

In the result this appeal is allowed. The orders of the Courts below remitting the award are set aside. The appellant will get the cost throughout. Nothing that we have said in this judgment will affect the right of the parties to take such steps, if any are available to them at law, for curing the defect arising from the award being on an unstamped paper.

Appeal allowed.

THE CALCUTTA JUTE MFG. CO. LTD.

v.

CALCUTTA JUTE MFG. WORKERS' UNION

(P. B. GAJENDRAGADKAR, A. K. SARKAR and
K. N. WANCHOO, JJ.)

Industrial Dispute—Charge of defiance and insubordination—Authority if must be a direct superior—Enquiry—Incidental matter if could be considered—Standing Order 14 (c) (i).

J, a sardar of the Batching Department of the appellant company, brought to the notice of G, a supervisor of the department, that one R of the Spinning Department was throwing away as unusable some workable roves. G on finding the report correct, with a view to make a complaint against R's work to the superior authority asked J to collect the roves thrown away. R tried to prevent J from collecting the roves; on G intervening R took a menacing attitude and abused G in filthy language. Soon another sardar S took R's side and also abused G and threatened him with violence. The management of the appellant company on the complaint of G served charge-sheets on the 2 workmen R and S which stated that as they had used abusive and filthy language and threatened to assault G, a supervisor, they were guilty of misconduct under standing order No. 14 (c) (i) which contemplated two types of misconduct; one wilful insubordination and the other disobedience of any lawful and reasonable order of a superior.

The tribunal *inter alia* held that G not being the supervisor of the Spinning Department where R and S worked was not a direct superior of these workmen and they were not guilty of insubordination or disobedience within the Standing Order.

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Held, that defiance of persons in authority whether such persons were the direct superiors of the workmen charged or not and also riotous conduct which made it impossible for the higher officers to discharge their duties properly, amount to insubordination.

Held, further, that an order of dismissal may be rightly sustained if it is based on a finding on a charge which the workmen concerned had the opportunity of meeting even though in the course of the enquiry other incidental matters had crept in.

N. Kalindi v. M/s. Tata Locomotive & Engineering Co. Ltd. (1960) 2 L.L.J. 228, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 11 of 1961.

Appeal by special leave from the award dated January 7, 1960, of the Second Labour Court, West Bengal Calcutta, in case No. VIII-C/157 of 1958.

M. C. Setalvad, Attorney-General for India
S. N. Andley, *Rameshwar Nath* and *P. L. Vohra*, for the appellant.

M. K. Ramamurthi, *D. P. Singh*, *R. K. Garg* and
S. C. Agarwal, for the respondent.

1961. November 16. The Judgment of the Court was delivered by

Sarkar J.

SARKAR, J.—This is an appeal against the award of an industrial tribunal holding that the dismissal of two workmen by the appellant was unjustified and directing their reinstatement.

The appellant has a factory for making yarn out of jute. There were, among others, two departments in the factory, namely the Spinning and the Batching departments. The workmen concerned were Ramdhani and Sitaram and they were employed in the Spinning Department. The preliminary stage of the preparation of yarn takes place in the Batching Department which in an unfinished stage is passed on to the Spinning Department for final processing and it is thereafter used for weaving.

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The appellant's case is that on March 22, 1958, a Roving Sardar of the Batching Department called Jagabandhu informed Ghosh, who was in charge of that department, that Ramdhani was throwing away as unusable some workable roves (slivers of jute drawn out and slightly twisted) which came from the Batching Department to the Spinning Department. Ghosh thereupon went to the Spinning Department and found that the report of the Roving Sardar was correct. He then asked the Roving Sardar to collect the roves thrown away by Ramdhani for being placed before the appropriate authority for inspection. Ghosh obviously intended to make a complaint against Ramdhani's work to the superior authority. At this Ramdhani, who was a Sardar in the Spinning Department, tried to prevent the Roving Sardar from collecting the roves. On Ghosh intervening, Ramdhani took a menacing attitude and abused him in filthy language. Soon, Sitaram, another Sardar of the Spinning Department, who had nothing to do with the matter, came there and took the side of Ramdhani. He also abused Ghosh and further threatened him with violence.

Ghosh complained to the Management of the factory about the conduct of Ramdhani and Sitaram and the Management thereupon served charge-sheets on them. The charge-sheets in substance stated that Ramdhani and Sitaram had used abusive and filthy language and threatened to assault Ghosh and they were, therefore, guilty of misconduct under Standing Order No. 14 (c) (i) of the Standing Orders of the appellant. That Standing Order is in these terms :

14(c)—The following acts and omissions shall be treated as misconduct :—

(i)—wilful insubordination, or disobedience, whether alone or in combination with

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others, of any lawful or reasonable order of a superior.

Pursuant to the charge-sheets the appellant's Labour Officer held an enquiry and came to the following findings :

"Both Sitaram and Ramdhani accepted the statement of Jagabandhu the only witness of the incident. Jagabandhu's statement clearly proves the offence of insubordination charged against Sitaram and Ramdhani. These two workmen could not place any witness or evidence by which it could be satisfied that they were not guilty.

The refusal of acceptance of charge sheet is also another misconduct on the part of both these two workmen. Moreover, they not only refused to accept charge sheet to explain their conduct but committed another very serious offence of fomenting and causing other Sardars to stage a stay in strike for two days on 24th and 25th March, 1958, and thereby caused serious dislocation of work. The situation created by this stay in strike was so tense that it even threatened the whole work to be dislocated and closure of the entire Mill.

From Jagabandhu's statement and its acceptance by Ramdhani and Sitaram and from their subsequent conduct I therefore find them guilty of the charge of insubordination and also activities subversive to discipline."

The appellant thereupon passed the following order:

"Further to the charge sheet issued to you on 26-3-58. I have found you guilty of misconduct under Rule 14-C(I) of the certified standing orders. My decision is that you

should be dismissed and I hereby dismiss you from the services of the company."

The Union, the respondent in this appeal, then raised an industrial dispute as to whether the dismissal of Ramdhani and Sitaram was justified and this was referred by the Government to the tribunal resulting in the award earlier mentioned.

It was conceded by the appellant before the tribunal that Ghosh was not the supervisor of the Spinning Department where Ramdhani and Sitaram worked and was not, therefore, a direct superior of these workmen. In view of this admission by the appellant the tribunal observed that if Ramdhani and Sitaram disobeyed any orders of Ghosh they could not be held guilty of insubordination and disobedience within the Standing Order as Ghosh was not their superior. It came to the conclusion that the decision of the enquiring officer of the appellant that these workmen were guilty of misconduct mentioned in Standing Order No.14(c)(i) was, therefore, basically erroneous and could not be upheld. It thereupon directed the reinstatement of the dismissed workmen. It further held that the appellant had been influenced by the finding of the enquiry officer that the workmen concerned had refused to accept the charge sheets and had caused a stay in strike. It observed that these offences were not the subject matter of the charge-sheets and the appellant could not take them into consideration in passing the order of dismissal. The tribunal further observed that the conduct of the workmen was not proper and in that view of the matter refused to direct payment of their wages during the period of their forced unemployment, which period was, however, ordered to be treated as a period of leave without pay. It is against this award that the present appeal has been taken.

Though the tribunal did not express any opinion as to the finding of fact by the enquiry officer

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of the appellant, it is clear that it accepted the same, otherwise it would not have disallowed the workmen their wages for the period of their forced unemployment on the ground that their conduct had not been proper. We have gone through the evidence on the record and we feel not the slightest doubt that the case of the appellant was true. The two workmen had been guilty of the misconduct imputed to them.

The question is whether that misconduct came within the Standing Order No.(14)(c)(i). We are entirely unable to agree with the tribunal that the conduct of the workmen did not amount to wilful insubordination. It is clear to us that the Standing Order contemplates two types of misconduct; one is wilful insubordination and the other is disobedience of any lawful and reasonable order of a superior. It is obvious that these two constitute different categories of misconduct. If insubordination, as the tribunal held, was disobedience to the order of an officer directly under whom the workmen charged with misconduct worked, then the two categories mentioned in the Standing Order would have amounted to the same misconduct. This obviously cannot be the proper reading of the Standing Order. In our view, insubordination would include defiance of persons in authority whether such persons were the direct superiors of the workmen charged or not. It would also include riotous conduct which made it impossible for the higher officers to discharge their duties properly. Mr. Ramamurthi for the Union said that insubordination was disobedience to a prescribed rule. We think that even in that sense the workmen were guilty of insubordination. It was clearly an implied rule of the factory that higher officers would not be thwarted and prevented from bringing to the notice of the management the wastefulness of the workmen causing loss to the

employer. This is all that Ghosh was about in this case, and this aroused the wrath of the workmen.

Mr. Ramamurthi also said that it was not a case of wilful insubordination because Ramdhani was entitled to throw away roves which he considered unworkable as his remuneration depended on his out-turn. This contention is wholly unfounded. Ramdhani got weekly wages as he admitted in his own evidence and therefore his wage did not depend on his out-turn. Again the conduct with which he had been charged was not throwing away the roves but adopting a menacing attitude towards one of the higher officers employed by the appellant.

Mr. Ramamurthy further said that the dismissal was not really on the finding that the workmen had been guilty of insubordination and that the tribunal was justified in holding that the order of dismissal had been induced by the finding of the enquiry officer as to the refusal of the workmen to accept the charge-sheets and causing the stay in strike as no charge in respect of these matters had been preferred against the workmen and the latter had no chance of defending themselves against such a charge. We have earlier set out the order of dismissal. That order does not show that the order of dismissal had been based on any consideration other than the finding on the charge brought against the workmen. In our view, an order of dismissal may be rightly sustained if it is based on a finding on a charge which the workmen concerned had the opportunity of meeting even though in the course of the enquiry other incidental matters had crept in. One cannot take a too legalistic view in these matters. We would also observe that the two matters mentioned in the enquiry officer's report are really connected with the charge and had been mentioned by the enquiry officer only to corroborate his finding on the charge brought, for it was the misconduct mentioned in the charge-sheets

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which led to the workmen refuse to accept the charge-sheets and causing the stay in strike. Inevitably, those questions would crop up in the enquiry and the enquiry officer could legitimately refer to them. They would further be relevant matters for the employer's consideration in deciding the punishment to be awarded to the workmen concerned for the breach of the Standing Order. In any event, there is no reason to think that the order of dismissal was based on consideration of any finding other than that mentioned in the charge sheets. We may refer to *N. Kalindi v. M/s. Tata Locomotive & Engineering Co. Ltd.* (1), in this connection.

Mr. Ramamurthy also argued that the order of dismissal was really an instance of victimisation and that this is in substance what the tribunal had found. We are entirely unable to accept this contention. The workmen in their evidence had not suggested that they had been dismissed by way of victimisation and neither do we think that the tribunal had come to any finding of victimisation.

We, therefore, think that the order of the tribunal cannot be upheld. We accordingly set it aside and hold that the order of dismissal of Ramdhani and Sitaram had been properly made by the appellant.

Appeal allowed.

(1) (1960) 2 L. L. J. 228.