

MASTER AND SERVANT

PAULINE LIPSON

*Mrs. Lipson is Director of the Legal Aid Bureau of Johannesburg.
This talk was delivered to a meeting of the Transvaal Region.*

In dealing with the laws of master and servant we must first establish who and what are servants. A servant is a person who subjects himself to the supervision and direction of his employer — who is of course “the master” — and is engaged to obey the employer’s orders, not only as to the things he has to do, but also as to the time and manner in which he has to do them.

Contracts of service fall into two classes, those which are governed by the provisions of the statutes relating to masters and servants, and those which fall under the common law.

The most important difference between the two is that a breach of contract by a statutory servant can lead both to a criminal charge and a civil claim for damages whereas the breach by a common law servant can lead only to a civil claim.

The definition of the word servant for the purpose of master and servant laws is a very wide one — it includes, and I quote, “any person employed for hire wages or other remuneration to perform any handicrafts or any other bodily labour in agriculture or manufacture or in domestic services — or as a porter, boatman or other occupation of a like nature.” This definition was laid down in the Transvaal in law 13 of 1880. A contract of service can be entered into without any written formality and it can be for an indefinite or a stipulated period.

Where a servant is engaged to do one particular piece of work, the contract naturally comes to an end on completion of the work but the master can put an end to the contract and can dismiss the servant before the work is finished if the servant is dilatory and prolongs the job beyond the lapse of reasonable time for finishing.

Without doubt one of the most important aspects of a master-servant contract is the question of what notice is necessary to end the contract. In the Master and Servant Act a hard and fast rule is laid down, namely *contracts for a month or more require a month’s*

notice and contracts for a week require a week’s notice. This must be given by the party who wishes to put an end to the contract.

There are certain circumstances where a contract can be cancelled without notice.

Generally speaking, any conduct whether wilful and deliberate, or otherwise, by either party, which is incompatible with the obligations he has undertaken is sufficient grounds for ending the contract.

The party who, by his conduct, makes it impossible to continue the relationship of master and servant gives the other person grounds for immediate cancellation without any notice being given or received. This applies both to the master and to the servant — who in this case has the same right to terminate the contract summarily if the master fails to carry on due date, or if the master insists on a servant doing work which clearly was not contemplated in the original contract — the servant has the right to leave the job without giving prior notice.

A servant also has certain rights if the master summarily terminates the contract without any justification. If a master dismisses a servant without giving notice — and without justification — the servant has a right to claim damages. These damages would be the amount of salary or wages he would have earned had the employment lasted until the contract had expired — this would be, of course, either one week or one month’s notice, so he could claim one week or one month’s wages in lieu of notice.

A master has the right to summarily cancel the contract on certain grounds. The most common ground is the negligence or dishonesty of a servant, and wherever a servant’s behaviour is such that it amounts to a repudiation of his obligations to perform his duties faithfully and truly.

A servant may be summarily dismissed if he shows himself to be incompetent or unable to render the services he has promised. In entering into a contract he implies that he has the

ability to do the work he agrees to undertake, and if it turns out he does not have the ability he can be sacked immediately.

This applies even in those cases where a servant has been engaged on a probationary or trial basis for a fixed time. If, before the time has expired, it is obvious that he is unable to carry out his duties competently, he can be dismissed without notice.

A servant who is working out a period of notice and who during that time commits a breach of his contract, can also be summarily dismissed before the expiration of the notice period.

Other grounds for instant dismissal are, drunkenness, insubordination — by refusing to carry out or obey lawful orders or instructions — absence from work without permission, and insolence. In the last case if the servant is insolent only once and not habitually the insolence must be of a very grave nature to lead to immediate dismissal.

The wages to be paid on dismissal must be the full amount earned for the days worked because in our law no man is allowed to enrich himself at the expense of another — a master cannot have the benefits of his servant's work without paying for it.

To go back for a moment to wages in lieu of notice — the Legal Aid Bureau deals with 20 to 30 complaints each month by servants who have been dismissed without notice.

Although the law is quite clear as to the period of notice to be given — employers have such grossly exaggerated ideas of what constitutes a breach by the servant, which entitles the employer to dismiss summarily, payment of wages in lieu of notice is very difficult to collect and although action can be brought before the courts, attorneys are loath to institute an action for what is considered to be a petty amount.

Let us look now at the rights of a servant who is unable to carry out his duties as a result of illness or accident. If the illness or accident is not caused by the servant himself the Master and Servant Act lays down that the servant must get one month's wages and every other benefit like board and lodging up to two months and only after the expiration of two months can the master cancel the contract.

Nowhere in the Act is there any provision for paid leave for a servant — paid leave is therefore a privilege not a right, and may be given at the discretion of the master. Over the years it has become customary to give a

domestic servant at least two weeks leave on full pay but if the employer should refuse to give paid leave he cannot be forced to do so.

I said earlier that a breach of contract under the Master and Servant Act can give rise to criminal charges being laid. A servant can be charged and found guilty in the criminal courts of being drunk on duty, failing to carry out orders, being absent without leave and desertion. The servant can lay a criminal charge against the master for withholding wages and also for failing to provide suitable food and accommodation if this should be part of the contract.

A master cannot be forced to give a servant a reference.

Of course many aspects of the relationship between employers and employees particularly in the commercial and industrial sphere are governed by statute — such as the Shops and Offices Act, Factories, Machinery and Building Work Act and the various wage determinations governing specific trades and industries which provide for the protection of both the master and the servant, in that they set out unequivocally such things as basic wages, period of leave, sick pay and general conditions of employment.

There is unfortunately no wage determination for domestic servants nor are they covered by the Workmen's Compensation Act, nor do they contribute to, and therefore cannot claim from, the Unemployment Insurance Fund.

This Act provides that any African worker other than a domestic worker who earns in excess of R10,51 a week must contribute to the Unemployment Insurance Fund. The amount is fixed by law and must be deducted each week or month by the employer.

If a worker becomes unemployed, he applies for benefits from the Fund. He must show that he is both willing and able to work and has worked and contributed for 13 weeks within the year in which he applies. He must register as a work seeker with the local labour office. If the employment officer cannot place him in suitable employment that official issues a report to that effect and that worker can then withdraw his contributions.

He is entitled either to draw the amount he has paid in or to receive benefits for 26 weeks, whichever is lesser. Payments are graded on the worker's earning and range from a minimum of R5,60 a week for an unskilled labourer to a maximum of R20,30 a week.

The Act clearly lays down that for a period of six weeks the employment officer must offer the workman positions of the type and within the same income bracket as the work he did previously.

If this is not done the worker can refuse to accept the jobs offered but if the worker refuses suitable employment or if he is summarily dismissed or resigns for no valid reason he can be penalised and the payment of benefits is withheld for six weeks. There is a right of appeal by the worker to the claims officer.

The dependents of a deceased contributor can apply for payment of the amount paid by the worker. Benefits will only be paid out if the worker had been a contributor for at least 13 weeks in the five years prior to his death and the claim must be made within three years from the date of death.

If a worker is unable to work as a result of ill health he is entitled to withdraw his contributions in the form of sick benefits.

The Workmen's Compensation Act provides virtually a form of insurance for employees. Once again domestic servants are not covered by the Act but all other workers are. In this case it is the employer who makes the contributions to the Workmen's Compensation Commissioner and if a workman is injured during the course and scope of his duties he is entitled to claim payment of portion of his wages for the period during which he is unable to work as a result of the injuries.

Provision is also made on a sliding scale for permanent disability ranging from the loss of the joint of a finger or toe to 100 per cent disablement. Provision is also made for payment of hospital and medical expenses.

Who cares?

ELEANOR ANDERSON

The Black Sash woman is glad of the cordial welcome from the Indian shopkeepers in Illovo, for the July morning is cold as she sets up her table outside their premises. She is there to sell two Black Sash publications — the "Memorandum on the Pass Laws and Influx Control" and the latest Sash magazine. She also proposes to hand out pamphlets entitled "Who Cares About Women?" and "Who Cares About Migrant Labour?"

Very soon a Black man hurries up to offer her 50 cents for the Memorandum saying, "I've just got to support you. Thank you for what you are doing."

B.S.W.: (to hurrying White woman) Are you interested in our Black Sash publication?

WOMAN: Not now thanks. I'm vitally interested, but right now I'm in a hurry to get to the races.

B.S.W.: (to White man) Would you like to see a copy of the Memorandum on...

MAN: Definitely not. (He flips an half-eaten apply at her feet.)

WHITE WOMAN: (fingering pamphlet) Who Cares? Are you fighting pollution?

WHITE WOMAN: (approaching table unasked) Isn't the Black Sash Jan Sinclair? She's a good person. (She buys both publications and takes both pamphlets.)

BLACK MAN: Thank you for trying to help us. My wife has just been endorsed out to Pietersburg.

(A lorry drives slowly past and the Black man sitting next to the White driver thumps the driver on the shoulder.

"Stop!" he shouts, and the driver stops. The Black man jumps out of the lorry and buys the Memorandum.

"This I must have," he says. "Thank you very much." And he goes back to the lorry.)

AN OLD LADY: (woe in her voice) Not Christmas cards already?

B.S.W.: (to White woman) Are you interested in seeing our Black Sash publications?

WOMAN: (very politely) Thank you so much, no. I'm a Christian.

(The Indian shopkeeper appears to ask how B.S.W. woman is getting on.)

INDIAN: Business is good today. You're bringing us luck.

And suddenly the long, chilly morning is not as long as B.S.W. had been thinking. After all, cold feet, warm heart.