1980 June 13

[A. LOIZOU, DEMETRIADES, SAVVIDES, JJ.]

AVGHI CONSTANTINIDOU,

Appellant,

v.

F.W. WOOLWORTH & CO. (CYPRUS) LTD.,

Respondents.

(*Case Stated No.* 178).

Master and servant—Dismissal without notice—Misconduct—Isolated act—Principles applicable—Summary dismissal of employee for violation of the internal rules of employer relating to purchase of goods by members of the staff from employer's supermarket—No wrong application of the Law—And no misdirection by trial Judge by referring to the grounds set out in section 5 of the Termination of Employment Law, 1967 (Law 24/67) cumulatively and especially paragraph (f), sub-paragraphs (i) and (v)—Not necessary to give employee a chance of fair hearing before dismissal.

Natural Justice—Fair hearing—Master and servant—Dismissal without notice for misconduct—Matter of private law—Whether necessary to give employee chance of fair hearing before dismissal.

Practice—Case stated—Industrial Disputes Court—Desirability that questions submitted for the decision of the Supreme Court should be clearly formulated and embodied in the statement of the case.

The appellant was in the service of the respondents as a staff-supervisor. On February, 1979, the respondents terminated her services on "account of violation of the internal rules of the Company". These rules related to the method and procedure of purchase of goods by the staff from the employers' supermarket and the breach committed by the appellant was that she allowed a member of the staff to purchase goods in a manner which was contrary to the procedure prescribed by the above rules.

In procedings for recovery of damages for wrongful dismissal,

under sections 9 and 3 of the Termination of Employment Law, 1967 (Law 24/67) the Industrial Disputes Court found that the termination of appellant's employment without notice was justified and that the termination of her employment was made for the grounds set out in section 5 of the above Law cumulatively and especially sub–paragraphs (i) and (v) of paragraph (f) thereof.

The employee appealed by way of Case Stated and Counsel appearing for her contended:

(a) That by referring to the grounds set out in section 5 of the Law cumulatively and especially sub–paragraphs (i) and (v) of its paragraph (f) the trial Court misdirected itself; it should have spoken of section 5(e) and (f) only and then refer to the cumulative effect of sub–paragraphs (i) and (v) of paragraph (f).

(b) That the trial Court wrongly decided that the dismissal of the appellant was justified under the provisions of section 5(e) and (f) and sub–paragraphs (i) and (v) of paragraph (f).

(c) That the trial Court acted in abuse of power because of the fact that the appellant was not given a chance of fair hearing before dismissal.

Held, (1) that the trial Court has not misdirected itself by referring to the grounds set out in section 5 of Law 24/67 cumulatively, because it was rather a matter of style or expression as no question of termination of employment under the grounds contained in sections 5(1)–(d) arose in the case; that what was intended was the cumulative effect of paragraphs (e) and (f) of section 5 and from paragraph (f) only its sub–paragraphs (i) and (v); and that, accordingly, contention (a) must fail.

(2) (*After referring to the principles of law governing the question of summary dismissal as a result of a single act of disobedience or misconduct vide* pp. 314–5 *post*) that in the circumstances of the present case there is no reason to interfere with the conclusions drawn by the trial Court and with its approach to the facts of the case; that the totality of the circumstances constituted acts of disobedience and misconduct that suggest no wrong

application of the Law in the circumstances and justify the dismissal of the appellant as being legally warranted; that regulations and instructions which set out a mode of security for the safety of the goods in a supermarket amount to sufficient grounds for justifying the summary dismissal; that, therefore, there was nothing wrong in the decision of the trial Court; that the dismissal of the applicant was justified under the provisions of section 5(e) and (f) of Law 24/67; and that, accordingly, contention (b) must fail.

(3) That the fact that the appellant was not given a chance of fair hearing before dismissal does not mean that the trial Court acted in abuse of power as in matters of private law this is not necessarily so; and that, accordingly, contention (c) must, also, fail.

Appeal dismissed.

Per curiam: It is very desirable that in a case stated the questions submitted for the decision of this Court should be clearly formulated and embodied in the statement of the case.

Cases referred to:

Cleanthis Christofides v. *Redundant Employees Fund* (1978) 1 C.L.R. 208 at p. 214;

KEM (Taxi) Ltd., v. *Tryphonos* (1969) 1 C.L.R. 52;

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

Jupiter General Insurance Co. Ltd. v. *Shroff* [1937] 3 All E.R. 67;

Laws v. *London Chronicle Ltd.* [1959] 2 All E.R. 285;

Sinclair v. *Neighbour* [1966] 3 All E.R. 988 at p. 990.

Case Stated.

Case stated by the Chairman of the Industrial Disputes Court relative to his decision of the 23rd June, 1979, in proceedings under sections 3 and 9 of the Termination of Employment Law, 1967 (Law No. 24 of 1967) instituted by Avgi Constantinidou against F.W. Woolworth & Co. (Cyprus) Ltd., whereby it was found that the termination of her employment without notice was justified and her application for payment of wages for wrongful and/or unjustified dismissal was dismissed.

M. Spanos, for the appellant.

P. Ioannides for *T. Papadopoulos*, for the respondents.

Cur. adv. vult.

A. LOIZOU J. read the following judgment of the Court. This is an appeal by way of case stated from the decision of the Industrial Disputes Court, by which the application of the applicant for "payment of wages in lieu of notice and/or damages for wrongful and/or unjustified dismissal under sections 9 and 3 respectively, of the Termination of Employment law, 1967 (Law No. 24 of 1967) as amended by Law No. 17 of 1968, was dismissed without notice, was justified".

The application of the present appellant was heard in the first instance together with the application of another employee of the respondent company whose dismissal was connected with that of the appellant. That applicant, however, was found to have been unjustifiably dismissed and that she was entitled to the remedies provided for by the Law and there has been no case stated in that instance. In the case, however, as stated by the trial Court, reference is made to the facts of both cases, the present appellant being referred to therein as the second applicant, whereas that successful applicant is referred to as the first applicant, and we shall continue to refer to her in that way.

The facts, as found by the Court, were as follows:

The respondent company is one with limited liability and has organised business of shops (supermarket) in which they do retail trade of various merchandise and has in its employment about seventy employees. The first applicant was engaged by the respondent company at the beginning of March 1974, as a sales-girl and in August of that year she was promoted to sales-supervisor and her salary for the purposes of the Laws, was £17.365 mils weekly. The appellant was engaged on the 15th November, 1976, as staff-supervisor, and her salary for the purposes of the Law, was £27.500 mils weekly.

On the 28th August, 1978, the respondent company, by its General Manager, sent written memoranda (*exhibits* 1A, 1B) to the Assistant Manager, Sales-Supervisors, Staff-Supervisors, Department Managers, Trainee Department Managers, in which the following were, *inter alia*, stated:-

> "In order to improve the efficiency of the store, the following procedures must be strictly adhered to. I would like to remind you, that, although these procedures were

supposed to be followed by the Department Managers and Sales Supervisors from the time the store opened in 1974, some of them have not been observed and now, in view of the increased work load, it is felt necessary that these rules be followed.

.....

.....

CASH REGISTERS—As from to-day, you are not allowed to operate the cash registers. The only exception to this is made in the case of Renos and Panayiotis during the staff purchases period, i.e. 06.45 to 07.20 hours only.

STAFF PURCHASES—The staff purchases register, will only operate from 06.45 to 07.20 each day and *all* staff must make these purchases during that period. No one is allowed to make any purchase during the time the store is opened to the public.

(*Note of the Court*: During winter hours were made until 07.50).

DISCOUNT—Discount is given only to the staff. In case of customer discounts, these can be only authorised and signed by me.

.....

.....

The above instructions must not be altered or ignored in anyway.

I am sure that you will co-operate with the foregoing and thus help the more efficient operation of our store".

On the 20th September, 1978, the appellant sent a letter to a member of the staff communicating a decision of the Management for the termination of her employment on account of a disregard of fundamental rules of the company and explained that "..... without authorization you have transferred goods from the store to the basement of the shops and you have concealed them in two different places. You realize that after this there has been created a lack of trust and consequently your staying in the service is impossible".

The prescribed procedure for purchases by the staff was the following:

The goods were purchased up to 07.50 hours (depending on

the time table) and were produced by the employee to the cashier and after they were registered they were paid. If they were made on days of 10% discount (Wednesdays and when an employee is off duty), they were entered in the relevant page of the ledger of each employee. After they were paid they were arranged in bags on which, for the male staff, the name of each one was written, for the female staff its number was recorded, and then conveyed by an employee especially employed for the purpose to the bag-room in the upper floor from where when the work was over, each one took delivery of his own goods and left the premises without coming in touch with the shop where the goods are displayed. No one could visit the bag-room which was locked by the appropriate employee. This procedure was followed for the purpose of security and good order of the shop.

On the 22nd February, the first applicant visited Katina Ioannidou engaged as a sales-girl in the ladies department of the company and took one blouse and one pair of trousers which were in "a sale" and had been placed in a drawer earlier; this applicant did this as these items might be sold. This action was done in the presence of other employees. A week before that date the first applicant had kept two cardigans, colour beige and black, size 36, which had been put aside by Tasoulla Achilleos, a sales-girl of ladies articles. This again in the presence of many employees.

On the 23rd February, whilst the first applicant was talking to Katina Ioannidou, the appellant came for inspection and she was told by the first applicant that she had put aside a blouse and one pair of trousers and asked for permission to try them on in the dressing-room of the upper floor during the break. She was also told that a week earlier she had put aside two cardigans with Tasoulla, they went together to her and the appellant asked for herself a cardigan beige colour but she did not find one for her size. At about 9.30 a.m. the first applicant took two cardigans the blouse and the pair of trousers and as she had been asked by a colleague to change the break-time she accepted and placed them on the counter. At about 10.30 a.m. she got the aforementioned items and went to the upper floor through the stair-case in order to try them on. She went to the dressing-room where Olymbia Marangou is responsible for the "bag-room". She told her that she had

permission to bring them upstairs and try them on. At the time of the fitting the appellant was passing by and said that the blouse was too loose and the sleeves needed to be made more tight. The first appellant asked if Olymbia could do the repair, but Olymbia was not certain if she could finish them on that day as she had many table-cloths to sew. The first applicant then told her, "all right, as I do not have also money to pay them to-day and actually I shall take them to-morrow and put them somewhere together with the blouse". Olymbia said that she would try to arrange them in a bag and she would place them in the bag-room which is locked, so that other girls would not go in and out. Further the first applicant asked the appellant permission to pay on the following day as she would be delayed. At noon the first applicant stayed in the shop as usual.

On the following morning the appellant paid the amount to the cashier without presenting the items as she knew the prices. When the first applicant came and in the presence of other employees the appellant mentioned that she paid for the items, she showed her the receipt for C£18.800 mils and having received the money asked Olymbia if the blouse was ready. It was not and gave her the receipt and placed them there where the items of the first applicant were.

On Friday, the 23rd February, 1979, as aforementioned, when the first applicant took the items for trial, the two sales-girls were surprised from the fact that on the one hand that was not the appropriate time for purchases by the staff and on the other that they had asked earlier the first applicant if she would buy them and she answered in the affirmative, but that was not the usual procedure of purchases by employees. Because of this they asked Akis Demetriades, the cashier responsible for the purchases, if he had registered the items of the first applicant or the appellant and he replied in the negative. Not knowing that the first applicant had obtained the permission of the appellant to take them for a trial, he mentioned it to a certain Renos, the section head of the Foods Branch, who at about 12.50 hours went to the office of the General Manager, Andreas Demetriades, whom he found with Mr. Riley, the Overseas Executive of the Woolworth Shops, and mentioned to him that the first applicant was seen to take certain cardigans upstairs.

Then the General Manager stood at the stair-case where the exit of the staff was and as he alleges saw the first applicant to leave at 01.10 hours carrying only her hand-bag.

This was found by the trial Court to be contradictory to the rest of the evidence as it had been ascertained by all that the first applicant did not come out of the shop but remained in it with her colleagues. A little later the appellant came out carrying her hand-bag as well as a shopping-bag with foodstuffs which she had purchased. After that the General Manager went to the canteen and whilst passing by the bag-room talked with the officer in charge and another employee and looked to the floor without mentioning anything to them.

In the afternoon at 6.30 p.m. when the work was over, he called Iosif, alias "Fakin" (in charge of the store) and told him to keep a watch and if he saw the first applicant carrying a black bag to tell her that he wanted her and see that she did not throw away the bag. The same was said to Andreas, the security man. The first applicant came out of the shop carrying only her hand-bag.

When all left he went to the bag-room with Mr. Riley, opened the shopping bag which had in it two cardigans and one cotlet pair of trousers. On advice from Mr. Riley he put a black mark at the back of the label of each item for identification. He locked and then left.

On the following day, Saturday the 24th February, 1979, he visited four or five times the bag-room and the shopping-bag was there. At 1 p.m. when the staff would leave work, he watched with Mr. Riley whether the first applicant would leave with the shopping-bag. He saw her carrying that bag, he called her, he asked her if it was hers, she answered, yes, and he told her that it was in the bag-room from the previous day and why she did not take it. She answered that she had no money to pay for it and that the appellant paid for them on that day. She also showed him the receipt. Then he reprimanded her as she knew that merchandise could not be taken out of the shop without being paid and that there were trial booths and she should not take them upstairs. The first applicant told him that she took them to try them and if they did not fit she would take them back and this was done so that she would not occupy a trial-booth during the time the shop was

open to the public, and that this was done with the knowledge and permission of the appellant. The General Manager called the appellant who assured him that it was with her knowledge, but in any event she admitted that the breach of regulation was done by her. She further mentioned that she registered with the cashier the amounts without presenting the merchandise as she knew the prices.

In the cash receipt four prices are recorded, namely, for two cardigans, one pair of trousers, one blouse which on the previous day was not in the shopping-bag, but its repair was finished on Saturday and placed in it. The amount of £4.150 mils was the sale-price for the pair of trousers, although its price in the sale was £3.750 mils and the difference was paid over and above its price.

The General Manager told her that he had information that other things were taken unpaid and placed her on suspension until he would ascertain what was happening. The appellant took him by the collar, called him "Shah" and told him that he would fall himself also as the dictator and he should not try to prove her to be a thief. To that he answered that he had no such intention but that there was a breach of regulations. The appellant then offered to submit her resignation but he did not accept it.

On Monday the 26th February, 1979, and after the General Manager completed his investigations, both the first applicant and the appellant presented themselves for work and when he saw the appellant he asked "What did we say on Saturday Mrs. Avgi? I think it was very clear, we said you should go". She answered that she wanted this given to her in writing, and then she added: "I shall not leave, I shall remain staff-supervisor of the Woolworth Shops because outside it is not written 'Andreas Demetriades' ". In the end he consented and he gave them each a letter dated the 24th February, 1979, which read: "You are informed that as from to-day your services are terminated on account of violation of internal regulations of the Company".

The relations of the appellant with the General Manager were not harmonious in the past on account of disagreements in facing certain problems from the managerial point of view.

She mentioned to him that he ignored the human element, he considered the staff as rubbish, but rubbish gives odour and one day it will choke him.

On account of the non-strict compliance of the regulations regarding purchases by the staff in the past an irregularity was observed at the cash at the time of serving the public. On account of this the Manager reprimanded the appellant who issued a communique (*exhibit* 2) by which it was specified that the cash would remain open for the purchases of the staff until 07.50 hrs. The appellant on account of such disagreements had submitted her resignation which was not accepted.

The judgment of the Court was based on the following:

"With regard to the second applicant the Court finds that the termination of her employment was made for the grounds set out in Section 5 of the Law cumulatively and especially (i) and (v) of paragraph (f). The second applicant as staff-supervisor had increased responsibilities. The regulations issued by the Management were clear. She knew the method and the procedure of purchase of goods by the staff, yet, they were not observed with the result that anomaly was caused at the offices during the hours of serving the public and on account of that she was reprimanded and there followed the communique issued by her about the hours of work of the cashiers (*exhibit* 2).

In spite of that on the 22nd February, 1979, it came to her knowledge that various items were kept by the first applicant and instead of reprimanding her, she allowed the non-payment and removal of the merchandise. Their placing and keeping in the bag-room a fact which she knew that it was prohibited and on Saturdays she pays at the cashier without the production of the goods whereas she should supervise the strict application of the regulations.

In the opinion of the Court, a meticulous and strict application of regulations relating to the smooth functioning of the business on the one and serving the security and protection of the goods on the other, constitute fundamental rules of the contract of employment. We do not want to be taken that every violation of any regulation

carries with it the immediate termination of the employment, but this must depend on the circumstances of each case.

The second applicant alleged before us that this violation was committed by her having taken into consideration the problems of the first, namely, that her mother was ill. We do not consider this allegation sufficiently strong and relevant in order to justify such breach. Furthermore, we wonder whether the applicant could, on account of her position, deviate from the regulations. We conclude, that she could not by herself as in the instruction, *exhibit* 1(A), it is clearly mentioned "The above instructions must not be altered or ignored in any way". The learned counsel for the applicant submitted to the Court that in the regulations it should be mentioned that the breach of them would have as a result the termination of employment. On principle, the Court accepts this submission and suggests to the employers to include in their regulation such warning, but we do not think that its omission renders unjustified such a termination of employment.

Further, the breach by the applicant was done with the knowledge of other staff and could create a bad precedent for the rest of the staff on the one hand and create wrong impressions on the other, to the two salesgirls, who not knowing the permission given to the first applicant that their actions caused suspicions about the commission of a criminal offence which we considered unjustified as above and dismissed.

The second applicant disagreed repeatedly with the General Manager of the Company, she called him 'Shah' with the meaning she gave to it, grabbed him by the collar and on a previous occasion she told him that he ignores the human element and that he considers them as rubbish but they will choke him from the bad smell.

Of course, we do not know under what circumstances these last words were said. In any event we consider that all together constitute behaviour on behalf of the employee which makes it clear that the relations of employer and employee cannot reasonably be expected to continue.

In view of what is hereinabove set out, the Court took into consideration all the circumstances of the case and considers that the termination of her employment without notice is justified and consequently her application is dismissed as in Law and substance unfounded".

The President of the Court in stating the case did not set out the questions left for our decision but referred us to those appearing in the Schedule attached to the notice of appeal. They were in all nine grounds of appeal but learned counsel for the appellant in arguing the case before us condensed them into four grounds facilitating thereby immensely the examination of the issues of this appeal. Before examining them, we wish to point out that it is very desirable that in a case stated the questions submitted for the decision of this Court should be clearly formulated and embodied in the statement of the case as not all grounds of appeal raised by counsel are necessarily points that can be raised by way of a case stated under the law. To this end a similar intimation was made in the case of *Christofides* v. *The Redundant Employees Fund* (1978) 1 C.L.R., p. 208, at p. 214.

Be that as it may, the four questions for examination are the following:-

(a) That the judgment of the Court is contrary to the provisions of section 5 of the Termination of Employment Law, 1967 (Law No. 24 of 1967) as amended.

(b) The Court wrongly decided that the dismissal of the applicant was justified under the provisions of section 5(e), (f)(i) & (v) of the aforesaid law.

(c) The Court wrongly interpreted and appreciated fundamental facts and came to wrong conclusions regarding the circulars, *exhibits* 1(A) and (B) and wrongly decided that the appellant acted in breach thereof.

(d) The Court acted in abuse of power.

The material part of section 5, the section that permits dismissal without giving rise to compensation, 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 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;

(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;

.....

(v) serious or repeated contravention or disregard of works or other rules in relation to the employment".

It may be mentioned here that in the case of *KEM (Taxi) Ltd.* v. *Anastassis Tryphonos* (1969) 1 C.L.R., p. 52, it was held that the legislature by section 5(e) & (f) of the Law, intended to incorporate in this connection the Common Law. It was further held and reference was made in that respect to a number of English cases (see *Clouston & Co. Ltd.* v. *Corry* [1906] A.C. 122 P.C. at p. 129; *Jupiter General Insurance Co. Ltd.* v. *Shroff* [1937] 3 All E.R. 67; *Laws* v. *London Chronicle Ltd.* [1959] 2 All E.R. 285), that there is no fixed rule of law defining the degree of misconduct which will justify dismissal without notice. But misconduct inconsistent with the fulfilment of the express or implied conditions of service will justify dismissal though an isolated act of neglect or misconduct will not justify same unless attended by serious consequences. The Court will have to determine whether the misconduct of the servant, however, 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. The test to be applied must inevitably vary with the nature of the business and the position held by the employee. Furthermore "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; disobedience must be 'wilful'; this connotes a deliberate flouting of the essential contractual conditions; and 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".

It was argued on behalf of the appellant that by referring to the grounds set out in section 5 of the Law cumulatively and especially (i) and (v) of para. (f), the trial Court misdirected itself; it should have spoken of section 5(e) and (f) only and then refer to the cumulative effect of sub-paras. (i) and (v) of para. (f). In our view there is no misdirection on this point, it is rather a matter of style or expression as no question of termination of employment under the grounds contained in paras. 5(a)—(d) arose in the case. What was intended was the cumulative effect of paras. (e) and (f) of section 5 and from the sub-paras. of para. (f) only (i) and (v). Dr. J. B. Chronin, who was actively engaged in the preparation of this legislation as an I.L.O. expert advising the Government of Cyprus, in an article entitled I.L.O. Recommendation 119 "Job Security in Cyprus", published in The International and Comparative Law Quarterly Review 1968, Vol. 17, p. 760, at p. 766, had this to say:

> "Section 5 in general merely follows the common law rules for lawful termination without notice with the additional provision of redundancy as a good cause. Subsection 5 (f) is in fact merely a rather arbitrary setting out of certain common law provisions:
>
> Without prejudice to the generality of the foregoing sub-paragraph (e) the following may, *inter alia*, taking into consideration all the circumstances of the case 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;

(ii) gross industrial misconduct;

(iii) commission by the employee in the course of his duty of a criminal offence without the agreement, express or implied, of his employer;

(iv) immoral behaviour by the employee in the course of his duties;

(v) serious or repeated disregard of works of other rules.

Certainly this adds nothing to either the force or meaning of the section. It was inserted purely as an aid to the general public to whom the words of Section 5(e), 'conduct by the employee such as to render him liable to dismissal without notice', are presumably pretty meaningless. However superfluous the subsection may seem to the lawyer it may be that in legislation of this kind amplification for the benefit of the persons whom the Law is intended to protect has something to be said for it".

The answer, therefore, to the first question is that there is no misdirection as to the law.

The second question posed is that the Court wrongly decided that the dismissal of the applicant was justified under the provisions of section 5(e) and (f), and sub-paras. (i) and (v).

The trial Court found that there has been a breach of the instructions referred to earlier in the judgment and that that breach by the appellant was done with the knowledge of other members of the staff and it could create a bad precedent for the rest of them on the one hand, and create wrong impressions on the other, to the two sales-girls and that a meticulous and strict application of regulations relating to the smooth functioning of the business, on the one, and serving the security and protection of the goods on the other, constitute fundamental rules of the contract of employment. It added, of course, that in order that the violation of any regulation can carry with it the immediate termination of employment that must depend on the circumstances of each case.

We have referred to the principles of Law governing the question of summary dismissal as a result of a single act of disobedience or misconduct. In the circumstances of the

present case we find no reason to interfere with the conclusions drawn by the trial Court and with its approach to the facts of the case. The totality of the circumstances constituted acts of disobedience and misconduct that suggest no wrong application of Law in the circumstances, and justify the dismissal of the appellant as being legally warranted. We share the approach of the trial Court that regulations and instructions which set out a mode of security for the safety of the goods in a supermarket from unauthorized movement from one place to another and in the circumstances that might take them outside the control of the employer, amount to sufficient grounds for justifying the summary dismissal.

In the present case the regulations in question clearly allowed no departure from them and the trial Court was right in that the reason advanced by the appellant in disregarding them was not sufficient to justify her conduct. Furthermore, she was aware of their existence, she was herself reprimanded for a certain irregularity observed at the cash and she herself issued *exhibit* 2, hereinabove referred to, for the strict observance of such instructions. The answer, therefore, to the second question is that there was nothing wrong in the decision of the trial Court that the dismissal of the applicant was justified under the provisions of section 5(e) and (f) of the said provision.

In the case of *Sinclair* v. *Neighbour* [1966] 3 All E.R., p. 988, at p. 990, it was stated with regard to the facts of that case by Davies, L.J.:

> "The Judge ought to have gone on, in my judgment, to consider whether, even falling short of the label of 'dishonesty', it was nevertheless conduct of such a grave and weighty character as to amount to a breach of the confidential relationship between master and servant, such as would render the servant unfit for continuance in the master's employment and give the master the right to discharge him immediately".

This approach applies with equal force to the facts in the case in hand.

There was further the misconduct of the applicant on Saturday which the Court could, particularly and legally take into consideration when the irregularity was discovered by the General

Manager. The argument that that was conduct that happened after her dismissal, does not stand. She was in a way interdicted on Saturday but it was on Monday morning that her dismissal was related back to Saturday, which cannot exclude her conduct towards the General Manager.

With regard to the third question, i.e. that the Court wrongly interpreted fundamental facts and came to wrong conclusions regarding the circulars in question, we need only say that it is not necessary for us to label these circulars as regulations or instructions, as they were in fact legitimate orders of the employer as to how the employees should conduct themselves in a field which was closely connected with the security of his goods in addition to avoiding congestion in the shop during working hours by the purchase by employees of goods from his shop indiscriminately at any time of the day. This is how the Court viewed them and we have no reason to interfere with this approach and this is our answer to this question.

With regard to the last ground that the Court acted in abuse of power, we need hardly say anything. This ground was connected with the fact that the appellant was not given a chance of fair hearing before dismissal. We do not share the view as in matters of private Law this is not necessarily so; in any event the General Manager spoke to her and he obtained her views before her dismissal.

These are the answers of this Court to the four questions posed and the case is sent back to the trial Court for the necessary action. In fact, they amount to a confirmation of its decision.

For all the above reasons the appeal is dismissed with no order as to costs as none have been claimed by the respondents.

Appeal dismissed. No order as to costs.