

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

H.C.A. No. 1228 of 1990

BETWEEN

DIAN PARRIS

Plaintiffs

AND

CLAUDIA WORKMAN

AND

**THE CARIBBEAN UNION
CONFERENCE OF SEVENTH
DAY ADVENTISTS**

Defendants

Before the Honourable Mr. Justice P. Moosai

Appearances:

Dr. K. O'Brien for the Plaintiffs

Mr. B. Commissiong Q.C. for the Defendants

JUDGMENT

At the commencement of the trial the second-named Plaintiff, Claudia Workman, indicated that her claim against the Defendant had been settled. The Plaintiffs' Attorneys

indicated that they were unaware of this and, in any event, were claiming costs on her behalf. I am not inclined to make such an order. Workman ought to have informed her Attorneys. In the circumstances I propose to deal with the claim by the first-named Plaintiff whom I shall hereafter refer to as the Plaintiff for ease of reference. The Plaintiff's claim is against the Defendant for, inter alia, a declaration that her dismissal was wrongful and damages for wrongful dismissal.

The Plaintiff, a laboratory technician, began employment with the Defendant's hospital ("the Defendant") on 10th October, 1977. In 1978 she was promoted to the X-ray Department. In January 1980 she was promoted to the laboratory where she began working as a laboratory clerk for a few years. Thereafter the Plaintiff spent two to three years training as a laboratory technician. This was on the job training. In 1989 she was earning the gross sum of seven hundred and fourteen dollars (\$714.00) per fortnight. In addition she was entitled to other benefits. She was on call to work after normal working hours for which she was paid three hundred and seventy-five dollars (\$375.00) per call.

Claudia Workman ("Workman") was at the material time the supervisor of the laboratory. Apart from Workman and the Plaintiff, there were two other employees in the laboratory. Workman was the most senior followed by the Plaintiff. The two other employees, one of whom was Miss Nester Ovid, were trainees.

The Plaintiff's evidence was that as a laboratory technician her duties included the drawing of blood from patients, collecting samples other than blood from patients, for example, urine samples, and taking blood from donors for the blood bank, performing laboratory tests and urine analysis. In addition there was the chemistry aspect which took in

about twenty to thirty tests for example, cholesterol and triglycerides. She also did electrocardiographs and some book work.

On Friday 24th March, 1989 the Plaintiff's evidence was that she was bitten by a dog. Within fifteen minutes of being bitten by the dog, she received a telephone call asking her to report to work. The Plaintiff requested of the nurse that she (the nurse) ask the doctor to draw the blood for her. The nurse indicated to her that if the doctor had already left she (the nurse) would draw the blood.

The Plaintiff then attended the Defendant's hospital and had her finger dressed at the Emergency Room and collected the blood sample from the nurse and did the test. She was given a sick leave certificate which stated that she was examined on Friday 24th March, 1989 and found to be suffering from a dog bite to the right thumb. A period of recuperation commencing from 24th March, 1989 to 27th March, 1989 was recommended. There was some issue as to whether or not Dr. Rao had seen her and issued that sick leave certificate. Dr. Rao was called by the Defendant but he was not very helpful. He denied that the signature on that sick leave certificate was his. The Emergency Service Record of the Defendant's hospital was also shown to him. That revealed that the Plaintiff received a dog bite about half an hour before resulting in superficial abrasions dorsal of thumb with a shallow puncture. Dr. Rao also denied that that was his signature on same. In cross-examination Dr. Rao was unable to recall whether he worked on that date. He did not know and could not remember if he attended to the Plaintiff on that day. He admitted both documents were certificates of the Defendant's hospital.

Having seen the witness and looked at the documents, I accept the evidence of the Plaintiff on a balance of probabilities. Even though Dr. Rao denied that those were his

signatures, I formed the distinct impression that by his demeanour he was not categorically denying that he had seen the Plaintiff. He seemed unsure.

After her finger was bandaged the Plaintiff testified that she did not stay home as the doctor advised but presented herself for work. In fact she began work immediately after her finger was bandaged. The Plaintiff's sick leave expired on 27th March, 1989. She admitted that after that date she was fit to work although she qualified that later on by saying:

“When I went to work there, I was saying in part that I was fit to work.”

The Plaintiff testified that from 24th March, 1989 to 27th March, 1989 she performed all other tests save for the drawing of blood. The Plaintiff explained that the reason why she was unable to draw blood during that period was that she was right-handed and she used the vacutainer system which required the use of the right thumb to push in the vacutainer. In addition her finger was bandaged and she could not have worn gloves because the bandage was very thick and the glove would not fit. As a result of her training she was aware that if her skin was broken and she had to take blood samples, a bandage was necessary.

The Plaintiff also testified in her examination-in-chief that before she got the injury she took blood samples from the patient who was in Ward 205 and who was HIV positive. I pause her to note that that clearly could not be true. The unchallenged evidence of Dr. Primus, the attending physician to the patient, was that this patient was admitted to the Defendant's hospital on 28th March, 1989. The Plaintiff was bitten on 24th March, 1989.

Again in her examination-in-chief the Plaintiff testified that some time before her injury there was an incident with this particular patient's blood. The glass tube containing his blood broke in the centrifuge while spinning at high speed and spilled, making a mess. Again for the reasons just stated that could not be true. Immediately after testifying to the

above, the Plaintiff in examination-in chief then stated that she did not take blood from the HIV patient on 31st March 1989 and thereafter. In cross-examination she admitted being asked after 27th March, 1989 to go to Room 205 and draw blood from the HIV patient and also admitted that on 28th, 29th and 30th March, 1989 she did not draw blood from the HIV patient as her finger was not properly healed. Again in cross-examination and quite contrary to what she had said in examination-in-chief she testified that in the first week of April 1989 she was drawing blood from the HIV patient. It was specifically put to her that she did not draw blood on 1st April, 1989 but she answered that she drew blood in the first week of April, 1989 after her finger was fine.

It was then specifically put to her that by 31st March, 1989 her superficial abrasion had healed and there was no large bandage on her finger and that she could have worn double gloves. Strangely enough she denied that suggestion. Was she therefore now saying that her cut had not healed and that she was not drawing blood even though, just prior to that, she testified that she was drawing blood in the first week of April 1989?

Dr. Primus testified on behalf of the Defendant. Her testimony was that the HIV patient was admitted to the Defendant's hospital on 28th March, 1989. On 1st, 2nd, 3rd, 4th, 6th, 7th, 8th and 10th April, 1989 she ordered blood tests for the patient. These tests were extremely important because the patient was admitted with an extremely high temperature and it was important to ascertain the cause of his fever. In addition his white cell count on admission was low. By the third day of admission it had fallen even further. This exposed the patient to a greater risk of infection and it was therefore important to monitor his blood count closely so as to initiate timely treatment. Blood tests ordered on 1st April, 1989 were obtained. It is clear from the evidence of Workman that those tests were not done by any of

her laboratory staff. Blood tests were ordered on 2nd. and 3rd. April,1989 but they were not done. In the absence of results of blood tests ordered on 2nd and 3rd April, 1989 she was unable to ascertain whether his condition had become worse, stabilised or improved. On 4th April, 1989 she ordered blood tests but they were done. Workman's evidence again made it quite clear that it was not done by the laboratory staff. Dr. Primus had to personally take the blood to another laboratory, West End Body Clinic Laboratory. On 6th April, 1989 she ordered blood tests and they were not done. Dr. Primus recalled speaking to one of the laboratory technicians who refused to take any blood from the HIV patient. As a result of this refusal she took the blood herself. The blood was taken to Trinmed laboratories for analysis. Dr. Primus then spoke to Dr. Griffith, Chief of Staff about the situation.

On 7th and 8th April, 1989 blood tests were ordered and not done. On 10th April, 1989 the day the patient was discharged blood tests were ordered and done. Dr. Primus was unable to say who did same. On 12th April, 1989 the patient was re-admitted and discharged on 18th April, 1989. Blood tests were ordered during this period and were done but she was unable to say who took same. In cross-examination Dr. Primus testified that it was her usual practice to inform the laboratory technician of the status of a patient if he were HIV positive.

I was very impressed with the demeanour of Dr. Primus. Her evidence was cogent, compelling and convincing. Her credibility like her testimony was unshaken. Her evidence impacts on the credibility of the Plaintiff. The Plaintiff could not therefore have taken the blood nor carried out the blood tests. Some support for Dr. Primus's evidence is also lent by the evidence of the Defendant's witnesses Lawrence Duncan, Hospital Administrator, Dr. Fitzclarence Griffith, Chief of Staff and Dr. William Swanston, Director of the Defendant's laboratory.

Dr. Griffith testified that as a result of the refusal of the laboratory staff to carry out tests he called them in individually. He spoke to the Plaintiff who acknowledged that she had refused to take the blood from the HIV patient. The Plaintiff stated that she had a dog bite on her finger and that the tests were ordered too frequently. Dr. Griffith told the Plaintiff that she could perform the tests safely by double gloving, putting on a gown and also wearing a mask. Dr Griffith was shown the medical certificate during the course of the trial and opined that the Plaintiff's wound was not of such a nature as would prevent her from carrying out the tests. Dr. Griffith's opinion was that it was not usual in the profession for health care professionals who have superficial wounds to refuse to attend to such patients.

Notwithstanding his advice, the Plaintiff refused to take the blood. It was suggested to Dr. Griffith that he did not meet with the Plaintiff but he denied this. It was also suggested to Dr. Griffith that he had never spoken to the Plaintiff during the entire time that he had worked at the Defendant's hospital. Dr. Griffith answered that that was absolutely false. Again Dr. Griffith impressed me as a witness of truth. There was no attempt by him to embellish his evidence nor were there such inconsistencies as would lead me to the conclusion that his evidence was not credible.

Dr. William Swanston testified that as head of the laboratory he recalled a problem concerning the blood tests for the HIV patient. Three technicians came to him namely, Mrs. Workman, Miss Ovid and the Plaintiff. Mrs. Workman speaking on behalf of the group expressed concern about having to take blood frequently from the patient as he was HIV positive. His reply to them was that they could not justify refusing to take blood as there were guidelines that could be followed but that he appreciated their concerns.

Lawrence Duncan, Hospital Administrator, testified he was out of the country during the period 2nd April, 1989 to 10th April, 1989. On his return on 10th April, 1989, and as a result of a letter written to him by Mr. Wainwright Phillip, he went to the laboratory and spoke to Workman, Miss Ovid and the Plaintiff. He told them that they had refused to carry out the physician's orders. They admitted that they refused to carry out the physician's orders and that they intended not to take the blood. The Plaintiff told him that if the supervisor (Workman) refused, she was not going to take the blood. Workman told him that the doctors did not know what they were doing, that laboratory tests were ordered too frequently and that she was not going to have anything to do with an AIDS patient. Duncan told them that they would have to take the blood but they refused. The Plaintiff replied by giving the very same reasons as Workman.

Duncan testified that the following day he called in Workman and the Plaintiff:

"I implored, I asked them please to take the blood...."

Their response was that they would not take the blood.

Duncan spoke to them again that afternoon. They said they were not going to take the blood and gave the same reasons as the day before. He then contacted the Chairman of the Board.

I accept the evidence of Swanston and Duncan that the Plaintiff had refused to carry out blood tests on the HIV patient. This again would seriously impact on the evidence of the Plaintiff who at one point testified that she was taking blood in the first week of April 1989. Even the Plaintiff's witness, Workman, cast doubt on the Plaintiff's credibility. Her testimony was that on 2nd April, 1989 she wrote Phillip telling him of the HIV patient in Room 205 and of the frequency of tests required. She complained of the lack of equipment

and the fact that the staff at the laboratory were being exposed unduly. In cross-examination Workman testified that between 1st and 6th April, 1989 she and her staff did not refuse to take blood. "They only wanted some kind of consultation. They only wanted help." Further Workman testified that she was unaware that Dr. Primus was treating an HIV patient. She thought he would have been sent, as before, to Dr. Bartholomew at Port of Spain General Hospital.

Counsel for the Defendant, Mr. Commissiong, asked:

"Q: Who was to draw the blood if your department refused?"

A: The doctors or the nurses could have drawn the blood."

She admitted that it might be correct that Duncan begged them to go and take blood from the patient. Again she testified that we were trying to call attention to this irresponsible move to have such a patient.

Workman also put the Plaintiff's credibility in issue when she testified in cross-examination that as supervisor, by the Plaintiff presenting herself to work, she had to assume that she (the Plaintiff) was fit to work. Workman admitted that the Plaintiff had on a bandage but that in that case you could put on an oversized glove and you could also double-glove. There was some allegation as to the unsatisfactory state of the Defendant's laboratory but this is undermined by the reasons given for the refusal to take the blood from the patient. It is clear to me that the Plaintiff and Workman were acting in concert in an attempt to prevent the Defendant from treating the HIV patient. Even the allegation that the Defendant, in contravention of accepted guidelines, required laboratory staff to pipette by mouth was refuted by Workman who testified at one stage that there was no need to do same. Her evidence was that after Hepatitis B became known pipetting by mouth was forbidden.

Further I accept Dr. Swanston's evidence that in 1989 the Defendant's laboratory was more or less of the same standard as all the other laboratories he knew of in Trinidad and Tobago, namely Port of Spain General Hospital, Public Health Laboratory in Federation Park and the private laboratories he visited.

Halsbury's Laws of England 4th Edition, Volume 16, Employment, succinctly summarises the law at paras. 298 and 299:

“An employer has a common law right to dismiss an employee without notice on the grounds of the employee's gross misconduct, and such a dismissal is not wrongful. Originally this right was explained as a legal incident of the status of master and servant but, in line with the modern contractual analysis of the employment relationship, is now explained in contractual terms, as the acceptance by the employer of a repudiation of the contract by the employee. ... However, now that summary dismissal is explained in contractual terms, the question is whether the misconduct was sufficiently grave to amount to a repudiation by the employee of the contract of employment, either as to the whole contract or as to a particular part of it of fundamental importance; this is a question of fact in any particular case, depending on the circumstances of the case, the nature of the employment and, possibly, the terms of the particular contract in question, and previous case law is of limited precedent value, particularly as attitudes to certain forms of misconduct may change over time.”

The taking of blood and the carrying out of blood tests were essentials of the Plaintiff's contract of employment. In addition the Plaintiff admitted in cross-examination that as part of her training she is aware that the doctor and the doctor alone is to decide what tests his patients should have and the frequency of same. By their refusal to take the blood and carry out the blood tests, the Plaintiff, together with other employees of the laboratory, placed the life of a patient in jeopardy by their deliberate and calculated act. This could also have had the effect of exposing the Defendant to the possibility of legal action. When one considers that private institutions such as the Defendant depend so much on the confidence of the general public for their survival, the concerted act of the Plaintiff and others threatened to cause incalculable damage to the integrity of the said institution.

In Gorse v. Durham County Council [1979] 1 WLR 775 Mr. Justice Cusack stated:

“The effect of the action taken by the plaintiffs, in conjunction with their colleagues, of whose actions they were entirely aware, was to disrupt the education service for what was then to be regarded as an indefinite period. The Plaintiffs took the action deliberately, after ample time for reflection, and with a full understanding of the probable consequences to the education service. Short of actually refusing to teach they could hardly have participated in any enterprise more fundamentally at variance with their lawful obligations. They were not only refusing a lawful order, but a lawful order which to their knowledge was not a triviality, but one, disobedience to which would have had serious consequences. Indeed, it was the object of the withdrawal from supervising school meals to cause harm and disruption, otherwise it would have

served no purpose in drawing attention to the teachers' claim or in achieving the objective which they desired. I have no doubt at all that this was conduct which amounted to a direct repudiation of their agreements, and this being so, it would normally be open to the defendants to accept the repudiation and to regard the contracts as at an end."

The facts as I have found them reveal that the Plaintiff was guilty of gross misconduct. Even explained in contractual terms, the misconduct was sufficiently grave to amount to a repudiation by the Plaintiff of the contract of employment.

For the reasons above stated the Plaintiff's action is dismissed. The costs of the action are to be paid by the Plaintiff to the Defendant to be taxed in default of agreement.

Dated this 31st day of March 1999.

PRAKASH MOOSAI

JUDGE