the same way as a reasonable employer or employee in England. In referring to English authorities as to what amounts to misconduct justifying summary dismissal at common law, we must bear this in mind and that the test

to be applied must vary with the nature of the business, the position held by the employee and other relevant circumstances.

In deciding whether bad language, insolence or insubordination in the course of employment amounts to misconduct, regard must be had not only to the words but the place or environment in which they were used. One cannot expect the same moderation of language, say, in a mine in the absence of any customers of the master's business, as in a transport office in the presence of customers.

In the present case the language used by the employee in public in the presence of the employer's customers, was terribly obscene, blasphemous and insolent. The employee's conduct on this occasion was insulting and insubordinate to such a degree as to be incompatible with the continuance of the relation of master and servant. Although this was an isolated act of misconduct of the employee, it was such as to interfere with and prejudice the proper conduct of the master's business. In the circumstances I am satisfied that the employee's conduct amounted to such a deliberate disregard of the conditions of service, as justified the employer in accepting the employee's repudiation, treating the contract as ended and summarily dismissing him. For these reasons the employee's claim must fail.

In conclusion I would like to make the following observations with regard to the provisions of the Termination of Employment Law, 1967, which confer on the employee the right to compensation on termination of employment.

As the law stands at present, if the Tribunal finds that the employee so conducted himself as to render himself liable to dismissal without notice (section 5(e) and (f)) – as in the present case – then the employee loses both his right to compensation under the provisions of section 3 of the Law, and to payment in lieu of notice under section 9 (see also section 15). But there may well be cases in which, although it would be right not to award any payment in lieu of notice, it would still be fair to award the employee compensation, in full or in part, in the discretion of the Tribunal, under section 3, having regard to all the circumstances of the case, including his length of service with the employer. In this connection one could usefully compare the provisions of the Public Service Law, 1967 (No. 33 of 1967), whereby the Public Service Commission may,

in a proper case, impose as disciplinary punishment "compulsory retirement" without loss of retirement benefits (under section 79(1)(i) and (6)), instead of "dismissal" with consequential forfeiture of all retirement benefits (under section 79(1)(j) and (7)). I would, therefore, suggest that the responsible authority and the Legislature might consider the desirability of amending the law to enable the Tribunal to do justice in appropriate cases.

In the result I would allow the appeal, set aside the Tribunal's award and direct that the employee's claim be dismissed.

VASSILIADES, P.: In the result, the appeal is allowed; and the case is returned to the tribunal to be dealt with according to the outcome of the appeal.

Subject to the order for costs in favour of the appellants, made on 17.10.68, there will be no order for costs in the appeal.

Appeal allowed.